

213 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45796-2022 (O&M)
DECIDED ON: 13th DECEMBER, 2022

KARAMJIT SINGH GILL ...PETITIONER

VERSUS

STATE OF PUNJABRESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Gagandeep Singh Bajwa, Advocate and
Mr. Pranshul Dhull, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

Mr. P.S. Hundal, Sr. Advocate with
Mr. Vikramjeet Singh, Advocate
for the complainant.

SANDEEP MOUDGIL, J. (ORAL)

CRM-41013-2022

Prayer in the present application is for arraigning the applicant
as Respondent No.2.

In view of averments made in the present application, the
applicant-Sulkhan Singh son of Shri Parkash Singh is ordered to be
impleaded as respondent No.2.

Amended memo of parties is taken on record.

Application, accordingly stands allowed.

CRM-41017-2022

Application is allowed, as prayed for.

Annexures R-2/1 to R-2/6 are taken on record subject to all just
exceptions.

CRM-43281-2022

Application is allowed, as prayed for.

Police report/Challan dated 05.10.2022 is taken on record as Annexure P-4, subject to all just exceptions.

CRM-M-45796-2022

The instant petition has come up before this Court invoking the jurisdiction under Section 439 Cr.P.C seeking regular bail in case FIR No. 103, dated 17.08.2022, under Section 153-A of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station E-Division, Amritsar City.

Dr. Anmol Rattan Singh, learned Senior counsel for the petitioner contends that he has been falsely implicated in the present case on false and baseless allegations while referring to the FIR dated 17.08.2022 (Annexure P-1) lodged on a complaint by one Sulkhan Singh, Manager, Sach Khand Shri Harmandir Sahib, Shri Darbar Sahib, Amritsar. He has drawn the attention of this Court to the story of the prosecution as recorded in the said FIR with the allegations attributed qua the petitioner, of which the relevant reads as under:-

“Sir, on dated 16.08.2022 one person came at Sachkhand Harmandir Sahib, Sri Darbar Sahib Amritsar, after taking a dip in the holy water and thereafter, wore a t-shirt having picture of Jagdish Tytler who was an accused of 1984 Sikh genocide and after clicking a photograph and without paying obeisance went out in his skoda car along with his security officials. Under a conspiracy he has tried to disturb the atmosphere and he has hurt the Sikhs sentiments. His activities are recorded in CCTV cameras. He is also having a security (gunman). From the social media we came to know that his name is Karamjit Singh Gill who is known as Chairman of SC/ST Cell Congress. Legal action may kindly be taken.

Documents attached. Photocopy of Picture. Sd/- Sulakhan Singh Manager, Sachkhand Sri Harmandir Sahib, Shri Darbar Sahib, Sri Amritsar.”

Learned Senior counsel contended on the strength of Supreme Court Judgment in the case of **“Arnesh Kumar vs. State of Bihar;** (2014) 8 SCC 273, that in the offence under Section 153-A IPC Part-I, the punishment is of upto three years or fine or both whereas, even Part II carries punishment upto 5 years and fine and, therefore, applying the ratio laid down in the Arnesh Kumar’s case supra ought to have been applied by serving a notice under Section 41-A Cr.P.C and an opportunity to join the investigation should have been awarded. He has further stated that no reasons for detention was disclosed by the Investigating Officer while forwarding the petitioner before the Illaqa Magistrate.

Learned Senior counsel also laid much stress of the case being political motivated referring to the complainant being Manager of Shri Darbar Sahib who might be carrying some enmity with the political leader Jagdish Tytler with whose photograph printed on the T-shirt wore by the petitioner. With much force and vehemence, it has been argued on behalf of the petitioner that offence under Section 153-A IPC is not made out at all as none of the ingredients laid therein are *prima facie* evident even from the bare language of the FIR.

Notice of motion.

Mr. Rajiv Verma, DAG, Punjab puts an appearance having been served with an advance notice along-with copy of the petition.

Mr. P.S. Hundal, learned Senior counsel, appearing on behalf of the complainant has vehemently argued that Jagdish Tytler was an accused in 1984 Sikh Genocide and the petitioner knowing fully well deliberately

with an intent to hurt the sentiments of Sikhs' wore the T-shirt with a picture of Jagdish Tytler and after taking a dip in the holy pond clicked his photograph and left in his Skoda car with the security officials. Mr. Hundal, has contended that such act of the petitioner is under a well planned conspiracy to disturb the peaceful atmosphere.

Mr. Rajiv Verma, Deputy Advocate General, Punjab has submitted that the petitioner has committed serious offence under Section 153-A IPC and has been nominated as accused in the present FIR on the basis CCTV footage and not on the basis of mere suspicion. He further argues that the role of the petitioner is evident from the fact that he was wearing a T-shirt having picture of Jagdish Tytler, who was prime accused in 1984 Sikh Genocide and also sent a picture from his mobile phone to some person with intention to make the same viral. As such, the petitioner does not deserve the concession of bail.

Heard counsel for the parties at length.

Before proceeding further in the matter, it would be relevant to have a glance of Section 153-A IPC, 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,

(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”

Considering the provisions, as envisaged in Section 153-A IPC and examining the contents of FIR, the test for the prosecution is to make out a *prima facie* case has to establish within the ingredients incorporated therein. Section 153-A IPC would apply if, a person is found doing acts prejudicial to maintenance of harmony by promoting enmity between different groups on the grounds of religion, race, place of birth, residence, language, etc by words either spoken or written or by signs or by visible representations or otherwise promotes or attempts to promote disharmony or feeling of enmity, hatred or ill-will between different religious, racial, language or regional groups or caste or community apart from other factors.

In the instant case mere wearing of a T-shirt with a picture of one on his favorite person with the words “**HAPPY BIRTHDAY TO OUR BELOVED GOD FATHER**”, as is evident from Annexures R-2/3 and

R-2/4 with the reply filed by respondent No.2 supported by seizure memo T-shirt (Annexure R-2/1), does not reflect any incriminating material or provocative act on the part of the petitioner to bring the case within the ambit of Section 153-A IPC. Moreover, from the identity of the petitioner it transpired that he is General Secretary, SC/ST Cell of the Punjab Pardesh Congress Committee as has been put on record by way of final report under Section 173 Cr.P.C.

The Apex Court in the case of **“Patricia Mukhim vs. State of Meghalaya and other”** reported in AIR 2021 Supreme Court 1632 while deliberating on Section 153-A IPC held as under:-

"9. Only where the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public tranquility, the law needs to step in to prevent such an activity. The intention to cause disorder or incite people to violence is the sine qua non of the offence under [Section 153 A IPC](#) and the prosecution has to prove the existence of mens rea in order to succeed.

10. The gist of the offence under [Section 153 A IPC](#) is the intention to promote feelings of enmity or hatred between different classes of people. The intention has to be judged primarily by the language of the piece of writing and the circumstances in which it was written and published. The matter complained of within the ambit of [Section 153A](#) must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning."

In the instant case no iota of evidence has come forth even in the challan against the present petitioner with regard to uttering of any word or by any other means which may cause hurt to the feelings of a particular

community.

In another judgment **“Balwant Singh and another vs. State of Punjab; (1995) 3 SCC 214”** the Supreme Court examining the question to make out *prima facie* case under Section 153-A IPC held as under:-

"9. Insofar as the offence under Section 153A IPC is concerned, it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities. In our opinion only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or effect public tranquility, that the law needs to step in to prevent such an activity."

I have gone through the entire case record including the challan prepared under Section 173 Cr.P.C and considered the submissions of respective counsel for the parties. It is true that except wearing a T-shirt with a photograph of a leader of his own party by the petitioner, no overt act has been attributed against him and there is no material whatsoever even to infer that the petitioner was acting under any pre-oriented plan as alleged or to suggest that by words either spoken or written or by any other means as enumerated under Section 153-A IPC, he incited anyone to create violence or promote communal hatred. The intention to cause disorder or incite people to violence is the *sine qua non* of the offence under Section 153-A IPC and there is no existence of *mens rea* for the prosecution to succeed .

Therefore, having found no *prima facie* material against the petitioner to constitute an offence punishable under Section 153-A IPC, this

Court is of the view that the benefit of bail can be extended to him. It is also weighs in the mind of this Court that investigation in the case is complete, challan stands filed and the petitioner is already in custody for 3 months and 23 days, as is evident from custody certificate dated 12.12.2022.

Accordingly, it is ordered that the petitioner shall be released on bail on furnishing bail bonds and one local surety to the satisfaction of learned Chief Judicial Magistrate, Amritsar, however, in order to facilitate trial the following conditions are imposed on his bail:-

(i) If the petitioner is having any Pass Port, he will surrender the same before the Investigating Officer immediately.

(ii) He will record his appearance at the police station before the Investigating Officer once in a week.

(iii) He will not try to influence any of the witnesses of the case directly or indirectly.

However, the Chief Judicial Magistrate, Amritsar may relax any of the conditions under (i) or (ii) or both in appropriate circumstances.

In terms of the above, the present petition under Section 439 Cr.P.C. is allowed.

Ordered accordingly.

13th DECEMBER, 2022

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**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*