

CrI.O.P.(MD)No.19526 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2024

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

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Kasthuri

... Petitioner/
Accused

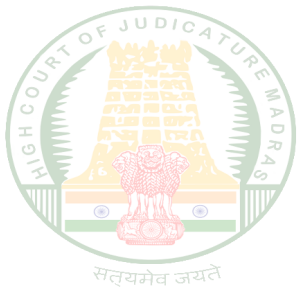
Vs.

The State of Tamilnadu,
Rep. by, the Inspector of Police,
Thirunagar Police Station,
Madurai.
Crime No. 612/2024.

... Respondents
Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to enlarge the petitioner on bail in the event of her arrest in Crime No.612 of 2024 on the file of the respondent police.

For Petitioner : Mr.A.K.Sriram
Senior Counsel
for Mr.M.Dinesh Hari Sudarsan
For Respondent : Mr.R.Bhaskaran
Additional Advocate General
assisted by Mr.S.Ravi
Additional Public Prosecutor



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ORDER

This petition is filed to enlarge the petitioner on bail in the event of her arrest in Crime No.612 of 2024 on the file of the respondent police.

2.The case of the prosecution is that the defacto complainant while watching You Tube in his mobile phone, happened to see a video where the petitioner was giving a speech at a Brahmin's meet. In that speech, the petitioner is said to have made disparaging remarks against the womenfolk belonging to a particular community. Aggrieved by the same, the complaint was given before the respondent police and based on the same, the FIR came to be registered in Crime No.612 of 2024 on 05.11.2024 for offences under Sections 294(b), 196(1)(a), 197(1)(c), 352 and 353 (3) of BNS 2023 and Section 67 of the Information Technology Act, 2000.



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3.Heard Mr.A.K.Sriram, learned Senior Counsel appearing on behalf of the petitioner and Mr.R.Bhaskaran, learned Additional Advocate General appearing on behalf of the respondent.

4.The learned Senior Counsel appearing on behalf of the petitioner submitted that the petitioner is a social activist, political commentator and a cine-actress. She was expressing her views in a particular meeting as to how the Brahmin community had been denied the identity of “Tamizhian” and whereas some of the leaders belonging to political parties who actually are Telugu speaking people had come to Tamil Nadu only 300 years ago and are proclaiming themselves to be Tamizhian. Hence, this speech made by the petitioner must be understood only with this background and bits and pieces cannot be lifted from that speech and it should not be given a convoluted meaning. The learned Senior Counsel submitted that the case in hand has arisen more out of political vendetta since after the speech was delivered and the petitioner was informed that some of the Telugu speaking persons were wounded, the petitioner posted a twitter message on 05.11.2024 and explained her stand and also expressed her regret for any inadvertent ill



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5.The learned Senior Counsel further submitted that the case is borne out by the records and the recorded version of the speech given by the petitioner is available in the public sphere and therefore, there is no necessity to subject the petitioner to custodial interrogation. That apart, in order to cause more hardship to the petitioner, multiple First Information Reports are registered against the petitioner for the same incident.

6.Per contra, the learned Additional Advocate General appearing on behalf of the respondent submitted that the speech made by the petitioner was intentionally directed against a particular community and if such speech is permitted, it will cause communal disharmony and hatred among two communities. As such, the petitioner has admitted that she has made such speech and hence, all the offences are made out. Hence, the learned Additional Advocate General sought for the dismissal of the petition.



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7.This Court has carefully considered the submissions made

on either side and materials available on record.

8.This Court also had the advantage of listening to the alleged controversial speech made by the petitioner and the portion of the speech over which the entire controversy has arisen is transcribed hereunder:

“ராஜாவுக்கு கூட சேர்த்துக் கொண்ட அந்தப்புற
மகளிர்களுக்கு சேவை செய்ய வந்தவர்கள் தெலுங்கு
பேசுபவர்கள் எல்லாம் தமிழர்கள் இனம் என்று சொல்லும்
பொழுது”

9.The learned Senior Counsel for the petitioner contended that the allegations made in the complaint is a clear misunderstanding of what was spoken by the petitioner in the meeting. The petitioner has not made any allegations against the womenfolk and what was stated by the petitioner is attempted to be twisted to suit the needs of the vested interest.



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10. On carefully considering the controversial statement made by the petitioner, it is seen that the petitioner has described the Telugu speaking people as the one's who came to Tamil Nadu to serve the wives and concubines living in a quarters reserved for them (Andhapuram) of a King.

11. It is true that the controversial statement which has now caused confusion does not directly attribute anything against the womenfolk belonging to the community. However, this statement made by the petitioner has painted all Telugu speaking people in a bad light.

12. Freedom of speech is a fundamental right that empowers individuals to express their thoughts, beliefs and opinions. However, with this power comes great responsibility. The ability to speak freely should not be misused to spread hatred or cause communal disharmony. It is essential to recognise the impact of our words can have on individuals and communities, and to use our voices to uplift rather than demean.



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13.I had an occasion to deal with the scope of hate speech in

K.Annamalai v. V.Piyush in CrI.O.P.No.27142 of 2023, which was delivered on 08.02.2024. After considering the entire law on the point, it was held as follows:

*“33. In **Pravasi Bhalai Sangathan v. Union of India**, (2014) 11 SCC 477 the Supreme Court observed that even the psychological impact that will be caused in the mind of the recipient of the message can be the basis for deciding hate speech. Hate speech can lay the ground work, which, at a later point of time, can lead to discrimination, ostracism, violence and in the most extreme cases, genocide. History has taught us what happened to the Jews during the Second World War, which initially started as a hate speech by Hitler and ultimately ended as a genocide.*

34. In the considered opinion of this Court, psychological impact on an individual or a group can also be brought within the meaning of definition of the term 'hate speech'. This is an



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*important facet in our understanding of what constitutes hate speech, as also to understand the scope of Section 153A of the IPC. The decision in **Pravasi Bhalai Sangathan**, supra, moved from the traditional approach, which expected a gross physical act to a modern approach with a psychological impact. At the same time, the distinction between free speech and hate speech remains relevant.*

*35. The distinction between the two came to the fore in **Patricia Mukhim v. State of Meghalaya**, (2021) 15 SCC 35. This was a case where one Patricia Mukhim, who is an important social worker in Meghalaya, requested that the non tribal population of Meghalaya also requires more protection. This message that was sent by her through the facebook incited communal tension. The Supreme Court held that the statement made by Patricia Mukhim in the facebook post did not have any intent to promote any class/community hatred and that the State of Meghalaya was requested to*



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take care of the interest of the non-tribals also in the State. This post was held to be falling within the scope of free speech, which cannot be stifled by registering criminal cases apart from holding that it could be branded as a hate speech. This tendency to misuse a face book post or statement made as a hate speech cannot be ruled out and therefore, the courts must be very careful before coming to a conclusion as to whether the speech made is a free speech or a hate speech.

...

52. The twitter handle, in which, the shortened and focussed version has been posted is a permanent data that is available. At an appropriate time/moment this data can be circulated and the ticking bomb will have its desired effect at that point of time. In other words, the concept of looking at hate speeches qua the result it yields, after such statements are made, should never be understood in its traditional way and the Courts have to necessarily take into



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consideration the fact that such content has a permanent data available and it can be used at any time to suit the situation. Hence, the psychological impact of a statement made by a popular leader must not be merely confined by testing it only to immediate physical harm and it is the duty of the Court to see if it has caused a silent harm in the psych of the targeted group, which, at a later point of time, will have their desired effect in terms of violence or even resulting in genocide. Therefore, the non-physical impact of the statements made will also come within the scope of Section 153A of the IPC.

53. A Judge, who decides these cases, cannot be sitting in a pulpit nor would ignore what is happening in the society during the relevant point of time. A Judge, who is holding a Constitutional position, has made his oath on The Constitution of India and therefore, he is duty bound to ensure that the basic features of The Constitution and the fabric of this country are not



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attempted to be destroyed.”

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14. When we hold the microphone – whether literally or metaphorically, we must be aware of the influence we wield. Our words can inspire change, foster understanding or conversely create division and animosity. In the case in hand, this Court has to see the impact that will be created by the speech made by the petitioner against the Telugu speaking people and what is attempted to be projected is that these people entered Tamil Nadu to perform a menial job and it is these people who are now claiming themselves to be Tamizhian.

15. The speech made by the petitioner clearly hovers around hate speech. As held in the above judgment, the statements made by the petitioner is now available in the social media and it can act like a ticking bomb, which will wait to burst at the appropriate point of time by creating violence as among the Tamil and Telugu speaking people. A speaker must always think twice before addressing such issues in the public platform and particularly, in the social media era since what is said becomes a permanent record.



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16.The speeches must not be made to play to the gallery and more responsibility must be shown. The petitioner probably was able to get the applause when she made this speech but what she had spoken had actually affected the sentiments of the Telugu speaking people. Even though the complaint states that the speech was directed against the womenfolk of the particular community, on carefully listening to the speech, it is seen that the entire Telugu speaking people have been demeaned. In a diverse country like ours, there must be zero tolerance whenever such speech is made by demeaning or insulting particular group of people based on their language.

17.On carefully reading the message that was tweeted by the petitioner, there is no genuine attempt to apologize for using such a bad and intemperate language and the petitioner is only attempting to justify her speech. In cases of this nature, the larger public interest will weigh in the minds of the Court. Useful reference can be made to the judgment of the Apex Court in *Siddharam Satlingappa Mhetre v. State of Maharashtra*, reported in *2011 (1) SCC 694*, where the Apex Court after

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considering all the earlier decisions gave certain guidelines while considering an anticipatory bail petition. One such consideration that was insisted upon is in cases where the impact of the grant of anticipatory bail, particularly, in case of magnitude affecting a large number of people. This will depend upon gravity of the offence. The case in hand falls under this category.

18.The petitioner claims to be an educated and public spirited person but what has fallen out of the mouth of the petitioner is highly pejorative. Courts must be more stringent when such demeaning statements are made by such persons since they are setting a bad role model for others to follow.

19.A message must be sent to all concerned that such fissiparous tendencies while making speeches will not be tolerated. Only if that is done, such recurrence can be prevented in future and people will think twice before making such reckless statements.



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20.A strong message must be sent by the court to the effect that whenever such scurrilous and derogatory statements are made by any person bordering hate speech and thereafter he is caught and prosecuted in accordance with law, tendering apology as a matter of course to escape the consequence cannot be entertained. If it is handled with kid gloves, anyone will make such reckless statements and tender an apology to escape the consequence. One has to own up the responsibility. The words uttered are like the arrow which has already left the bow and it will reach its destination and cause the damage and hence a halfhearted apology will not cure the damage that has already happened. Everyone must be more conscious while uttering a word from a public platform and must necessarily face the consequence if irresponsible statements bordering hate speech are made.

21.Before I conclude, I thought it fit to recall a poem which runs thus:

“A careless word, like an arrow let fly,
Strikes deep and leaves scars, no chance to deny.



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Once loosed from the bow, it cannot retract—

Choose wisdom in speech, lest we suffer the impact.”

22.To conclude, this Court wants to emphasize the fact that as we navigate the landscape of communication, let us commit to using our voices for good. Wield your words with care and grace. Let us try for dialogue that fosters understanding and compassion rather than division and hatred. By doing so, we honor the true essence of freedom of speech: a tool for unity and progress.

23.In the result, this petition stands dismissed.

14.11.2024

NCC : Yes
Index : Yes
Internet : Yes
PKN
To

1.TheInspector of Police,
Thirunagar Police Station,
Madurai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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N.ANAND VENKATESH,J.

PKN

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