

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

210

**CRM-M-40437-2022 (O&M)
Decided on : 19.09.2022**

Happy

. . . Petitioner(s)

Versus

State of Punjab

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Abdul Aziz, Advocate
for the petitioner.

Mr. JS Arora, DAG, Punjab.

SANJAY VASHISTH, J. (Oral)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioner – Happy, who has been booked for having committed the offences punishable under Sections 153-A, 153-B of IPC and Section 3 of the Punjab Prevention of Defacement Property Ordinance Act, 1997, in FIR No. 107, dated 01.05.2022, registered at Police Station City-I, Malerkotla, during the pendency of trial.

Learned counsel for the petitioner submits that as per the contents of the FIR, he affixed saffron flag and banner of saffron color on the gate of the Deputy Commissioner's office. There were some slogan also written on the saffron flag i.e. "Punjab Hai Khalistan, Khalistan Zindabad". However, police failed in getting any evidence in the CCTV camera, because of the lack of electricity. Therefore, petitioner has been arrested in the present case on the basis of a very weak and inadmissible evidence.

Learned counsel for the petitioner refers to Sections 153-A, 153-B of IPC and Section 3 of the Punjab Prevention of Defacement Property Ordinance Act, 1997, which reads as under:-

“153A. Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—(1) Whoever—

- (a) 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 illwill between different religious, racials, language or regional groups or castes or communities, or*
- (b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, [or]*
- (c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.*

153B. Imputations, assertions prejudicial to national integration.—

(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

- (a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or*
- (b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of*

any religious, racial, language or regional group or caste or community, be denied, or deprived of their rights as citizens of India, or

(c) makes or publishes and assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

The Punjab Prevention of Defacement of Property Act, 1997

3. Penalty for defacement of property. *-(1)Whoever defaces any property in public view by writing or marking with ink, chalk, paint or any other material or by erecting staffs, banners or by pasting notices and writing slogans without the written permission of the owner of the property, except for the purpose of indicating the name and address of the owner or occupier of such property, shall be punishable with imprisonment for a term, which may extend to six months or with fine which may extend to one thousand rupees or with both.*

(2) Where by offence committed under sub-section (1), is for the benefit of some other person or a company or other body corporate or an association of persons (whether incorporated or not), then such other person and every president, chairman, director, partner, manager, secretary, agent or any other officer or person concerned with the management thereof, as the case may be, shall, unless he proves that the offence was committed without his knowledge or consent be deemed to be guilty of such offence.”

Relying upon the said provisions of law, learned counsel for the

petitioner submits that maximum sentence if of three years or with fine can be

awarded. He further contends that as per custody certificate, petitioner has already undergone 04 months and 15 days custody uptill 17.09.2022.

Learned counsel for the petitioner further submits that after completion of investigation, final report under Section 173 Cr.P.C. has been submitted before the concerned Court.

Per contra, learned State counsel has vehemently opposed the prayer and submissions made by learned counsel for the petitioner. He has filed custody certificate dated 17.09.2022, of the petitioner in Court today, which is taken on record. Office to tag the same at an appropriate place in the paper book. A copy there of has been handed over to the learned counsel for the petitioner.

A perusal of the certificate reveals that apart from total custody period of 04 months and 15 days in the present case, there is nothing adverse against the petitioner showing his involvement in any other criminal activity.

Learned State counsel further submits that though maximum sentence that can be awarded in the present case, as per the provisions of law, is upto 03 years, yet it being a serious offence, petitioner does not deserve any sympathy or leniency and he should not be granted concession of bail. He, however, admits that after completion of investigation, challan has been submitted.

Be that as it may, once investigation is over and challan has been submitted, and trial is yet to start, conclusion of trial would surely take long time and for indefinite period, petitioner cannot be kept inside jail. The prosecution is yet to exhaust its list of witnesses, which is stated to be total 11 prosecution witnesses.

After considering the submissions of both the sides, and perusing the record with their able assistance, this Court is of the view that petitioner

deserves the concession of bail being it a Magisterial trial and as per custody certificate, petitioner has already undergone custody of 04 months and 15 days.

Accordingly, the present petition is allowed. Petitioner is ordered to be released on bail in this case, subject to his furnishing bail/surety bonds to the satisfaction of the learned Trial Court/ Chief Judicial Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if not required in any other case.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made here-in-above shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of evidence available on record.

It is further made clear that if in future petitioner is found indulged in similar kind of activities, in the circumstances, prosecution would be at liberty to seek cancellation of bail in the present case.

(SANJAY VASHISTH)
JUDGE

September 19, 2022

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No