

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.17622 of 2021 (O&M)
Decided on: 13.09.2021

Amit Ghai

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Chanakya Batta, Advocate
for Mr. P.L. Singla, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

The petitioner prays for grant of anticipatory bail in FIR No.118 dated 02.04.2021, registered under Sections 295-A, 298, 153-A, 153-B, 505, 149, 124-A, 120-B IPC at Police Station City Kharar, District S.A.S. Nagar.

The operative part of the order dated 28.04.2021, vide which interim anticipatory bail has been granted to the petitioner, is reproduced as under:-

“...Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No. 118 dated 02.04.2021, registered under Sections 295-A, 298, 153-A, 153-B, 505, 149, 124-A and 120-B of the IPC at Police Station City Kharar, District S.A.S. Nagar.

Learned counsel for the petitioner submits that as per allegations in the FIR, registered at the instance of Inspector Daljit Singh, it is stated that on 02.04.2021, he

had seen a video clip, which went viral on social media, in which co-accused Nishant Sharma, President of Shiv Sena Hind along with petitioner Amit Ghai, Advocate, Youth National President and Arvind Gautham, President Punjab Wing and many other persons as named in FIR had convened a conference, wherein certain derogatory remarks were made regarding Nihang Sikhs that they are roaming with 4 or 3 or 2 feet long swords and are giving bad name to the attire of Nihang community. According to the complainant, this video amounts to hate speech, which is prepared to create communal disharmony and may lead to communal riots by insulting a particular section of the society and, therefore, it has posed a threat to the unity and integrity of the country.

Learned counsel further submits that aforesaid Nishant Sharma and Arvind Gautam have already surrendered/arrested in this case and the video clip, which was uploaded on social media, i.e. Facebook and You Tube by Ajit Singh Buland, who is the Chief Editor of Punjab Kesari TV, is in fact edited in a manner that it gives one sided version, whereas the conversation between the petitioner and the said Press Reporter was not intended to hurt the religious sentiments of any community.

Learned counsel has reproduced the entire conversation in the present petition to argue that during conversation, the petitioner has expressed; in so many words that he has faith in Sikh Religion and since childhood he has been following the preachings of Sikh Gurus and, therefore, by editing the speech of the petitioner, a wrong message has been given by the aforesaid Press Reporter to make a sensational news by adding his own contents. Learned counsel has also placed

on record the original recording by way of a Pen Drive (Annexure P-2) to support his version.

Learned counsel further submits that a bare perusal of Section 153-A and 505 of the IPC would show that whoever, by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racials, language or regional groups or castes or communities, is liable for prosecution. Similar provisions are there in Section 295-A and 298 of the IPC.

Learned counsel further submits that the place where the petitioner has made the speech was situated in a Circuit House and the same was not accessible to the public and the recording was made by the said Press Reporter, therefore, he himself is a perpetuator of the offence, if any, under Sections 153-A, 153-B, 505, 295-A, 298 of the IPC.

Learned counsel further submits that in the absence uploading the said video clip on social media by the said Press Reporter, it was a private affair amongst the members, who were the followers of Shiv Sena Hind and have a fundamental right of freedom of speech under Article 19(2) of the Constitution of India.

Learned counsel relies upon 2021 SCC Online 258, Patricia Mukhim vs. State of Meghalaya, wherein the accused had uploaded a post on Facebook regarding his views about a particular community and the Hon'ble Supreme Court, while quashing the FIR, has held as under:

“14. India is a plural and multicultural society. The promise of liberty, enunciated in the Preamble, manifests

itself in various provisions which outline each citizen's rights; include the right to free speech, to travel freely and settle (subject to such reasonable restrictions that may be validly enacted) throughout the length and breadth of India. At times, when in the legitimate exercise of such a right, individuals travel, settle down or carry on a vocation in a place where they find conditions conducive, there may be resentments, especially if such citizens prosper, leading to hostility or possibly violence. In such instances, if the victims voice their discontent, and speak out, especially if the state authorities turn a blind eye, or drag their feet, such voicing of discontent is really a cry for anguish, for justice denied – or delayed. This is exactly what appears to have happened in this case.”

Learned counsel has referred to another judgment rendered by Hon'ble Supreme Court in 2021 (1) SCC 1, Amish Devgan vs. Union of India, wherein the accused who was Managing Director of several news channels operated by TV18 Media Ltd. had aired a programme about a particular religion. In this case, Hon'ble Supreme Court, while deciding the question regarding quashing of the FIR, has held that at the stage of investigation, no case for quashing of the FIR is made out, however, the petitioner was granted interim protection from arrest, subject to his joining investigation and cooperating in the same.

Learned counsel further submits that the role of the media is very responsible towards the nation building and in case, it is found that any person has given a hate speech, it is the primary duty of a press reporter to first inform the police before posting/airing such recording/contents on social media knowing the consequences of the same that it may lead to disturbance.

It is universally accepted fact that Press (including Print and Electronic media) has now become the fourth pillar of democracy, which can change the mindset of the citizens regarding hate crime in the society. Even in the present COVID-19 pandemic situation, this fourth pillar has done exceptionally commendable job in extending help to both, Government as well as needy citizens. Not only this, even social media is doing a great job in reaching out to the citizens who are in urgent need of help and all the citizens, whether known or unknown, are extending help to each other.

However, always there is an exception to general rule and a micro percentage of media may not be that responsible in playing a positive role in nation building and instead of restraining to promote hate speeches, coverage, it airs sensational news. The followers of this school of thought believe that they are above law and will go uncondemned from the process of law.

The Law Commission of India, in its 267th report on 'Hate Speeches', has recommended to add more stringent provisions by amending the Indian Penal Code. The operative part of recommendation reads as under:

“6.33 In view of the above, the Law Commission of India is of considered opinion that new provisions in IPC are required to be incorporated to address the issues elaborately dealt with in the preceding paragraphs. Keeping the necessity of amending the penal law, a draft amendment bill, namely, The Criminal Law (Amendment) Bill, 2017 suggesting insertion of new section 153C (Prohibiting incitement to hatred) and section 505A (Causing fear, alarm, or provocation of violence in certain cases) is annexed as Annexure-A for consideration of the Government.”

Notice of motion.

Mr. Joginder Pal Ratra, DAG, Punjab, who is also appearing through video conferencing, accepts notice on behalf of the respondent-State and submits that petitioner and other accused have issued a press note calling a press conference, in which the petitioner had made a speech, which was aired on social media by aforesaid Ajit Singh Buland.

Learned State counsel further submits that investigating team is not averse to investigate the case in a manner as to whether Ajit Singh Buland is a perpetrator or catalyst of the crime in view of the bare language of the provisions IPC invoked in the FIR.

List again on 25.05.2021.

Meanwhile, in the event of arrest, the petitioner be released on interim bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.

In the meantime, the Director/Additional Director, Bureau of Investigation, Punjab is directed to look into the investigation as well as the role of aforesaid Ajit Singh Buland, who has uploaded the video clip on social media and file a specific affidavit on the following points:

(i) whether a press reporter, being a citizen, on coming to know that an offence is committed, is bound to inform the police before airing such information.

(ii) whether aforesaid press reporter himself was an instrument in perpetuation of the crime as uploading a video clip on social media or electronic media may amount to promoting disharmony or feeling of hatred etc.

(iii) whether the original video recording as such can be termed as a hate speech.

(iv) whether the edited video clip, with his comments as catalyst, amounts to hate speech.

Let the affidavit be filed on or before the next date of hearing....”

Counsel for the petitioner has submitted that, in pursuance to the order dated 28.04.2021, the petitioner has appeared before the Investigating Officer and has joined the investigation.

In compliance of the order dated 28.04.2021, the affidavit of the Director Bureau of Investigation, Punjab, which has been filed in the Court today along with the report of the DIG, Rupnagar Range, Rupnagar, who has headed the SIT, is taken on record.

According to the report, by raising 04 points, the SIT has recorded a finding that the original video can be termed as a hate speech and the Press Reporter was not an instrument in perpetuation of the crime. The SIT formed the opinion by observing that the members of Shiv Sena Hind have invited the Press Reporters to air the contents of the press conference for the public. It is also observed that the Press Reporter had given introduction to the contents of his comments regarding the event which does not amount to hate speech.

Counsel for the State, on instructions from the Investigating Officer, has not disputed the aforesaid fact and submits that the petitioner is no more required for further investigation.

Considering the fact that it will be matter of trial whether the original video clicked could amount to hate speech or not as no specific finding has been recorded by the SIT and it is only observed that the original video showing the press conference can be termed as

hate speech, I deem it appropriate to confirm the bail granted to the petitioner.

Accordingly, the present petition is allowed and the interim bail granted to the petitioner vide order dated 28.04.2021 is made absolute subject to the conditions envisaged under Section 438(2) Cr.P.C.

(ARVIND SINGH SANGWAN)
JUDGE

13.09.2021
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No