

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

282

CRM-M-6018-2020 (O&M)
Decided on: 17.02.2020

Simranjit Kaur

.. Petitioner

VERSUS

State of Punjab

.. Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Dr.D.P.S.Randhawa, Advocate
Mr. Suvir Sidhu, Advocate
Mr. Rohit Sud, Advocate
for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab.

Mr.Liaqat Ali, Advocate
for the complainant.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition under Section 439 of the Code of Criminal Procedure has been filed for grant of regular bail to the petitioner in case FIR No.0196 dated 18.12.2019, under Section 295-A IPC and Section 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, registered at Police Station Cantonment, Police Commissionerate, Amritsar.

The allegations which are contained in the FIR are that on 15.09.2019, on social media, one lady advocate who is resident of Mohali and is also connected with a political party, has compared Bhagwan Shri Balmiki Ji Maharaj with some gangster and despite being an advocate, she

must not use such objectionable words against Bhagwan Balmiki Ji Maharaj and. therefore, the present FIR has been lodged against the present petitioner. Thereafter, the petitioner surrendered before the police on 19.01.2020. From that period, she is in custody.

Learned counsel for the petitioner has submitted that in the present case, although, there is a C.D. which was placed on the social media on 15.09.2019 and which shows that she has made some statements with regard to Shri Balmiki Ji Maharaj but according to learned counsel for the petitioner, the same were only the remarks which were made unintentionally and without any motive or malice in the mind of the petitioner. He has further argued that the petitioner has made the remarks which were not to malign the highness of Shri Balmiki Ji Maharaj. He has further argued that in the present case, his argument is augmented from the fact that on the same day i.e. on 15.09.2019 at 5.41 p.m., the petitioner had uploaded another video on the same media, putting a clarification and also specifically apologizing from the general public that she never meant to compare Bhagwan Shri Balmiki Ji Maharaj with any gangster. Learned counsel for the petitioner has submitted two copies of transcripts of the above stated video of clarification/apology tendered on social media and the said transcript which has been produced in Court and are hereby directed to be placed on record. One of which is placed as Mark 'X' and which is reproduced as under :-

“Satshiri Akal ji, I am Simranjit I seek apology from everyone whosoever felt offended with my statement in which I quoted “Bhagwan Balmiki Ji' just to give an example that 'we should not

criticize a person due to his bad past if person is doing good job today, "I apologize from core of my heart if I hurt anyone's religious sentiments'. I never intended to do so, I can never compare a person with Lord Balmiki, who has earned a high place in society and religion.

I didn't compare him with any person. 'How can I dare to compare a religious guru with a person specially when a religious guru is considered as God. I got call from an organization blaming me that I abused "Lord Balmiki ji" and I compared Lord with Lakha Sadana but I made them clear as well that I never intended so and I didn't do so, I just gave an example. I made it clear that we human don't own that high status as Lord Valmiki Ji, we are nothing, so I didn't compare. I again made it clear that how can we human compare us with God, we are nothing. But still if I hurt anyone with my statement I apologize from core of my heart, I am sorry again. But in that video I just said we should praise a person for his good deeds, I quoted it as example, I just said if person has reformed himself, as Mr. Lakha Sadana who was gangster way back, but today he is doing wonderful job, he is working for mother tongue Punjabi as he is doing what no one else is doing, as he is raising issue and spreading awareness amongst people no one else is doing so we should respect him rather calling him gangster. Here I quoted "Lord Balmiki Ji" as an example as I heard while I grew, but my knowledge can be wrong also, the fact I know can be wrong also but I heard that he was a dacoit but attaining Divine trance, he became spiritual and religious guru

and became known as “Lord Balmiki”. Another example is of Baba Banda Singh Bahadur, who was a hunter and a day while hunting, a pregnant bear got injured and died, and this incident transformed him into a Spiritual person from a hunter, then after his meeting with Guru Gobind Singh, he became Saint-Soldier. There are many more examples we can quote as of Dulla Bhatti etc. But again if with my example, I hurt anyone I am again sorry and I apologize with folded hands, but I never intended to do so. I request everyone to share this video as much as you can so that the people those are feeling offended, do understand what I wanted to convey, they do listen to apology too, they do learn that I never intended to hurt their religious sentiments. They want me to come for table talk but as I did nothing so why should I for compromise or table talk. Even if they feel I did wrong they can go for legal actions, I am ready for the consequences. But I know I didn't hurt anyone I didn't hurt anyone's religious sentiments, I didn't compare anyone's God with any person. I just quoted an example that we should not discuss the past, if person has reformed, if person is doing good work we should praise him. Still if I said anything wrong I am again sorry but I respect all religions and I respect every person.”

In the said transcript of unconditional apology, learned counsel for the petitioner has argued that she has specifically stated that she is seeking apology from everyone whosoever felt offended with her statement and she apologizes from the core of her heart if she had hurt anyone. She

further stated that she can never compare a person with Lord Balmiki Ji, who has actually earned a high place in society and religion. In the second transcript which is directed to be marked as Mark 'Y', she has stated that she respects all the religion and God Balmiki Ji is a God for people having faith in him. She has stated that she respects and gives honour to God Balmiki Ji as she also gives respect to Guru Nanak Dev Ji and has further stated that in the history, which she has learnt from childhood can be wrong. Thus if unintentionally she has hurt anyone's religious feelings, she apologize with folded hands. She never intended to hurt anyone's religious feelings and her intention was not wrong. The abovestated transcript is reproduced as follows:-

“I respect all the religions, God Balmiki ji is god for the people having faith in Him, I do respect and give Honour to God Balmiki ji as I do give respect and Honor to Guru Nanak Dev Ji, but the history I have learnt since childhood can be wrong, thus if unintentionally I hurt anyone's religious feelings, I apologize with folded hands. I never intended to hurt anyone's religious feelings and my intentions were not wrong. I just quoted an example for better understanding. Still anyone feel offended can take legal action but I respect them with whole heart. But if anyone is trying to discourage me because I am a girl I don't feel afraid from death or anything else. Few mischievous persons are trying to give it communal colour that is the tragedy and irony of our society.”

Learned counsel for the petitioner has relied upon a three-judges Bench judgment of Hon'ble Apex Court in **Mahendra Singh Dhoni**.

vs. Yerraguntla Shyamsundar, 2017 (2) RCR (Criminal) 746, wherein it was held by the Supreme Court that Section 295A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalises only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. It has been further held that insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. It only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Para 9 of the said judgment is reproduced hereunder:-

“9. Learned counsel then shifted his ground and formulated his objection in a slightly different way. Insults to the religion or the religious beliefs of a class of citizens of India may, says learned counsel, lead to public disorders in some cases, but in many cases they may not do so and,, therefore, a law which imposes restrictions on the citizens' freedom of speech and expression by simply making insult to religion an offence will cover both varieties of insults, i.e., those which may lead to public disorders as well as those which may not. The law in so far as it covers the first variety may be said to have been enacted in the interests of public order within the meaning of el. (2) of Article 19, but in so far as it covers the remaining variety will not fall within that clause. The argument then concludes that so long as the possibility of the law being

applied for purposes not sanctioned by the Constitution cannot be ruled out, the entire law should be held to be unconstitutional and void. We are unable, in view of the language used in the impugned section, to accede to this argument. In the first place cl. (2) of Article 19 protects a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression "in the interests of" public order, which is much wider than "for maintenance of" public order. If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence cannot but be held to be a law imposing reasonable restriction "in the interests of public order" although in some cases those activities may not actually lead to a breach of public order. In the next place Section 295A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalises only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. It only Punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the section, which penalises

such activities, is well within the protection of clause (2) of Article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 19(1)(a). Having regard to the ingredients of the offence created by the impugned section, there cannot, in our opinion, be any possibility of this law being applied for purposes not sanctioned by the Constitution. In other words, the language employed in the section is not wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Article 19(1)(s) and consequently, the question of severability does not arise and the decisions relied upon by learned counsel for the petitioner have no application to this case."

Learned counsel for the petitioner has further submitted that since the petitioner has on the same date given a detailed apology to the people at large, the essential conditions which are contained under Section 295A as well as Section 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act will not be attracted. He has further submitted that the petitioner is in custody since 19.01.2020 and the investigation of the case is going on but no recovery is to be made from the petitioner because the subject matter of the case falls in the C.D. itself which is already with the police, therefore, has prayed for grant of bail to the petitioner.

Per contra, learned counsel for the State Mr. Ajay Pal Singh Gill, learned Deputy Advocate General, Punjab, has submitted that in the

present case, there is no doubt that the petitioner has used the derogatory words which are contained in the FIR itself but the fact remains that the allegations against somebody who is worshipped as a God by a set of community, is a kind of indiscipline which should not be tolerated in the society and would constitute an offence and, therefore, he has opposed the grant of bail to the petitioner. He has further submitted that in the present case, the investigation, although is going on but no recovery is to be effected.

Mr. Liaqat Ali, Advocate, who has appeared on behalf of the complainant has vehemently opposed the grant of bail to the petitioner on the ground that the matter is serious in nature despite the fact that the petitioner has offered a detailed apology but this kind of offence cannot be tolerated by the society at large and, therefore, he has also opposed to grant of bail to the petitioner.

I have heard learned counsel for the parties and have also gone through the contents of the paper-book which were made available to me.

At the outset, the argument of learned counsel for the petitioner that the petitioner is a lawyer and by virtue of the same some concession may be shown to her is outrightly rejected because nobody can be considered as being above the law. So far as the allegations contained in the FIR are concerned, I have gone through the FIR in which the petitioner has been attributed to using some derogatory remarks against Shri Balmiki Ji Maharaj who is worshipped as a God by a set of people in India and abroad. However, on the same day when the said alleged remarks were made by the petitioner, she has immediately apologized by uploading another C.D. at

5.41 p.m. and then again in the separate C.D., she has again for the second time apologized with regard to her contents by verifying and by stating that she is making an apology because she never intended to hurt the feelings of anybody but she has stated out of carelessness, because what she had heard right from her childhood, she had stated only the same thing. Therefore, there is no malice or wrong intention in her mind with regard to insult any person who is worshipped as a God including Shri Balmiki Ji Maharaj. She has specifically stated in the apology that she has apologized from the core of her heart and she does not want to hurt anyone's sentiments. She would never intend to do so. She can never compare a person with Lord Balmiki Ji, who has earned a high place in society and religion. She has further submitted in the apology that she is sorry again. She has further stated that her knowledge about Lord Balmiki Ji right from the childhood can also be wrong also and thereafter she is also given illustrations of various other persons who are being respected in this part of country to a very large extent. In the second transcript, she has even stated that she respects all the religion and God Balmiki Ji is God for the people having faith in him and, therefore, she has not intentionally hurt anybody's religious feelings and she has apologized with folded hands in this regard.

Considering the offending video and the apology, which were tendered on the same day, this Court will revert back to the contents of Section 295A IPC as well as to the law laid down by the Hon'ble Supreme Court in **Mahendra Singh Dhoni's case (supra)** and in which it has been categorically held that in the absence of any malicious intention to hurt somebody's feelings, the provisions of Section 295-A would not apply. In

the present case, once, on the same day, an apology has come from the mouth of the petitioner which was also submitted in the social media, the applicability of Section 295-A would require further consideration in this context as well.

Although, at this stage, the subject matter of the case pertains only to grant of regular bail, though this Court refrains itself from observing anything on the merits of the case, which would be subject matter of trial, if any, but so far as the custody period is concerned, it is admitted position that the petitioner had herself surrendered before the police and she is in custody w.e.f. 18.01.2020 and as per statement made by learned State counsel that no recovery is to be effected from the petitioner and has submitted that although the investigation of the case is still going on and no recovery is to be effected from the petitioner because the entire subject matter of the case pertains to a C.D. itself which can be seen at the time of trial, the law with regard to the grant of bail to a person is now well settled. The life and liberty of a particular person is guaranteed in the Article 21 of Constitution of India which has to be balanced with other factors which would include the need of recovery, influencing of witnesses and tempering of record etc. It is a duty of the Court to strike a balance between both these and then in the facts and circumstances of the case, the Court has to apply its mind and to take a conscious decision as to whether in a particular case, bail should be granted or not.

After appreciating the arguments which have been raised at length by learned counsel for the parties and the totality of circumstances of the case and in view of the fact that no recovery is to be made in the present

case and that the apology was tendered on the same date on which the alleged video was uploaded on the social media and the fact that it is not a case of respondent-State that there is likelihood of petitioner influencing witnesses or tempering record. I deem it appropriate to grant the benefit of bail to the petitioner. Consequently, the present petition is allowed. It is ordered that the petitioner shall be released on regular bail on his furnishing bail bond/surety to the satisfaction of the learned trial Court.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

17.02.2020
anju

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No