

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17992-2023
RESERVED ON:30.05.2023
PRONOUNCED ON: 31.07.2023

SANJAY RAIPETITIONER

VERSUS

STATE OF PUNJAB AND ANR.RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Petitioner in person.

Mr. Baljinder Singh Sra, amicus curiae.
Ms. Tanu Bedi, amicus curiae.

Mr. Rajiv Verma, DAG, Punjab.

Mr. Puran Singh Hundal, Sr. Advocate with
Mr. Mrigank Sharma, Advocate for the complainant.

SANDEEP MOUDGIL, J

1. The instant petition under Section 438 Cr.P.C., has been filed for grant of anticipatory bail to the petitioner in FIR No.152, dated 23.12.2022, under Section 295-A of the IPC, 1860, registered at Police Station Sadar Division E, District Police Commissionerate Amritsar, (Annexure P-1).

The contents of the FIR reproduced as under:-

“Application No. 417-PC-CDDated 09.09.22, To, The Police Commissioner, Sri Amritsar. Subject:- Regarding Complaint against Sanjay Rai son of R.M. Rai. Sir, The Shiromani Gurdwara Prabandhak Committee, Sri

Amritsar is lawful organisation constituted under Gurdawaras Act, 1925. Its Head Office is at Teja Singh Samundri Hall, Sri Amritsar Sahib and it has got the rights for doing legal administrative proceedings of very kind with this name as per Gurdwara Act. As per the report received from the Research Scholar of Shiromani Committee with regard to the complaint received from Sikhs and general public of the Illaqa against Sanjay Rai son of R.M. Rai, resident of Flat No.419, Phase-5, Mayur Vihar, Delhi at present resident of Ashram village Palakhi, Police Station Bhogrwana, Tehsil Indora, District Kangra (Himachal Pradesh) (Photocopy of which is enclosed herewith). In the video sent by the people of that area the person named Sanjay Rai who by claiming himself as incarnation of Sri Guru Nanak Dev Ji's soul is falsely claiming of having twelfth sect and by staking the claim of having the entry of the soul of Sri Guru Nanak Dev Ji in himself, and under the dirty policy of insulting Sikh community and by misleading, the people is hurting the prestige and honour of Sikhs. Such mischievous persons promotes the hypocrisy and also looting the poor and innocent persons too. You are requested that by taking this matter seriously and while registering the case under appropriate sections against Sanjay Rai and his associate persons for insulting Guru Sahib, hurting the religious sentiments of Sangat, looting the innocent persons and for breaking the communal harmony in the society and for misleading the people and strict action be taken against them. Yours faithfully, Sd/- Partap Singh, Secretary, Shiromani Gurdwara Prabandhak Committee, Sri Amritsar City. The application alongwith necessary documents was given by Secretary, Shiromani Gurdwara Prabandhak Committee, Sri Amritsar Commissioner of Police, to the Hon'ble Amritsar City. The Hon'ble Commissioner of Police, Amritsar City marked the application to ACP Cyber Crime Amritsar City for investigation. The ACP wrote in his report that the incident in the application being related to Police Station E-

Division, Amritsar sent his report to the Hon'ble Commissioner regarding sending the same to concerned police station. The office of Hon'ble Commissioner of Police, Amritsar by putting No. 417-PC-CD, Dated 9.9.22 sent the application to Station House Officer Police Station E-Division and on receiving the said application alongwith documents at police station by post, was sent to the Incharge Police Post Galiara for enquiry. Incharge Police Post Galiara during the course of enquiry wrote in his report that on summoning the applicant party and opposite party I have recorded their statements and perused the Pen drive and four pages translated in Hindi presented by Hitender Atri of applicant party. That from statements and perusal of video made by Sanjay Rai while making the propaganda in the Santlok Ashram, it has been found that during propaganda Sanjay Rai by showing the video shows himself as incarnation of Sri Guru Nanak Dev ji Maharaj and claims himself in coming 12th Sect and also preaches for the same and he by making this video of propaganda also viral the same on social media. Alongwith him his another associate Sachin to whom he states the soul of Sukhdev Rishi also helps him and also upload video on social media. Many things of his propaganda spoken in the video in Pen drive and 04 papers of propaganda duly typed in Hindi are objectionable, because he says himself that his first birth is of Amirishi ji, second birth is of Raja Janak and third birth is of Nanakji and his fourth life is of Sanjay and time and again in his Audio and Video and written preaching he claims himself as the soul of Nanak and he also claims that he has been speaking this thing since many years and says that he is soul of Nanak ji and he is in the form of Satguru on this earth and Dass (he) is His servant i.e. God and we come in twelfth sect and thirteenth sect also Sant Mora Mora Hans Mora Bhagat Mora Dass Hoga 13th sect, which he shows by himself. In the Audio in Pendrive, Sanjay Rai also insults the turban of Sikh religion and is speaking that mere wearing of turban anyone

becomes Sikh? and besides this he is also misleading the people by saying that meat is served in Gurdawaras. This Sanjay Rai by misleading the people and by saying of having entered the soul of Guru Nanak Dev ji in himself and by insulting the Sikh community is hurting the prestige and honour of Sikhs and says that he is serving the God and he also preaches that facts which he is saying it has reference in the tales of Sikh community and the God has assigned him the duty to intimate the entire earth because there is proof of Granths regarding his this service. He by doing so and by misleading the innocent people is exploiting them. Due to his doing such the resentment feelings is creating in whole Sikh Society and due to his doing so there is apprehension of creating big trench in Hindu, Sikh and other religious. Besides this he had also replied to the questions raised by me and recorded to the reply of Question No.04 in his in statement that its only Dass Sanjay who is the soul of Guru Nanak Dev ji. In the previous birth my name was Nanak and in this birth my name is Sanjay, which can be proved from knowledge, Knowledge provided by Almighty God and internal solution as to whether the Dass is Nanak ji or not. That from the statements acquired during enquiry, Video presented in the Pendrive and Hindi Translation in 04 pages presented by Hitender Atri it has been found that Sanjay Rai son of Raj Muni Rai, by making the Dera named Sant Lok Ashram in village Palakhi District Indora District Kangra, is doing his propaganda, and during propaganda he by showing himself as

soul of Guru Nanak Dev ji in himself and also by telling himself as his Twelfth incarnation is doing false propaganda, due to which he is promoting show-off and also by looting the innocent people is also exploiting them and he also through video in the name of propaganda made in the Ashram made by him is uploading the video on social media. Due to his doing so, the resentment feeling is creating in the entire Sikh Society and due to his doing so there is apprehension of

creating a big trench in both the religious. Thus the application alongwith the statements acquired, pen drive, report of Research Scholar and Hindi translated papers made from Video by Hitender Atri are being sent to you and it is requested after obtaining the legal opinion from Hon'ble DA Legal in this regard it is recommended to take legal action in this regard. Report is submitted. Sd/- Harjit Singh Chowki Galiara, District Amritsar Dated 12.10.2022 and he sent his report to the Station House Officer E-Division. The Station House Officer of Police Station while agreeing with the report of Incharge Police Post Galiara sent his report to the Hon'ble ACP Central and the Hon'ble ACP while agreeing with the report of Station House Officer Police Station E-Division sent the report to Hon'ble DCP HQ, Amritsar City who while agreeing with the report of ACP Central wrote in his report that from the statements acquired by the Enquiry Officer during enquiry, video presented in the Pendrive and Hindi Translation in 04 pages which have been presented by Hitender Atri it has been found that Sanjay Rai son of Raj Muni Rai, by making the Dera named Sant Lok Ashram in village Palakhi District Indora District Kangra, is doing his propaganda, and during propaganda he by showing himself as soul of Guru Nanak Dev ji in himself and also by telling himself as his Twelfth incarnation is doing false propaganda, due to which he is promoting show- off and also by looting the innocent people is also exploiting them. Who also by preparing video in the name of propaganda made in the Ashram made by him is uploading the video on social media wherein he by showing himself as incarnation of Sri Guru Nanak ji is claiming of having 12th Sect. Due to his doing so, the resentment feeling is creating in the entire Sikh Society and due to his doing so there is apprehension of creating a big trench in both the religious. Thus the application alongwith the statements acquired, pen drive, report of Research Scholar and Hindi translated papers made from Video by Hitender Atri are being sent to you and after

obtaining the legal opinion from Hon'ble DA Legal in this regard, necessary directions be given for taking legal proceedings. Report is submitted for necessary order. Sd/- Deputy Commissioner of Police, HQ Amritsar 02.11.2022. He after preparing his report sent to the Hon'ble Commissioner of Police Amritsar City. The Commissioner of Police Amritsar after writing on the report "Examine and Comments Pl. Dy. DA (L) Sd/- Commissioner of Police Amritsar 9.11.22 sent it to DA Legal. The DA Legal after perusing the enquiry report, wrote in his report that "Subject: Regarding 417-PC-CD Dated 09.09.22, Sir, I have carefully seen the enquiry report of Deputy Commissioner of Police HQ, Amritsar City and documents attached therewith. On the basis of enquiry report as per my legal opinion an offence under section 295A IPC is found to be committed in this case by Sanjay Rai son of Raj Muni Rai, if approved." Hon'ble Commissioner of Police Amritsar, Sd/- District Attorney (Legal) Amritsar 21.12.22 and sent his report back to Hon'ble Commissioner of Police, Amritsar. After writing "Approved SHO E-Division for n/a as per law Sd/- Commissioner of Police Amritsar City 23.12.22" on the report of DA Legal was sent to for registration of case. TODAY AT POLICE STATION: On the receipt of aforesaid application at police station by post after registering the above case under aforesaid sections against, the original letter alongwith copy of FIR are being sent to SI Paramjit Singh 1146/ASR Incharge PP Galiara through HC Sarabjit Singh 1269 and special reports after being issued are sent to the Illaga Magistrate and senior officers through HC Lovepreet Sahota 1745. The Station House officer and Control Room have been informed. Completion report no.23.12.22 time 7:55 PM."

2. On earlier occasions, the petitioner was being represented through Shri Atul Lakhanpal, Sr. Advocate and the petitioner was granted interim protection vide order dated 21.04.2023, who withdrew his power of attorney on 15.05.2023 and from 17.05.2023, the petitioner opted to appear in person.

3. Considering the arguments on behalf of complainant-Shiromani Gurudwara Parbhandak Committee (hereinafter referred as SGPC), Mr. Mrigank Sharma, learned Advocate, to the effect that there is a Hukuknama issued by 10th Guru Shri Guru Gobind Singh Ji and also as shabad of various parts of Shri Guru Granth Sahib Ji, no living person can claim himself to be a Guru, it to be a question of law in larger public interest, this Court appointed Mr. Baljinder Singh Sra, learned Advocate as amicus curiae to assist on the issue. At this stage Mr. Puran Singh Hundal, learned Sr. Advocate also puts in appearance and moved an application bearing CRM-20130-2023 to implead Mr. Pratap Singh as respondent No2, Secretary SGPC, which was allowed on 04.05.2023 and the amended memo of parties was also taken on record.

4. Before advertng to the legal question raised by the complainant-SGPC as well as respondent No.2, this Court would prefer to take note of the contentions raised by the petitioner, who appeared in person on all dates subsequent to 21.04.2023, who denied in toto any act or omission on his part and even utterance of any single word, which could be considered to be derogatory or to cause insult or hurt to the sentiments of any community and hence do not attract Section 295-A of IPC. It is further asserted by Mr. Sanjay Rai-petitioner that he has renounced the world along with like minded 40 to 50 persons and has established an Aashram namely "Sant Lok Ashram" at village Palkhi, Tehsil Indora, District Kangra (Himachal Pradesh) for spiritual preaches with highest grade of discipline to provide selfless service to mankind wherein Aarti is performed four times a day apart from taking care of 250 cows. He also submits before this Court that somehow he sensed a realisation of his being in incarnation of Guru Nanak Dev Ji, and got motivated to preach his teachings the videos of which are stated to be made available on social media without any deliberate and malicious intention to insult or hurt the feelings of any

community. The petitioner concluded the pleading urging that there is no material evidence to support the allegations of Section 295-A of IPC, hence, the contents of FIR in itself have failed to establish any such act on his part either by words spoken or written or by any signs or by visible representation, which could tantamount to deliberate and malicious intention to outrage the religious feelings or insults or any attempt to insult the religion or the religious belief of a community.

5. During the course of hearing on 21.04.2023, Mr. Mrigank Sharma, learned Advocate appearing for the complainant-SGPC, Amritsar vehemently stressed that for the Sikh community, it is only Shri Guru Granth Sahib Ji, which can be termed as Guru and no other living person would be accepted as their Guru, as has been disciplined in the Hukumnana and, therefore, the act of the petitioner cannot be pardoned, who knowingly fully well, deliberately with the intent has started preaching the teachings of Shri Guru Nanak Dev Ji.

6. At the same time, Mr. Puran Singh Hundal, learned Sr. Advocate for the complainant-Shiromani Gurudwara Parbandhak Committee, Amritsar, vehemently argues that the petitioner by stating himself to be in reincarnation of Guru Nanak Dev Ji, has deliberately insulted with malicious intention and hurted the religious sentiments of the Sikh community, and on a question put by the Court as to is there any specific restriction mentioned in any of the verses of Shri Guru Granth Sahib or in the Hukumnama, if any, issued by Shri Guru Gobind Singh Ji, Mr. Puran Singh Hundal sought time to produce such part of the aforesaid two holy documents on 17.05.2023.

7. Though, the case was heard at length on subsequent various dates, but no such verse/Hukumnama could be produced to authenticate such stand taken by the respondent No.2 as well as the complainant.

8. On the commenced hearing on next date, Mr. P.S. Hundal, learned Sr. Advocate also asserts that the petitioner is a habitual offender, who is involved in two other FIRs of identical nature bearing FIR No.124 dated 21.06.2022 under Section 420 of IPC, registered at Police Station Indora, District Kangra, Himachal Pradesh and FIR No.128 dated 23.06.2022, under Section 295-A of IPC, registered at Police Station Indora, District Kangra, Himachal Pradesh and also drawn attention of this Court to the transcript of certain photograph uploaded by the petitioner on social media, which were brought on record by respondent No.2 at Annexure R-2/3 pertaining to Annexure R-2/6. Specific mention has been made on behalf of respondents about the one holy book-Bhakti Bodh, wherein the petitioner is claiming to the effect that Shalok No.20 of chapter 23 of holy Gita finds the name of Janak Ji, who attained perfection. From the transcript, it is also read out by Mr. Hundal that the petitioner made an intentional and deliberate malicious act to hurt the feelings of Sikh community, while trying to mislead public at large saying that in the entire Gita Ji, there is mentioning of a “Yogi” and also about 4 births in the “Asura Nikandan Ramaini” wherein names of ‘Dhruv’, ‘Prehlad’, ‘Janak’ ‘Videhi’ whereas Ambrish Kareh Puran Kaaja has been mentioned at page No.45. What would be attained by Ambrish Ji from amongst the holy souls that he came to this world first, followed by Janak Ji, thirdly Nanak Ji will take birth in the world and Sanjay would be the fourth. The petitioner is also shown to be preaching that in Asura Nikandan Ramaini, the whole spirits teach us about the lives of Satguru and Saints at Annexure R-2/4 video No.3, as produced by respondent No.2 before this Court reflecting that the petitioner is claiming himself to be an interpreter and in reincarnation of Guru Nanak Ji. Most offended part referred by Mr. Hundal relates to video-audio 11 at Annexure R-2/6, which are stated to be insulting and hurting their religious sentiments and

feelings while questioning that whether anyone can become a Sikh by tying the Turban? And alleges that meat is served in Gurudwaras with one instance of Hyderabad and has attempted to spread hatred by using such words like during elections to Gurudwara Management Committees propaganda is made with the help of guns in their hands and even gun-shots are fired. He has also insulted the Sikh community, as argued by Mr. Hundal by socialising on Youtube in particular through videos that there is an alliance between the Gurudwara Management Committees and the political leaders and they are all sycophants.

9. Certain photographs have also been referred by Mr. Rajiv Verma, DAG Punjab in support of registration of FIR, while opposing concession of anticipatory bail stating that he can be seem acting as having attained some divine power, wherein people can be seen touching his feet and in one video, it is mentioned in clear words “Yeh Mahapurush Pichle Janam Me Guru Nanak Dev Ji the”.

10. While concluding the arguments, Mr. Hundal further vehemently laid stress on a resolution dated 11.11.2015 passed by SGPC, Teja Singh Samundari Hall, Amritsar, wherein it was unanimously resolved by the interim meeting of SGPC held on 07.04.2015 that showing living persons performing the role of Shri Guru Nanak Dev Ji and his family members in the film “Nanak Shah Fakir” is in violation of an order issued by Akal Takht Sahib and has gravely hurt the feelings of this sect all over the world. In addition to that, it was also submitted that it was resolved that role of Guru Sahiban and their family members cannot be played/acted upon by any living person as per the prevalent Sikh traditions and rites. Subsequently on 19.12.2022, Dharam Prachar Committee passed a resolution in the meeting held on 13.12.2022 that all kinds of films depicting the Sikh Guru Sahiban and their family members was completely banned.

11. On the question of locus standi of SGPC for getting registered the FIR under Section 295-A of IPC, Mr. Hundal referred to Section 129 Sikh Gurdwaras Act, 1925, which reads as under:-

“129. What matters may be discussed by Board in general meeting:- The Board in any meeting may consider and discuss any matter with which it has power under this Act to deal and any matter directly connected with the Sikh religion, but shall not consider or discuss, or pass any resolution or order upon, any other matter.”

12. He further submits that SGPC is a statutory body created by a Legislation to supervise and taking care of religious matters related to Sikh community and, therefore, has the locus to lodge the instant FIR adding further that it is a religious body as well.

13. Thereafter, in continuance of his submissions, Mr. Hundal, put reliance on certain case law to support his arguments through ***Gurleen Kaur and Ors. vs. State of Punjab and Ors.***, rendered by full Bench of this High Court. However, a perusal of the said judgment reported as 2009(3) RSJ page 24 does not deal with the question directly or indirectly, as to whether SGPC is a religious body. The substantial issue before the full Bench was pertaining to a Sikh Minority College, whereby it ruled that candidates who do not maintain hair unshorn are not entitled to admission against the seat reserved for said minority community, which was held to be a fundamental tenet of Sikh religion as a permissible pre condition for admitting students under the Sikh minority community quota.

14. Another judgment by the Apex Court in ***Shiromani Gurudwara Prabhandhak Committee vs. Somnath Dass*** as was pressed upon with vehemence by Mr. Hundal urging that Sikh religion is the only religion having

force of law on this earth, which has been declared by Legislation, as enacted vide Sikh Gurdwaras Act, 1925.

15. On called upon by this Court Mr. Baljinder Singh Sra, learned amicus curiae mentioned certain verses from Shri Guru Granth Sahib Ji, particularly on the theory of reincarnation on the basis of “sayings of Shri Guru Nanak Dev Ji such as:-

"ਪਸੁ ਪੰਖੀ ਅਨਿਕ ਜੋਨਿ ਜਿੰਦੂ ॥: Life forms (in anymal Kingdom) are COUNTLESS ('Anik' – which cannot be counted, innumerable). (sggs 237).

ਕਈ ਕੋਟਿ ਜਨਮਹਿ ਜੀਵਹਿ ਮਰਹਿ ॥ : Countless ('ਕਈ ਕੋਟਿ- Kayee kot': multitudes)

life forms are in exercise – they are born, live and die. (sggs 276).

Baba Nanak says that this notion of AFTERLIFE 'Aavaa Gavan' (reincarnation) has been concocted to exploit people by those who have turned Spirituality into a business transaction. The SGGS debunks and discards these illogical and concocted concepts which is nothing but Pakhand:-

ਆਵਾ ਗਉਣੁ ਬਜਾਰੀਆ ਬਾਜਾਰੁ ਜਿਨੀ ਰਚਾਇਆ ॥:

This notion of 'Aavaa Gavan' (reincarnation) is of those who have made Spirituality into a trade or into a means of earning their living. (sggs 1290).

To remove our confusion, doubts and fear of man-made afterlife notion of 'Aavaa Gavan' (reincarnation), Guru Arjan sahib uttered the following Shabad in the form of a question and said:

ਜਬ ਕਛੁ ਨ ਸੀਓ ਤਬ ਕਿਆ ਕਰਤਾ ਕਵਨ ਕਰਮ ਕਰਿ ਆਇਆ ॥ :

When nothing existed, when (any beings: insect, animal, humans etc.) came for the first time in 'Joon' then when and what actions would they have done that caused them to get such 'Joon' ? (sggs 748)

The Guru Sahib explains in the next verse of the same Shabad that this is the Cosmic Law (i.e., Hukam: System-Rule-Law of Nature,) according to which one is born:

ਅਪਨਾ ਖੇਲੁ ਆਪਿ ਕਰਿ ਦੇਖੈ ਠਾਕੁਰਿ ਰਚਨੁ ਰਚਾਇਆ

(The Reality is that) this is a Divine Play set in motion and watched by the Divine Himself. || 1 || (sggs 748).

The Gurbani (SGGS) makes it crystal clear that this life we have Here AND now is the ONLY life we will ever have – the human birth DOES NOT happen a second time!

ਕਬੀਰ ਮਾਨਸ ਜਨਮੁ ਦੁਲੰਭੁ ਹੈ ਹੋਇ ਨ ਬਾਰੈ ਬਾਰ ॥ ਜਿਉ ਬਨ ਫਲ ਪਾਕੇ ਭੁਇ ਗਿਰਹਿ
ਬਹੁਰਿ ਨ ਲਾਗਹਿ ਡਾਰ ॥੩੦॥ - Kabeer human life is priceless ('Dulamb-hu' - rare, unique, precious etc., because) it does not occur a second time. Just like a fruit that drops to the ground when it ripens, it does NOT ever go back to the branch again. || 30 || (sggs 1366).

ਇਹੀ ਤੇਰਾ ਅਉਸਰੁ ਇਹ ਤੇਰੀ ਬਾਰ ॥ ਘਟ ਭੀਤਰਿ ਤੂ ਦੇਖੁ ਬਿਚਾਰਿ ॥ :-

This is your ONLY time. This (Human Life) is the ONLY opportunity. Contemplate Within with your Gurbani Guided Conscience and you will Realize – that there will be NO second opportunity of second chance or coming back. (sggs 1159)."

16. After referring to the above verses from holy Guru Granth Sahib Ji, Mr. Sra stated that since religious feelings are hit by the act and conduct of the petitioner, who is guilty of committing such offence against the society at large and its gravity is quite serious and, therefore, no satisfactory ground is made out to grant extra-ordinary concession of anticipatory bail to him. He would also contend that Sanjay Rai claimed himself to be in reincarnation of Shri Guru Nanak Dev Ji, as is crystal clear from the video clips and by claiming himself to be 12th sect has insulted and hurted the Sikh community as a whole, apart from injuring religious sentiments.

17. Ms. Tanu Bedi, learned Advocate showed willingness to assist the Court having put in some efforts to understand the whole issue and this Court accepted the request and appointed her as well an amicus curiae on 22.05.2023.

18. At this juncture, Ms. Tanu Bedi, learned Amicus Curiae, drew attention to the contents of video clipping referring as under:-

Transcription of video No.1:- He claims himself to be reincarnation of Shri Guru Nanak Dev Ji and about other reincarnations at different times. (Annexure R-2/3)

Transcription of video No.3:- God is speaking through him and he is reincarnation of Guru Nanak (Annexure R-2/4).

Transcription of video No.5:- It shows that videos are uploaded daily on Youtube and accused petitioner has appeared as 12th sect (Annexure R-2/5).

Transcription of video No.11:- In nutshell the transcript of this clip shows that the petitioner explains what constitutes religious sentiments (i) by tying Turban, no one become Sikh, Sikh means disciple (ii) khalsa means pure (iii) Hyderabad Gurudwara video shows serving meat in Gurdwara and during elections fire arms are used. (Annexure R-2/6).

19. This Court was taken to have a glimpse of photographs though attached by the respondent-complainant, Ms. Bedi highlighted the captions on those pictures “Kalyug me Guru Nanak Dev Ji dobara aaye” and “Mahapurush Pichle Janam me Guru Nanak Ji the” (Annexure R-2/7 and Annexure R-2/8).

20. Ms. Bedi further continued the submissions with the above narrated background of allegations that as far as the contention of the complainant-respondent is concerned to the effect that no living person on this earth can now claim himself as Guru of Sikhs after 10th Guru Gobind Singh Ji, there is no granth or any mythological writing to suggest that no other living person can be a Guru except Shri Guru Granth Sahib Ji. She also went on to submit that if the petitioner is claiming himself to be in reincarnation of Shri Guru Nank Dev Ji, it would not fall within the ambit of Section 295-A of IPC.

21. A reference has also been made by her to 52 disciplines pronounced by Shri Guru Gobind Singh Ji, to be followed by Sikhs, wherein 10th ordent reads as “Satguru Shri Guru Granth Sahab Ji Nu Mannana”

22. It is also submitted by her whether any of the commands or even Shri Guru Granth Sahib Ji bars any person to claim as Guru of Sikh community, she insisted that Shri Guru Gobind Singh Ji asked to accept the holy Granth as their Guru, but from nowhere either in Shri Guru Granth Sahib or from any other dictates, she could get information to say that only Shri Guru Granth Sahib Ji is to be accepted as Guru and no living person can be worshipped as Guru.

23. Ms. Bedi has also drawn attention of this Court for consideration of anticipatory bail, to a three judges decision of the Apex Court in ***Mohd. Zubair vs. State of NCT of Delhi & Ors., 2022 SCC online SC 897***, observed, while granting bail to the petitioner for an offence under Section 153-A, 295-A, 201 and 120-B of IPC read with Section 35 of the Foreign Contribution (Regulation) Act, 2010 involving more serious and grave intensity offences observed that arrest is not meant to be used as punitive tool and reiterated the guidelines of ***Arnesh Kumar vs. State of Bihar, AIR 2014 SC 2756***.

24. Mr. Rajiv Verma, DAG, Punjab stated that he would adopt the submissions made by Mr. P.S. Hundal, Sr. Advocate and summarised submitting that from a bare perusal from a plain reading of the FIR itself very clear and direct allegations have been made against the petitioner. He also states that though the petitioner has joined the investigation, but is required to give voice samples, as was directed vide order dated 09.05.2023 passed by Additional Chief Judicial Magistrate, Amritsar on an application preferred by the prosecution. He also on the strength of certain photographs as well as various incriminating printed material attached by the complainant argues that prima facie offence under Section 295-A IPC is made out. Mr. Verma folded the submissions urging that considering the seriousness of all these allegations, which might lead to religious unrest in the State of Punjab, the petitioner does not deserve the concession of bail.

25. Having heard learned amicus curiae, Mr. Puran Singh Hundal, Learned Sr. Advocate for the complainant and Mr. Rajiv Verma, DAG, Punjab for respondent-State.

26. This Court to satisfy itself has posted anxious consideration and examination to the allegations emerging out of the FIR and has taken note of the submissions made by the learned counsel for the respective parties.

27. I deem it appropriate to consider the extensive submissions made by respective counsels appearing before this Court, the essential ingredients to constitute an offence under Section 295-A IPC needs to be looked at as envisaged therein:-

“[295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.—Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of 273 [citizens of India], 274 [by words, either spoken or written, or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to 4[three years], or with fine, or with both.”

A perusal of the aforesaid provision identifies four essentials such as:-

- (i) malicious & deliberate intention,*
- (ii) outrage,*
- (iii) insult or attempts to insult,*
- (iv) the religion or the religious belief of that class*

28. The whole case depends on the *mens rea*, while considering the anticipatory bail petition on which the submission of Mr. P.S. Hundal, learned Sr. Advocate, appearing for the complainant extends the scope of discussion in the

anticipatory bail as to whether prima facie offence under Section 295-A is made out in the case in hand.

29. The extensive arguments raised by Mr. Hundal, learned Sr. Advocate, if examined for adjudication by this Court going to the extent that “HUKUMNAMA” by 10th Guru, Shri Guru Gobind Singh Ji dictates that only Shri Guru Granth Sahib Ji will be considered as their Guru and no other living person on this earth can be worshipped as Guru in the Sikh religion would amount to adjudication on the merits of the whole case, which to the mind of this Court in all probability would prejudice the trial in one or the other way.

30. Even otherwise, there is a thin distinction between the two terms i.e. religion and religious belief, of which no interpretation so far is available except to understand that religious belief is a matter of subjective acceptance as the same may be believed by one individual but not by the others.

31. Here, it would be also worth mentioning of a command made by Shri Gobind Singh Ji in the year 1708 i.e.,:-

*“Agya Bhai Akal Ki Tabhi Chalayo Panth.
Sabh Sikhan Ko Hukum Hai Guru Manyo Granth
Guru Granth Ji Manyo Pargat Guran Ki Deh”*

32. A bare reading of the aforesaid verse clearly demonstrates that Shri Guru Granth Sahib Ji is to be considered as Guru by the Sikhs or followers of Sikh religion, but it is not in so many terms restricting the belief only to accept Shri Guru Granth Sahib Ji alone as their Guru. In such circumstance, the religious belief would weigh more in the mind, which is a matter of subjective acceptance.

33. If in this context act of the petitioner is looked at and contested, there is no dearth in any material to establish that he is forcing himself to be a Guru upon a particular sect and in that eventuality, it will be a matter of belief to

accept his claim or not. Even on previous occasions, the Courts have always preferred to leave the construction or defining the term religious belief to the person concerned, who are followers or professors of that religion giving it a constitutional protection to hold that belief unless it is against a public policy or any statutory or constitutional provisions.

34. Even Articles 25 & 26 of the Constitution of India, bestows the right of freedom to religion and conscience with the opening language “subject to public order, morality and health”. In fact, one should not forget that the religion and religious belief also told us not to be triggered or effected or moved, forget about getting wounded or outraged by any insult. It would be belittling the religious belief and reducing its sanctity to even think that they can be insulted. Whatever thinnest distinction can be edged out between the two i.e., religion and religious belief, one thing is common that is both are supposed to make a life morally worth enduring, are not so brittle or fragile that they can be insulted by anyone. All religion preaches compassion and forgiveness. As a matter of record, certain quotes from Shri Guru Granth Sahib Ji, also tell us the importance of forgiveness even to the person, who cause us hurts. Some of such verses is read as under:-

"ਫਰੀਦਾ ਬੁਰੇ ਦਾ ਭਲਾ ਕਰਿ ਗੁਸਾ ਮਨਿ ਨ ਰਵਾਇ ॥ 1381

Farid, answer evil with goodness; do not fill your mind with anger. Forgiveness is a gift from Waheguru. We can also consider it a precious gift from a generous heart. Forgiveness is not a reward; it is not something that we give to someone based on her/his good behaviour. Rather, it is something that you give whether he/she has deserved it or not. Forgiveness is also not based on whether the person has asked for it or not.

ਜਹਾ ਲੋਭੁ ਤਹ ਕਾਲੁ ਹੈ ਜਹਾ ਖਿਮਾ ਤਹ ਆਪਿ ॥੧੫੫॥

Where there is greed, there is death. Where there is forgiveness, there is God himself – Guru Granth Sahib, 1372.

ਖਿਮਾ ਗਹੀ ਸਚੁ ਸੀਚਿਓ ਖਾਇਓ ਅੰਮ੍ਰਿਤੁ ਨਾਮ ॥

Adopting an attitude of tolerance and gathering truth partake of the ambrosial nectar of the name – Guru Granth Sahib. 261

We cannot embrace Waheguru's forgiveness if we are so busy clinging to past wounds and nursing old grudges. Consider a dank, dark room with closed windows and curtains, keeping the breeze and sunshine at bay. In order to get that fresh air, you have to get up and open the window and curtains. We need to open ourselves up to the possibility of forgiveness and inner peace. One of the secrets of a long and fruitful life is to forgive everybody, everything, every night before you go to bed.

ਤੁਮ੍ਹਰ ਸਾਚੁ ਧਿਆਵਹੁ ਮੁਗਧ ਮਨਾ ॥: O (my) foolish mind!

Contemplate the eternal God (sggs 1176).

ਅਸੰਖ ਮੁਰਖ ਅੰਧ ਘੋਰ ॥ : (In this word) there are countless fools who act in thick ignorance. (sggs 4).

One should do self-analysis of one's own deeds. When we are not to remain in this world for ever, they why indulge in pride or ego? None is to be considered worthy of condemnation: Wisdom (Enlightenment) brings such realization. Do not struggle (or pass life) in foolishness (Un-Enlightened State).

35. Needless to say, the belief in the theory of reincarnation, as has been ruled out by Mr. Hundal, learned Sr. Advocate, Shri Guru Gobind Singh Ji stated himself to be in reincarnation referring to the place he did 'Tapasya' as a Saint at "Shri Hemkunt Sahib Ji", a holy shrine established as a a pilgrimage of an utmost importance not only for the Sikhs, but for living human beings from all religions.

36. If the questions posed by Mr. Hundal, on the strength of which anticipatory is sought to be rejected, are tested at this stage to the touch stone of Section 295-A of IPC, it might prejudice the case of the parties as well as mind of the trial Court and, therefore, is totally unwarranted. As such, it is left open for

the trial Court, which is the appropriate forum for adjudication on these issues after giving the parties an opportunity to lead evidence during the course of trial.

37. On the question of powers vested with this Court under Section 438 Cr.P.C., reference can be made to a Supreme Court judgement passed in **Joginder Singh vs. State of U.P., AIR 1994 SC**, wherein it was held that no offence under IPC or any other law makes the arrest mandatory even for non-bailable and cognizable offence.

38. It would be apt mentioning of the observations made by the Supreme Court in “***Mahender Singh Dhoni versus Yerraguntla Sham Sunder & Anr. (2017) 7 SCC 760***”, while considering the quashing of a complaint under Section 295-A, wherein it has been observed that this provision in IPC does not stipulate everything to be penalised and any and every act would not tantamount to insult or attempt to insult the religion or the religious belief of a class of citizens. The Supreme Court further held that it penalises only those acts of insults or those varieties of attempts to insult the religion or religious belief, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class.

39. In ***Ramji Lal Modi vs. State of U.P., AIR 1957 SC 620***, the Constitutional Bench of the Apex Court tested the vires of Section 295-A, while upholding the said provision in para 9 thereof to the effect that:-

“Section 295-A IPC does not penalise each and every act of insult, but only those which are perpetrated with deliberate and malicious intention, insults to religion offered unwittingly or carelessly without deliberate or malicious intention do not come within the Section, it only punishes the aggravated form of insult and cause of this aggravated form of insult only, the Section is under the vires of Constitution.”

40. To conclude, this Court needs to scrutinise the allegations and its gravity as narrated in the instant FIR. The parameters to be kept in mind by this Court under Section 438 Cr.P.C., would be that the grant of bail is an exercise of not only statutory power, but also is an extension of Courts duty to protect fundamental right under Article 21 of the Constitution of India, which can be deprived of only as per procedure established by law. No offence under IPC or any other law makes the arrest mandatory even for non-bailable and cognizable offence, the word used is “police may arrest”, as has been interpreted by the Supreme Court in *Joginder Singh’s case (supra)*.

41. Now examining the contentions of Mr. Rajiv Verma, DAG, Punjab, wherein he seeks rejection of anticipatory bail on the ground that material is to be recovered being used by the petitioner for propagating and professing his ideology, if contents of FIR is taken to be a result of thorough investigation and collection of such material, as is evident from the reply filed by the complainant-SGPC itself, said material is already with the Investigating Agency and nothing more seems to be recoverable from the petitioner.

42. As far as argument to the effect that petitioner is a habitual offender, who is involved in other FIRs is concerned, it is of no help at this stage, as the said FIR No.124 dated 21.06.2022 under Section 420 IPC and FIR No.128 dated 23.06.2022 under Section 295-A of IPC belongs to District Kangra, Himachal Pradesh are outside the jurisdiction of this Court.

43. This Court is not ignorant of the aspect that at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time, it cannot be disputed and is equally true as a basic principle of criminal jurisprudence that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality strict

adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial of the concession of bail for an indefinite period. If such proposition is accepted and applied sending the petitioner inside would be clearly violative of right to life and liberty under Article 21 of the Constitution of India.

44. Admittedly, it is a case of magisterial trial with maximum three years of punishment if at all, the petitioner is found guilty.

45. In the considered opinion, I have no hesitation in holding that this Court retains an inherent power and jurisdiction for dealing with any extraordinary situation in the larger interest of administration of justice and for preventing manifest injustice being done having regard to the facts and circumstances of this Court, the instant petition is a fit case, where this Court should interfere and exercise its inherent power and jurisdiction under Section 438 Cr.P.C.

46. As such, the petitioner who has already joined the investigation, in the light of interim bail granted vide order dated 21.04.2023 and since the respondents have failed to establish the act of the petitioner with *mens rea* to be malicious and deliberate, he cannot be denied the concession of anticipatory bail.

47. Hence, the interim order dated 21.04.2023 is made absolute.

48. Petition is allowed in the aforesaid terms.

49. However, nothing observed herein shall be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)
JUDGE

31.07.2023
Meenu

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*