

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 15.01.2020

1. CRM-M-43517-2019 (O&M)

Virender Aggarwal

....Petitioner

Versus

State of Haryana

....Respondent

2. CRM-M-21843-2019 (O&M)

Mahendra Gupta

....Petitioner

Versus

State of Haryana

....Respondent

3. CRM-M-22554-2019 (O&M)

Radhey Shyam Sherewala

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON’BLE MR. JUSTICE ARVIND SINGH SANGWAN

**Present: Mr. Birender Singh Rana, Sr. Advocate with
Mr. Divya Bajaj, Advocate
for the petitioner (in CRM-M-43517-2019).**

**Mr. S.K. Jindal, Advocate
for the petitioner (in CRM-M-21843-2019).**

**Mr. Amit Arora, Advocate
for the petitioner (in CRM-M-22554-2019).**

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Sunil Chadha, Sr. Advocate with
Mr. Manish Mehta, Advocate and
Mr. Aditya Sanghi, Advocate
for the complainant (in all cases).

ARVIND SINGH SANGWAN, J.

This order shall dispose of aforementioned three petitions praying for grant of anticipatory bail to petitioners Virender Aggarwal in CRM-M-43517-2019, Mahendra Gupta in CRM-M-21843-2019 and Radhey Shyam Sherewala in CRM-M-22554-2019, in FIR No.131 dated 27.02.2019 under Sections 66(E), 67 & 67(A) of the Information Technology Act, 2000 (for short 'I.T. Act') and Sections 120-B & 294 of the Indian Penal Code (for short 'IPC'), registered at Police Station City Narnaul, District Mahendergarh.

Brief facts of the case, as per allegations in the FIR, registered at the instance of complainant Gopal Sharan Garg, are that he is elected President of Akhil Bhartiya Aggarwal Sammellan and Sanatan Dharam Education Board, Narnaul. He was also President of Trader Welfare Board constituted by Govt. of Haryana and is a respected businessman. It is further stated that some of his political opponents created a false CD of a lady with a man having resemblance with his face, showing vulgar and intimate relationship in order to blackmail his family and his cousin Het Ram Garg, by levelling allegations of character assassination. It is further stated that when he refused to bow to the pressure of accused persons, the said false CD was forwarded to thousands of persons through social media and it was

propagated in a bad manner. The cousin of the complainant, Het Ram Garg registered a complaint and thereafter, FIR No.525 dated 07.10.2018 was registered at Police Station Narnaul and the district police of Palwal, by constituting an SIT, investigated the case and accused persons namely Raj Kumar Yadav, Sandeep Sharma, Kishan Chaudhary, Surender @ Pammi Chaudhary and Keshav Sanghi, Advocate were arrested, who were later on granted the concession of regular bail, as the challan in the said FIR was presented on completion of the investigation. It is also stated in the FIR that taking undue benefit of the situation, Radhey Shyam Sherewala, claiming himself to be National Convener of Aggar Chetna Sadbhavna Yatra Sangathan, being Organizing Secretary, from his mobile No.82196-75573, forwarded vulgar and obscene picture of a lady on mobile No.94160-65937 on 04.12.2018 through Whatsapp, in criminal conspiracy with Virender Aggarwal, resident of New Delhi, who obtained the report from a Forensic Lab regarding false and fabricated CD and sent the report along with vulgar and nude picture to Radhey Shyam Sherewala, Mahendra Gupta and hundreds of persons by way of Whatsapp and thus, the accused persons have committed the offence, by mentally harassing the complainant and socially amputating his respect by character assassination. The police, thereafter, registered the aforesaid FIR No.131 dated 27.02.2019 under Sections 66(E), 67 & 67(A) I.T. Act and Sections 120-B & 294 IPC.

Learned senior counsel for petitioner Virender Aggarwal has argued that the incident relates to the year 2018, when cousin brother of the complainant got an earlier FIR No.525 registered against four persons, who

were arrested and later on, granted the concession of regular bail. On similar set of allegations, present FIR No.131 is registered regarding preparation of a false and obscene video and circulating the same. It is further argued that when the case was investigated by the SIT and the challan was presented against the accused persons in FIR No.525, nothing has come in the investigation against the petitioner and therefore, by levelling new allegations, present FIR No.131 has been registered against the petitioner and two other persons.

Learned senior counsel for petitioner Virender Aggarwal has further argued that as per the FIR, the allegations are against two other co-accused Radhey Shyam Sherewala and Mahendra Gupta and due to the reason that in a General Body Meeting of Akhil Bhartiya Aggarwal Sammellan, the complainant denied his presence in the video, by claiming it to be a false and fake and therefore, it was decided by the Organization to get the same examined from a Forensic Lab to find out the truth and after receiving the report from Forensic Lab that video is original, in a subsequent General Body Meeting of the Akhil Bhartiya Aggarwal Sammellan held on 30.01.2019, the complainant, under social pressure of Aggarwal Sabha, was removed from the post of President unanimously and one Ramesh Aggarwal, Sr. Vice President was appointed as working President and Virender Aggarwal was appointed as working General Secretary. It is thus argued that the complainant, by concocting a false story, has now registered the second FIR against the petitioner and two other accused persons.

Learned senior counsel has next argued that the fake video was already in public domain and was circulated by the persons named in FIR

No.525 and there is no allegation that petitioner Virender Aggarwal has ever forwarded any alleged fake video to any person, using any social media platform and therefore, only allegation against him is that he got the CD scientifically examined from a Forensic Lab, which was on account of the oral decision of General Body Meeting. Learned senior counsel has placed on record a copy of the Forensic Lab report dated 17.11.2018, carrying five pages as well as Whatsapp message sent by petitioner Radhey Shyam Sherewala on 04.12.2018, in which it is stated that Forensic lab report of the CD is seen, however, this transcript dated 04.12.2018, allegedly done from the mobile phone of Radhey Shyam Sherewala, is not clear, whether the video was forwarded with the same, as PDF document, in the name of forwarding letter, is of the lab, which is shown to have been forwarded.

A perusal of the message forwarded on Whatsapp shows that it is stated that CD relates to Gopal Sharan Garg, as per Forensic Lab report. It is also stated that there is some old dispute of Gopal Sharan Garg with Kishan Chaudhary and ABAS has no connection with the accused, who were arrested on account of blackmailing and therefore, looking into the image of the association on moral grounds, the complainant should resign.

Learned senior counsel has also argued that the petitioner has joined the investigation during enquiry by the SIT and has also deposited his mobile phone and nothing has come that his mobile phone was ever used for forwarding any such video. It is further argued that the petitioner is a senior citizen and is not involved in any other case.

Learned senior counsel for petitioner Virender Aggarwal has also argued that no offence under Section 67(A) of I.T. Act is made out against the

petitioner, as he has not published or transmitted any sexually explicit material as is clear, even from bare perusal of the FIR and except Section 67(A) of I.T. Act, all other offences are bailable.

Learned counsel for petitioner Mahendra Gupta has argued that the petitioner has not forwarded any video to any person either on Whatsapp or through any other means and the allegations in this regard are against the persons, who are accused in FIR No.525. It is further argued that the accused in FIR No.525 were arrested and they have been granted the concession of regular bail. It is also argued that only role of the petitioner is that he has forwarded the lab report through Whatsapp to the members of the Executive Committee of the organization and there is no allegation that the petitioner gave his comments or any lab report or fake video on Whatsapp. It is further submitted that since the petitioner is a member of Executive Committee, he has acted as per direction of the General Body Meeting for verification of the CD from the Forensic Lab, which, as per the report, was found to be authentic and genuine.

Learned counsel for petitioner Radhey Shyam Sherewala has argued that the petitioner has also joined the investigation in pursuance to a notice given under Section 41(1) Cr.P.C.

It is worth noticing here that in these petitions, petitioner Mahendra Gupta was granted the concession of interim anticipatory bail, whereas no such order was passed in favour of petitioners Virender Aggarwal and Radhey Shyam Sherewala.

In reply, learned State counsel, on instructions from SI Jai Kishan and assisted by learned senior counsel for the complainant, however,

opposed the prayer for grant of anticipatory bail. It is argued that after registration of earlier FIR No.525, the petitioners, in order to create further evidence, got the CD tested from a private Forensic Lab and obtained a report adverse to interest of the complainant and they have committed the offence.

Learned senior counsel for the complainant has further argued that there is no proceeding of the association to show that it was directed that CD be got scientifically analyzed by petitioner Virender Aggarwal and it was done by him at his own level just to create evidence against the complainant.

On a Court query whether the allegations in FIR No.525 and FIR 131 are identical or same, learned State counsel, on the basis of affidavit of Deputy Superintendent of Police, Hodal, District Palwal, has stated that notices had been issued to petitioners Radhey Shyam Sherewala, Virender Aggarwal and Mahendra Gupta under Section 41 (1) Cr.P.C., for joining the investigation in the present FIR No.131 and they had joined the investigation and produced the mobile phones, which were taken in possession by the Investigating Officer. It is further stated that an SIT, constituted by Superintendent of Police, Palwal, under the supervision of DSP, Hodal, District Palwal, is carrying out the investigation. However, nothing is stated in this affidavit regarding the similarity of allegations in the aforesaid two FIRs.

Another affidavit of Superintendent of Police, Palwal is also on record, in which it is stated that Radhey Shyam Sherewala and other accused have joined the investigation, but they did not send any objectionable video to Gopal Sharan Garg on his Whatsapp. It is further stated that they are members of Whatsapp groups and the video might be received in the group

by complainant Gopal Sharan Garg from some other person. With this affidavit, Forensic Lab report is also attached along with photographs in a sealed envelope, which are seen and are re-sealed.

After hearing learned counsel for the parties, it is apparent that only offence under Section 67(A) of I.T. Act is non-bailable, whereas all other offences are bailable.

A perusal of contents of FIR No.525, which is placed on record by learned senior counsel for the complainant and the contents of present FIR No.131, would show that second FIR is not in continuation to the offence committed in FIR No.525, which is based upon circulation of a video, which the complainant claims to be a fake and fabricated one, whereas the accused in the said FIR had stated that it pertains to complainant Gopal Sharan Garg.

Present FIR No.131 is registered with the allegations that subsequently, petitioner Virender Aggarwal got the said video recording analyzed from a Forensic Lab, New Delhi, which has given a report that it is a genuine video. A perusal of transcript of the message sent by Radhey Shyam Sherewala is not clear about forwarding of the CD (though the petitioners claim that it was already circulated much prior to registration of the present FIR) and therefore, there was no occasion for re-circulating the same on the Whatsapp and the lab report in a PDF format was forwarded with a message to the members of the Organization that person like the complainant should not stay on the post of President of the Sabha and on moral grounds, he should resign.

From perusal of the FIR, it would be a matter of trial whether the offence under Section 67(A) of I.T. Act is made out or not, as all other

offences are bailable and the primarily no injury to reputation of complainant was caused by the present petitioners and it were the accused in the earlier FIR No.525, who had circulated the video on social media and they are the main accused.

Looking into role of all the three petitioners individually, I find that it is a case where concession of anticipatory bail be granted to them.

Accordingly, all these three petitions are allowed and petitioners Virender Aggarwal, Mahendra Gupta and Radhey Shyam Sherewala are granted the concession of anticipatory bail subject to the conditions envisaged under Section 438 (2) Cr.P.C.

It is will be open for the Investigating Officer/SIT to call the petitioners, by issuing the notice in writing, if they are required for the purpose of further investigation.

Nothing observed in this order shall have any bearing on merits of the case, as it is only for deciding the bail application.

[ARVIND SINGH SANGWAN]
JUDGE

15.01.2020
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No