

S.No.208

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

CRM-M-47055 of 2021 (O&M)

Date of Decision:13.01.2022

Phuljeet Singh Cheema

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Premjit S. Hundal, Senior Advocate with
Mr. Prashant Mahajan, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

Mr. Vinod Gupta, Advocate and Mr. Mayank Gupta,
Advocate for the complainant.

(Through Video Conferencing)

VIKAS BAHL, J.

This is the first petition filed under Section 438 Cr.P.C for grant of anticipatory bail to the petitioner in case bearing FIR No.353 dated 25.10.2021 registered under Section 295-A IPC at Police Station Mahesh Nagar, Ambala Cantt.

On 10.11.2021, this Court was pleased to pass the following order:-

“Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.353 dated 25.10.2021 registered under Section 295- A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Mahesh Nagar, Ambala Cantt.

Learned Senior Counsel for the petitioner inter alia contends that the video in question was shared from the

Facebook account of the petitioner unintentionally and by mistake by dragging the page downwards and the moment the petitioner came to know from his friend that the video had been shared from his account, the said video was deleted from the Facebook account within 3½ hours of it being put on Facebook and the said video was deleted prior to the registration of the FIR. It is further contended that the petitioner had created the said video and there was no intention to outrage the religious sentiments or religious beliefs of the Hindu community and the petitioner had given an immediate apology vide letter dated 25.10.2021 and in fact, he has great respect for the country as well as for all the religions including the Hindu religion and in fact, the grandfather of the petitioner had received the Gallantry Award of 'Vir Chakra' for his services as a Soldier in the 1965 Indo-Pak War. It is argued that Section 295-A of the IPC would be attracted only in case, there is a deliberate and malicious act with the intention to outrage the religious feelings of any class or insult the religious feelings of any class and has stated that the said Section would not be attracted as it was only on account of the mistake that the said video was shared by the petitioner and the act of the petitioner subsequent to the same would prima facie show that it had been done by mistake. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in case titled Ramji Lal Modi Vs. State of U.P., reported as A IR 1957 SC 620,

moreso paragraph 9, the relevant portion of the same is reproduced hereinbelow:-

“9. xxx xxx “Section 295-A 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. Xxx xxx xxx”

It is further submitted that when there was a kar sewa of the Hindu temple, the petitioner accompanied the members of the Temple Committee in his own car to Makrana (Rajasthan) for bringing marble stones to the village and had spent a lot of money for the religious cause of the Hindu temple. It is also stated that the petitioner had only got a glimpse of the video clip and had not even heard/seen the entire clip. It is also contended that the petitioner had handed over his mobile

phone to his counsel namely Mr. D.S. Chhillar, Advocate, Ambala for onward delivery of the same to the Investigating Officer and during the course of arguments in the case, mobile phone was placed by the counsel before the Court of the Additional Sessions Judge but the said Inspector/Investigating Officer had refused to take the same into possession. He has further submitted that the petitioner is now also ready to give his mobile phone to the Investigating Officer and will fully cooperate in the investigation.

Notice of motion.

On asking of the Court, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of State of Haryana and Mr. Vinod Gupta, Advocate appears on behalf of the complainant and seek time to get instructions.

Adjourned to 12.01.2022.

In the meantime, in the event of arrest, the petitioner shall be released on interim bail subject to 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.”

Learned Senior Counsel as well as the State Counsel, on instructions from Inspector Suresh Kumar, submit that in pursuance of the above-said order, the petitioner has joined the investigation on 26.11.2021 and is not required for further investigation.

Learned counsel for the complainant has, however, argued that in the present case, the petitioner does not deserve the concession of anticipatory bail inasmuch as in the present case, it cannot be said that it is by mistake that the said video was shared by the petitioner as for sharing the video, the process involves three stages. It is further argued that in the present case, it is not in dispute that the video has been shared and, thus, the provisions of Section 295-A IPC will be attracted and the video which has been shared, has hurt the religious sentiments of the community.

This Court has heard the learned counsel for the parties and has perused the paperbook.

A perusal of the order dated 10.11.2021 would show that in the present case, it is not in dispute that it is not the petitioner who created the video. It is the argument of the learned senior counsel for the petitioner, that the said video was shared unintentionally, by mistake, by dragging the page downwards and the moment, the petitioner came to know about the same from his friend, the same was deleted from Facebook account within three and half hours of it being uploaded on the same and the same was done prior to the registration of the present FIR. It is reiterated that the petitioner has great respect for the country as well as all the religions including the Hindu religion and the grandfather of the petitioner had in fact been conferred with gallantry awards for his services as a soldier in the 1965 Indo Pak War. It is also reiterated that offence under Section 295-A IPC would only be attracted in a case of deliberate and malicious act with intention to outrage the religious feelings of any community. It is submitted that the petitioner had already handed over the mobile phone to the

Investigating Officer. The fact as to whether the act of the petitioner was committed by mistake or was a deliberate and malicious act, would be a moot point to be decided during the course of trial. The petitioner has joined the investigation and is not required for further investigation and no recovery is to be effected from the petitioner as the petitioner has already handed over his mobile phone to the Investigating Agency.

Keeping in view the facts as noticed in the order dated 10.11.2021 and also the fact that the petitioner has joined the investigation and is not further required for investigation, the present petition is allowed and the interim order dated 10.11.2021 is made absolute.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

January 13, 2022
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(VIKAS BAHL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No