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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.12.2024

Delivered on : 18.12.2024

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P. No.30924 of 2024

A.Pragash

Petitioner

Vs.

State rep. by
The Inspector of Police,
Cyber Crime Police Station,
Delta-2,
Central Crime Branch,
Chennai 600 007.
(Crime No.312 of 2024)

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of BNSS, 2023 seeking anticipatory bail in connection with Crime No.312 of 2024 on the file of the respondent police.

For petitioner
For Respondent

: Mr.D.Ashok Kumar
: Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)

ORDER

Apprehending arrest in connection with Crime No.312 of 2024 on the file of the respondent police in respect of offences punishable under Sections 192, 196(1)(a), 299, 302, 353(1)(b) and 353(2) of BNS, 2023, the present petition has been filed by the petitioner, who has been arrayed as sole accused in the case, seeking anticipatory bail.



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2. The apprehension of the petitioner is based on receipt a notice under Sections 35(3) and (4) of BNSS issued by the respondent police on 3.12.2024 directing the petitioner herein to appear for an enquiry on 6.12.2024 in respect of the said Crime Number.

3. Brief facts of the case are as under:-

i) A Woman Police Constable by name Selvi.A.Masilla Preethi (WPC 49220), entrusted with the duty of monitoring Facebook, Twitter, Instagram, Youtube, etc., to prevent controversial and abusive materials being made viral, had lodged a complaint on 27.11.2024 to the respondent police contending that while discharging her above said duty, she had come across a tweet made from the account of **P.A.Pragash@Legal_rowdy** (https://x.com/Legal_rowdy) on 24.11.2024 at 17.51 hours from the URL https://x.com/Legal_rowdy/status/1860660128514789668 to the following effect

"ஜயப்பனாவது மயிறாவது"

The tweet also contained a Hash tag to the effect that **"#WeStandWithIsaivani"** with an iconotext **"SUPPORT ISAIVANI"** on the image of a singer called Isaivani, who had sung a controversial song a few years ago, which became viral already creating some commotion in the society.

ii) Finding that such a tweet is made in a way to outrage the religious feelings of Hindus and devotees of Lord Ayyappan and provoke religious violence between the people of two religions by degenerating religious



harmony resulting in law and order issue, sought for initiation of steps for removing such a tweet and action against the wrong doer.

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iii) Having filed an FIR on the basis of the above complaint, the respondent police had issued notice under Sections 35(3) and (4) of BNSS and thereupon, the present petition has been filed by the petitioner seeking anticipatory bail.

4. Learned counsel for the petitioner would submit that the petitioner is a B.Com graduate, pursuing his LLB course at Dr.Ambedkar Law College, Bangalore and the FIR has been lodged without there being a complaint from any quarters alleging disturbance of public order and tranquility. He would further submit though he could not comply with the summons issued by the respondent by appearing on 6.12.2024 as he had received the same only on 6.12.2024, he had, later, complied with the same and thereupon, he had also deleted the tweet and thereby he would seek for grant of anticipatory bail to the petitioner.

5. Learned Government Advocate (Criminal Side) would submit that the petitioner, having deliberately made the tweet in the guise of freedom of expression, attempted to create enmity between two religious groups which would have serious repercussion and ripple in the society and thereby, he would vehemently oppose for grant of anticipatory bail to the petitioner. He would also submit that in the guise of freedom of speech, the petitioner cannot



and it should be dealt with strictly in accordance with law. He would further submit that the petitioner has three previous cases against him for offences of grievous in nature in Crime Nos.79/2017 of Kumbakonam West Police Station, 700/2022 and 434/2023 of Thiruneelakudi Police Station.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. No doubt freedom of speech and expression is guaranteed under Article 19(1) of the Constitution of India, however, it is not an absolute one and it contains certain restraints and exceptions which are postulated in Article 19(2) to 19(6) in the interest of the sovereignty and integrity of India, security of the State, friendly relationship with other States, **public order, decency or morality** or in relation to contempt of court, defamation or **incitement to an offence.**

8. Exercise of freedom of speech and restrictions thereon have been dealt with by the Apex Court in many a decision. In ***Amish Devgan vs. Union of India*** (2021)1 SCC 1, it has been held as under:-

"71. The Preamble to the Constitution consciously puts together fraternity assuring dignity of the individual and the unity and integrity of the nation. Dignity of individual and unity and integrity of the nation are linked, one in the form of rights of individuals and other in the form of individual's obligation to



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others to ensure unity and integrity of the nation. The unity and integrity of the nation cannot be overlooked and slighted, as the acts that "promote" or are "likely" to "promote" divisiveness, alienation and schematism do directly and indirectly impinge on the diversity and pluralism, and when they are with the objective and intent to cause public disorder or to demean dignity of the targeted groups, they have to be dealt with as per law. The purpose is not to curtail right to expression and speech, albeit not gloss over specific egregious threats to public disorder and in particular the unity and integrity of the nation. Such threats not only insidiously weaken virtue and superiority of diversity, but cut back and lead to demands depending on the context and occasion, for suppression of freedom to express and speak on the ground of reasonableness. Freedom and rights cannot extend to create public disorder or armour those who challenge integrity and unity of the country or promote and incite violence. Without acceptable public order, freedom to speak and express is challenged and would get restricted for the common masses and law-abiding citizens. This invariably leads to State response and, therefore, those who indulge in promotion and incitement of violence to challenge unity and integrity of the nation or public disorder tend to trample upon liberty and freedom of others.



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72.1. The content-based element involves open use of words and phrases generally considered to be offensive to a particular community and objectively offensive to the society. It can include use of certain symbols and iconography. By applying objective standards, one knows or has reasonable grounds to know that the content would allow anger, alarm or resentment in others on the basis of race, colour, creed, religion or gender."

9. In ***Kaushal Kishor v. State of U.P., (2023) 4 SCC 1***, the Supreme Court has held as under:-

"251. Every citizen of India must consciously be restrained in speech, and exercise the right to freedom of speech and expression under Article 19(1)(a) only in the sense that it was intended by the Framers of the Constitution, to be exercised. This is the true content of Article 19(1)(a) which does not vest with citizens unbridled liberty to utter statements which are vitriolic, derogatory, unwarranted, have no redeeming purpose and which, in no way amount to a communication of ideas. Article 19(1)(a) vests a multi-faceted right, which protects several species of speech and expression from interference by the State. However, it is a no brainer that the right to freedom of speech and expression, in a human-rights based democracy does not protect statements made by a citizen, which strike at the



dignity of a fellow citizen. Fraternity and equality which lie at the very base of our constitutional culture and upon which the superstructure of rights are built, do not permit such rights to be employed in a manner so as to attack the rights of another."

10. So far as the contention of the petitioner that without there being a complaint from public alleging disturbance of public order and tranquility, the FIR, which came to be lodged against him, is bad in law, it is relevant to note that the Apex Court, in a similar case in ***Aswini Kumar Upadhyay vs. Union of India and others*** (Writ Petition (Civil) No.943/2021 dated 28.4.2023) has observed that as and when any speech or any action takes place which attracts offences such as Sections 153A, 153B, 295A and 505 of the IPC etc., *suo motu* action will have to be taken to register cases even if no complaint is forthcoming and proceed against the offenders in accordance with law and made it clear that such action will have to be taken irrespective of the religion that the maker of the speech or the person who commits such act may profess, so that the secular character of India is preserved and protected.

11. Irrespective of the religion, to which the petitioner belongs, India being a secular country where there is co-existence of members of various religious faith, in the garb of freedom of speech, he cannot be allowed to pose a threat to the integrity and sovereignty of India. Further, the petitioner is not an illiterate to claim ignorance of the consequences of his act, but, a Law student, who is expected to maintain decorum, instead, he appears to be a



trouble monger, which is evident from his criminal antecedents. It is brought to the notice of this court that the petitioner has got three previous cases one in the year 2017, another in the year 2022 and the third one being in the year 2023 for the grave offences punishable under Sections 324, 379 and 506(2) IPC.

12. The petitioner, being a person with such a criminal background, having played gimmicks in abusing the social media, though claims to have deleted his tweet later on the initiation of action by the respondent police, this court feels that he is not entitled to be shown any indulgence. In view of the above, the Criminal Original Petition is liable to be dismissed and accordingly, it is dismissed.

18.12.2024

Index : Yes / No
Speaking / Non-speaking
ssk.

To

1. The Inspector of Police,
Cyber Crime Police Station,
Delta-2,
Central Crime Branch,
Chennai 600 007.
2. Public Prosecutor,
High Court of Madras.



A.D.JAGADISH CHANDIRA,J.

ssk.

P.D. ORDER IN
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