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

CRM-M-45543-2023

Date of Decision: 22.11.2023

Rahul Sharma

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vivek Salathia, Advocate,
for the petitioner.

Mr. G.S. Sidhu, AAG, Punjab.

Mr. Gurpartap Singh Bhullar, Advocate,
for the complainant.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case bearing FIR No.0138 dated 05.05.2023, under Sections 295-A, 298, 153-A, 506 & 34 IPC, registered at Police Station Sadar Amritsar, District Police Commissionerate Amritsar.

2. Learned counsel for the petitioner submitted that this is a second successive bail petition filed by the petitioner since earlier a bail petition was filed before this Court in CRM-M-31455-2023 and it was dismissed as withdrawn on 04.08.2023 with liberty to approach the Court concerned. Thereafter, he approached the learned Court below by filing an application but the same was dismissed on 24.08.2023 and thereafter, the present petition has

been filed and therefore, the present successive bail petition is maintainable.

3. Learned counsel for the petitioner has submitted that it is a case where the petitioner is in custody from 12.05.2023 and the police has completed the investigation and now the charges have also been framed on 31.08.2023. He also submitted that the allegations against the petitioner are that one person by the name of Sudhir Suri, who was the President of Shiv Sena Taksali, Punjab at Amritsar, was killed on 04.11.2022 and thereafter, as per the allegation, the petitioner uploaded his own video along with the other co-accused, namely, Saurav Setia on the Facebook in which he is saying that they will not leave any Sardar alive and they will fight with them and by calling bad names to the Sardars, he also stated that whatever they want to do, they can do and this 1% community will be taken out of their houses and will be dragged and beaten up and they will cut each and every Sardar because the person, who had killed the aforesaid deceased was a Sardar. He further submitted that the petitioner had uploaded the aforesaid video in a fit of anger as he was associated with the deceased person in his organization and it was not intentional. He further submitted that thereafter, on realizing his mistake, after about one week, he uploaded another video and tendered an apology pertaining to the aforesaid video. He also submitted that in view of aforesaid submissions, the offences under Sections 295-A, 53-A and 298 IPC are not attracted and since the petitioner is already in custody from 12.05.2023, he may be considered for grant of regular bail.

4. On the other hand, Mr. G.S. Sidhu, learned Assistant Advocate General, Punjab vehemently opposed the grant of regular bail to the petitioner and submitted that it is a case where after the aforesaid Sudhir Suri was killed,

who was heading the Shiv Sena unit. The present petitioner along with the other co-accused, namely, Saurav Setia, intentionally uploaded the aforesaid video specifically targeting the Sikh community with the sole purpose of causing riots and arson. He further submitted that the allegations contained in the FIR are very serious and grave and considering the gravity and magnitude of the offence he does not deserve the concession of regular bail. He also submitted that based upon the allegations, the charges were framed on 31.08.2023 but no witness has been examined till date and while referring to the affidavit filed by the State, he submitted that there is a strong apprehension that in case the petitioner is released on bail then he can tamper with the evidence, intimidate or influence the prosecution witnesses or even abscond from justice and therefore, it can also seriously prejudice the trial of the case.

5. Learned Assistant Advocate General, Punjab further referred to Para No.9 of the affidavit and submitted that the intention of the petitioner for killing the Sikhs was clear from the fact that on the date when the aforesaid Sudhir Suri was killed, the petitioner along with the other co-accused, ransacked the shop of the person, who had allegedly killed the aforesaid person and put it on fire and he was also seen in the CCTV footage while indulging in the act of arson and on the same day, the aforesaid violence was committed by the present petitioner along with large number of other co-accused in the form of a crowd and unlawful assembly and consequently, FIR No.162, dated 07.11.2022 was lodged against the petitioner and the other co-accused under Sections 436 & 427 IPC, at Police Station Majitha Road, Amritsar which is still under investigation. He further submitted that his action in committing arson and putting the shop of the assailant on fire, makes the intention of the

petitioner clear which he had himself uploaded on the video with regard to the aforesaid allegations made in the present FIR.

6. Learned State Counsel further submitted that mere tendering of an apology which was in fact out of pressure thereafter would not neutralize the allegations against the petitioner and would not become a ground for grant of bail to the petitioner particularly in view of the fact that after about one week he himself uploaded another video wherein he had apologized which would mean that he himself has confessed to the guilt and had it been an ordinary case of an offence, the argument of the learned counsel for the petitioner could have been accepted but it is a case where the gravity and magnitude of the offence cannot be mitigated only by tendering of an apology since after uploading of the video by the petitioner on 04.11.2022 and thereafter, when the same was made viral by one of the Journalist, namely, Sukhchain Singh on a news channel with regard to the aforesaid hate speech that there have been a lot of resentment in two different communities but the police taking into consideration the extraordinary situation handled the situation and did not permit any riot to happen otherwise there could have been heavy riots not only in the State of Punjab but also in different parts of country. He also submitted that the witnesses are yet to be examined and it is not a fit case for grant of regular bail to the petitioner in view of the aforesaid facts and circumstances.

7. Mr. Gurpartap Singh Bhullar, Advocate has caused appearance and filed his Power of Attorney although he himself is the complainant in person. While supplementing the arguments raised by the learned State Counsel, he submitted that not only is the gravity and magnitude of the offence involved in this case whereby the petitioner is not entitled for grant of regular

bail but also it is a case where apart from the arson being committed by the petitioner along with the other co-accused on the date of killing of the aforesaid Sudhir Suri, the petitioner and the other persons belonging to his group repeatedly thereafter, threatened the relatives of the person, who had allegedly killed the aforesaid Sudhir Suri. Thereafter, a petition was also filed by the brothers of the aforesaid person, namely, Sandeep Singh before this Court seeking protection because the petitioner and the other members of his group are repeatedly threatening them and the aforesaid petition bearing CRWP-3879-2023 is still pending before this Court in which notice of motion has already been issued by this Court. He submitted that the present petitioner is also respondent No.7 in the aforementioned petition. It has been specifically pleaded in the aforesaid petition that on 04.11.2022 when the aforesaid Sudhir Suri was killed, the private respondents along with the present petitioner, namely, Rahul Sharma assaulted the salesman of the shop of person, who had allegedly killed Sudhir Suri and later on tried to burn him alive while stealing petrol from a motorcycle parked outside the shop by pouring on him, pelted stones and put the shop on fire. The incident was captured in CCTV footage and therefore, after three days, FIR was registered against them including the petitioner. He further submitted that so far as the tendering of an apology by the petitioner after about one week is concerned, the same was an afterthought so as to wriggle out from the criminal offence. He also submitted that the way and manner in which the petitioner had stated in his video, which are the allegations in the present FIR, loss and disastrous effects could have been caused to the entire State and the entire country, but the same was prevented by the police. He further submitted that in case the petitioner is released on bail,

then there is a high possibility that he may influence the witnesses since no witness has been examined and particularly in view of the fact that rather the brothers of the alleged assailant, namely, Sandeep Singh have approached this Court by filing the aforesaid petition seeking protection from the petitioner as well.

8. I have heard the learned counsel for the parties.

9. The allegations contained in the FIR as so translated by the petitioner vide Annexure P-1 are reproduced as under:-

“Reference Complaint No.65880/PGD dated 10.11.2022. To, The Worthy Commissioner of Police, Amritsar. In the special subject regarding atrocities on the Sikh community, on personal level on the family of Sandeep Singh @ Sunny regarding violation of human rights, Sardar Arun Pal Singh ji Sat Sri Akal, starting regarding deep pain for which no justice has been received so far. All the Sikh Community has suffered the atrocities of 1984, justice of which is still roaming here and there and despite sufferings even today also one young person having alliance with devil minded gang is threatening the entire community and instigating that none of the Sardar will remain alive, openly getting quarrelled and abusing and saying that you can do whatever you want to do with me, you can do as we will pull 1% and beat them and will kill every Sardar by taking them outside their houses. He was Sardar who killed (video getting viral on social media anti-social element Rahul's word by word recording). C.P. Sahib, in this way in 1984 during that black time, word by word were pronounced "Blood for blood" and due to that incident, Sikh community could not rise above the said atrocities. Till today, allegations are levelled on many officers that they were involved in atrocities committed by the State. Even after suffering from such wounds by depending upon your

responsibility and intelligence, as nominees of the State hereby demand due action from you because Rahul, Saurav Setia and other anti-social elements, recognition of whom is your responsibility, (due to getting viral on social media), have committed offence by instigating the gathering which resulted very dangerous and even they could have been more dangerous. On the line of 1984, father of Sandeep Singh Sunny's shop got burnt, and their female family members are abused with objectionable statements and very dirty language has been used on social media, planning has been done to target the whole community and he has not left any chance to break the common brother-hood of the Punjab. By instigating this poisonous gathering and by issuing statements of inhuman nature, how the night of 4th November has been spent by the Hindu-Sikh brotherhood of Amritsar, you know better than us. In the present time, anybody gets up and say to the Sikhs that he will get them remembered 1984 and it will not be important but helplessness to fight for the cause of survival. In today's time, society is having more resources than that time and in case such incident happened now then we cannot imagine about the loss which we will occur but in a responsible manner, responsible action be taken so that every community in the society could get justice. We are trying to bring to your kind notice one simple question again that whether against any community unnecessary hatred can be spread over in a planned manner and disturbing the peace of the society. Whether any simple apology is sufficient for such criminals for threatening the public? We believe that it is not a sudden step taken in anger for finishing a particular community but it is a result of long-time intentional planning. In case any exemplary action is not taken at this time and again such spreading society is again escaped this time also, then the consequences will be very dangerous. The Worthy C.P. Sahib,

we hope that you are that much capable that such type of incident has taken place just to destroy the peaceful atmosphere of a particular community and you are well aware of the same. You are working on such constitutional position; you must try to act in a very faithful manner for your post. This community is having three main parts, life, independence and right to remain happy and all these three are being snatched. You are well aware that in order to save its existence, how far this community can go. At this end point of your "Jai Hind" on the same "Chadar", as per Gurbani of Sri Guru Teg Bahadur ji, we are saying good-bye "BheKahuKauDet, NahiNahiBheManatAan". Waheguru jikaKhalsa, Waheguru ji Ki Fateh. Sd/- United Sikh Students Federation Advocate Gurmohanpreet Singh (P/3262/2014), Advocate, Mob. No.98031-41088, Sd/- Legal Adviser, Jugraj Singh, Chief Patron, Mob. No.62845-13899

10. This Court is of the view that the translation of the aforesaid FIR appended as Annexure P-1 is not accurate. Therefore, the vernacular of the FIR as got translated from the Translation Branch of this Court is reproduced as under:-

“With reference to application No.65880/PGD dated 10/11/2022.

To

The Commissioner of Police, Amritsar.

Sub:- Regarding misbehavior with Sikh Community, regarding disrespect of the human rights of the family of Sandeep Singh@ Sunny personally, Sardar Arun Pal Singh Ji, Sat Shiri Akaal, the deepest pain for which justice has not been imparted yet. The entire Sikh community suffered from the 1984 genocide. Justice is still wandering here and there and wandered so much so, that even in today's era, a

young man with monstrous spirit who has the intention of committing genocide of the entire sikh community takes an entire gang with him and threatens and incites by saying therein that “we will not let any sardar to survive, we will fight openly, these sister (abusive language), do whatever you want to do with me, we will drag each and will give beatings and will cut sardar one by one by taking out of home, he was the sardar, who killed.”(The video out of the videos going viral on social media, exactly similar to voice/words of anti-social element Rahul). In the same manner, in the dark period of 1984, the words echoed, “Khoon ka badla khoon” and Sikh community could not recovered from that agony till date. Even today allegations are leveled on some officers, for the genocide got committed from that state. Despite these injuries, we again sincerely believe in your integrity and ability and demand appropriate action from you as the representative of other states: because Rahul, Saurav Setia and other social elements have committed crime by inciting the mob is quite fatal and could have been more fatal, so it is your responsibility to completely identify (due to being viral on social media) them. Just like the way, shop of father of Sandeep Singh Sunny was burnt down in 1984, the condemnable language was used against women of his family on social media. It was planned in order to finish entire community. He left no stone unturned to break the brotherhood of Punjab. You know better than us as to how the Hindu and Sikh community of Amritsar spent the night of 4th November due to the rhetoric that harassed the humanity and disturbance that incited the toxic crowd. In today’s era anyone stands up and says to sikh community, “we will remind you of the 84” and it become compulsion to fight for their existence again. Nowadays, the society has more resources compared to that era, if a story like that is created today, we cannot even estimate the loss, but we can

definitely take action in a responsible way, so that every section of the society can get justice. We are trying to bring a very common question to your attention because no action has been taken yet on the high-handedness being committed with a community, with a family.

Question:- Can there be any other absurd attempt to spread hatred towards a community under a planning, deliberately destroy the peace of the society? And does a bogus apology have the power to end the attempt to issue criminal threats to public? We believe that planning the genocide of an entire community and inciting an entire class to commit genocide does not arise out of a sudden outburst of anger but is the result of years of creative/planned thinking and fabricated narratives. If action is not taken on it and they are saved intentionally like anti-social elements who spread hatred in society then there will be dire consequences. We hope that you have the ability and you are well aware of the high-handedness being committed with the community the manner in which this atmosphere has been created. Please try to earn full loyalty to the position you hold and the constitution under which you are working, the three main parts of existence, life, liberty and the right to happiness are being taken away from one community. You know how far this community can go in order to save their existence. The Jai Hind, where you have an end, we bid farewell for the time being with the Bani of Guru Teg Bahadur Sahiban Ji. "Bhai Kahu Kau Det Nahi Nahi Bhai Manat aan" Waheguru Ji Ka Khalsa Waheguru Ji Ki Fateh. Sd/- United Sikh Students Federation Advocate Gurmohanpreet Singh (P/ 3262/2014) Advocate M.NO 98031-41088, Sd/- Legal Advisor Jugraj Singh Chief Sewadar M.No.62845-13899'

11. This Court is reminded of one of the blackest and horrific moments in the history of India which happened in the year 1984. After the

killing of the Prime Minister of India, this country witnessed riots across the country. Thousands of people were killed and their respective families are suffering till date. Although this Court will confine itself only to the allegations made in the present FIR, the wording allegedly used by the petitioner and its tenor leaves no manner of doubt that it is not only serious but also heinous in nature. As per the alleged video post which the petitioner had uploaded and which he had acknowledged thereafter by apologizing, he had so stated that not even one Sardar will be spared and they will fight with them openly. Bad names were also used for the Sikh Community in the name of 'Sister' and that with the threat that whatever they want to do they can do and they are 1% and they will be dragged and beaten up after taking them out from their houses, each one of the Sardars will be cut. It is further stated in the allegations contained in the FIR that the person, who had killed the aforesaid Sudhir Suri was a Sardar.

12. Such kind of contents of the FIR pertaining to the allegations which were uploaded on the internet by the petitioner himself and thereafter, made viral by one Journalist, are certainly serious and heinous in nature. It is the case of the learned State Counsel that the purpose of making such a statement on the social media was to cause riots among the communities which was duly prevented by the State. Not only this, as per the State Counsel and the complainant the day on which the aforesaid person, namely, Sudhir Suri was killed, the petitioner along with other co-accused formed a gang and ransacked the shop of the brother of the assailant and put it on fire, regarding which, another FIR was also registered against him as aforesaid and as per the learned State Counsel and the complainant, the petitioner was seen and identified in the

CCTV footage.

13. The apprehension which has been expressed by the learned State Counsel and the counsel for the complainant that considering the aforesaid allegations in case the petitioner is released on bail, then he may even intimidate and influence the witnesses and may abscond from justice carries weight and cannot be ignored.

14. This Court does not wish to go into the merits with regard to the aforesaid allegations but the scope of the present petition is only for the purpose of deciding the bail petition of the petitioner and it is made clear that no observation etc. made in the present order shall be deemed to be any observation on the merits of the case because the trial has already commenced. Therefore, considering the gravity and seriousness of the offence, this Court does not deem it fit and proper to grant regular bail to the petitioner. Consequently, the present petition is hereby dismissed.

22.11.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned:	Yes
2. Whether reportable:	Yes