

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

Mis. Cr. Case No.2206/2021

Munnawar S/o Iqbal Faruqui

Vs.

State of Madhya Pradesh

Shri Vivek Tankha, Sr. Advocate assisted by Shri Anshuman Shrivastava, Advocate for the applicant.

Shri Amit Sisodiya, Public Prosecutor for the respondent/State.

S/Shri Romil Verma, Manish Gupta and Rajesh Joshi, Advocates for the objector.

AND

Mis. Cr. Case No.2213/2021

Nalin S/o Shri Dharmendra Yadav

Vs.

State of Madhya Pradesh

S/Shri Anshuman Shrivastava and Soumil Ekadi, Advocates for the applicant.

Shri Amit Sisodiya, Public Prosecutor for the respondent/State.

Shri Rajesh Joshi, Advocate for the objector.

Reserved on: 25/01/2021

ORDER
(28/01/2021)

Rohit Arya, J.,

Both Mis. Cr. Cases Nos.2206/2021 and 2213/2021 arise out of common order passed by First Additional Sessions Judge, Indore dismissing their bail application.

As both the cases arise out of common order, they are being disposed of by this singular order.

For the sake of convenience, the facts of Mis. Cr. Case No.2206/2021 have been considered.

This is the first bail application under Section 439 of Cr.P.C., for grant of bail filed on behalf of the applicant. The applicant is in custody since 01/01/2021 in connection with crime No.02/2021 registered at Police Station Tukoganj, Indore, District Indore for the offence punishable under sections 295A, 298, 269 and 188/34 IPC.

2. As per prosecution case, the complainant Eklavya Singh Gaud has filed a written complaint and based on the same, offence punishable under sections 295A, 298, 269, 188/34 IPC was registered against Sadakat Khan, Edwin Anthony, Prakhar Vyas, Priyam Vyas, Nalin Yadav (organizer of the show), and Munnawar Faruqi. The complainant in the complaint has alleged in the complaint that he is custodian of Hindu Protection Congregation (Sanghatan). On 01/01/2020, a standup comedy show was organized at Munro Cafe, (56 Shops) Indore without obtaining permission and also without following the guidelines of Covid-19, like social distancing, etc., It is further alleged that the complainant alongwith his friends went to watch the said comedy show. In the comedy show, the comedians were cutting filthy and indecent jokes deliberately on Hindu religion Gods and Goddesses and BJP National President, Amit Shah. As a result, the comedians hurt and outraged religious sentiments of the complainant.

After the registration of FIR, the accused persons have been arrested and produced before the Judicial Magistrate, First Class, Indore. An application under section 437 Cr.P.C., filed by them has been rejected by the Magistrate on 02/01/2021 and bail application filed under section 439 Cr.P.C., has also been rejected by the Court below by the impugned order.

The accused pleaded that they are innocent and the case has been registered in a fraudulent manner against them. They have conducted a comedy show but, they have not committed any act which may hurt religious sentiments of any person. The ingredients of section 295A IPC are not attracted. The cutting of jokes on political leaders will not attract any offence, in view of Article 19(1) (a) of the Constitution of India, as it enshrines freedom of speech and expression. The applicants are artists who cut jokes to make laughter and entertainment of the general public and they have no intention to hurt religious feelings of any person of the society. Even otherwise, the offence is triable by Judicial Magistrate First Class

and the maximum punishment for the offence is three years, therefore, there is no necessity of their judicial remand.

3. Learned counsel for the applicant further submits that the applicant is innocent and he has been falsely implicated in the crime. In **Mis. Cr. Case No.11891/2018 (Deepak Nagle Vs. State of M.P.) on 04/04/2018 & M.Cr.C.No.32895/2020 (Krishnakumar Sastri Vs. State of M.P.) on 14/09/2020**, the Hon'ble High Court at Main Seat Jabalpur has granted interim protection to the applicants under section 438 Cr.P.C. The Hon'ble Supreme Court in the case of **Mahendra Singh Dhoni Vs. Yerraguntla Shyamsundar and another, 2017 (7) SCC 60** has held that every act of insult to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class will not fall in the domain of section 295A IPC. The applicant has no criminal antecedents. The applicant is in jail incarceration since 01/01/2021. Due to Covid-19, the trial is not likely to conclude in the near future. Under such circumstances, the applicant deserves to be enlarged on bail on such terms and conditions, Hon'ble Court deems fit and proper.

4. *Per contra*, learned Public Prosecutor has opposed the application with the submission that the applicant and his associates have been actively involved in the commission of the crime.

Learned counsel further submits that the investigating officer has seized the clippings of the incident cutting jokes hurting religious sentiments of Hindu Gods and prepared seizure memos.

Six seizure memos have been filed alongwith written submissions marked as R/5; (1) Pen drive containing recording of the comedy show (video footage) from the complainant Eklavya Singh Gaud, (2) a mobile phone from accused Munnawar Faruqui, (3) a mobile phone and booking letter of conferencing hall for organizing comedy show at Munro Cafe, Indore from accused Nalin (4) mobile phone of Lenova make, Rs.2,000/- note, driving licence and PAN card from accused Edwin Anthony who was sitting at the counter for collection of money (5) dual sim mobile phone and the 18 times call history from 03/03/2020 to 01/01/2021 between accused Prakhar Vyas and accused Munnawar Faruqui (6) a dual sim mobile phone from accused Sadakant Khan (7) copies of advertisement letter, Munrao Cafe trade mark for running shop

given by Food Safety Department and booking register page for organizing the comedy show and (8) Pen drive 32 GB containing video recording of the comedy show.

Accused Munnawar Farukhi deliberately and maliciously insulted the Hindu Gods, Maryada Purshottam Ram and Mata Seeta. He has referred to the statement of the complainant Eklavya Singh Gaud under section 161 Cr. P.C., wherein he has stated that Munnawar Farukhi used insulting and un-parliamentary language during the comedy show . Relevant extract is quoted below:

“उसके बाद मुन्नवर फारूखी कॉमेडी करने आया और उसने कार्यक्रम की रेकाडींग बंद करवा दी और आंडियंस के मोबाईल रखवा दिये फिर वहां कॉमेडी करना चालु किया और शुरुआत में ही भगवान राम और सीता को बेहत ही आपत्तिजनक शब्दों को प्रयोग करते हुए जिसके बोल इस प्रकार थे सीता गाना गाती है मेरा पिया घर आया ओ राम जी राम डोंट गिव फक आउस सीता ओर कहा कि सीता भी गाली बकती है ओर माधुरी को कुतिया कहती है फारूकी कह रहा था कि साले सभी हिन्दू देवी देवता अवैध संबंधों की पैदाईश है जो कि रामायण और महाभारत में भी है। महाभारत में एक ओरत से कई लोग बच्चे पैदा करते है औरत बच्चे पैदा करने की मशीन है इसके बाद मुन्नवर यही नही रुका और यमराज के उपर एक जोक मारते हुए कहा कि एक बार यमराज एक व्यक्ति की लाश लेकर भगवान के पास गये तो भगवान ने कहा कि यह क्या ले आया मादरचोद मैने तो किसी और को लाने भेजा था ओर इसके बाद उसने गोधरा कांड में जलाए गए कार सेवकों को जो अयोध्या जा रहे थे कि हत्या का मजाक बनाया’

similar is the statements of Kunal s/o Dilip Parik, Shubehndra s/o Hemendra Gaud, and Palash s/o Satish Gupta under section 161 Cr.P.C., Relevant portions of their statements are quoted below respectively:

Kunal s/o Dilip Parik:

“मुझे एवं मेरे पांच साथियों को बताया कि एडविन नाम के लडके को रूपये देकर टिकट ले लो फिर मैने एवं साथी एकलव्य ने दो हजार रूपये देकर चार टिकट लिए उनमें एकलव्य शरद पूनित एवं पलाश एवं पलाश दंदर चले गये तथा अकुल गेट पर रुक गया में ओर शुभेन्द्र बाहर रह गये तथा गेलरी में खडे हो गये तभी शो चालु हुआ तथा बाहर मुन्नवर फारूखी प्रेक्टिस करने लगा ओर भगवान राम ओर सीता को बेहद ही आपत्तिजनक शब्दों का प्रयोग करते हुए एक गाना गाया जिसके बोल इस प्रकार थे सीता गाना गाती है मेरा पिया घर आया ओ रामजी राम डोंट गिव फक आउस सीता ओर कहा कि सीता भी गाली बकती है ओर माधुरी को कुतिया कहती है फारूकी कह रहा था कि साले सभी हिन्दू देवी देवता अवैध संबंधों की पैदाईश है जो कि रामायण और महाभारत में भी है। महाभारत में एक ओरत से कई लोग बच्चे पैदा करते है औरत बच्चे पैदा करने की मशीन है इसके बाद मुन्नवर यही नही रुका और यमराज के उपर

एक जोक मारते हुए कहा कि एक बार यमराज एक व्यक्ति की लाश लेकर भगवान के पास गये तो भगवान ने कहा कि यह क्या ले आया मादरचोद मैने तो किसी और को लाने भेजा था ओर इसके बाद उसने गोधरा कांड में जलाए गए कार सेवकों को जो अयोध्या जा रहे थे कि हत्या का मजाक बनाया”।

Shubehndra S/o Hemendra Gaud:

“मुझे एवं मेरे पांच साथियों को बताया कि एडविन नाम के लडके को रूपये देकर टिकट ले लो फिर मैने एवं साथी एकलव्य ने दो हजार रूपये देकर चार टिकट लिए उनमें एकलव्य शरद पूनित एवं पलाश अंदर चले गये तथा अकुश गेट पर रुक गया में ओर शुभेन्द्र बाहर रह गये तथा गेलरी में खडे हो गये तभी शे चालु हुआ तथा बाहर मुनवर फारुखी प्रेक्टिस करने लगा ओर भगवान राम ओर सीता को बेहद ही आपत्तिजनक शब्दों का प्रयोग करते हुए एक गाना गया जिसके बोल इस प्रकार थे सीता गाना गाती है मेरा पिया घर आया ओ रामजी राम डोंट गिव फक आउस सीता ओर कहा कि सीता भी गाली बकती है ओर माधुरी को कुतिया कहती है फारुकी कह रहा था कि साले सभी हिन्दू देवी देवता अवैध संबंधों की पेदाईश है जो कि रामायण और महाभारत में भी है। महाभारत में एक ओरत से कई लोग बच्चे पैदा करते है औरत बच्चे पैदा करने की मशीन है इसके बाद मुन्नवर यही नही रुका ओर यमराज के उपर एक जोक मारते हुए कहा कि एक बार यमराज एक व्यक्ति की लाश लेकर भगवान के पास गये तो भगवान ने कहा कि यह क्या ले आया मादरचोद मैने तो किसी और को लाने भेजा था ओर इसके बाद उसने गोधरा कांड में जलाए गए कार सेवकों को जो अयोध्या जा रहे थे कि हत्या का मजाक बनाया”।

Palash s/o Satish Gupta:

“(नलिन) माईक हाथ में लेकर बोलता है
..... हाय कैसे हो तुम यहा इन्दौर में
लोग पांच सौ रूपये टिकट लेकर भी आते है हम चार साल से कर रहे है कोई नही आताअ देखने के लिये सही बात है यार बी गीव इट अपर फोर यूवर सेल्फ, आसान बात नही है जान का खतरा लेकर आना अभी यह रिलीजन रिलीजन पर बात करके बया मतलब है यहां रिलीजन रिलीजन वाले देखो मुनवर हिट हो गया। क्या घटिया सवाल पुछ रहे हो यार में रिलीजन के बारे में कोई बात नही कर रहा मेरे को सोसायटी से दुसरी चीजों से प्राबलम है बीन्ग एन इंडियन डु यू वॉट टू डॅ सेक्स विथ सम वन देन यू सुड गेट मेरिडविथ सम वन, व्हाट द फक, जिसके लिये मे नर्सरी से लेकर 12 वी तक पढाई की, 12 वी के बाद मां बाप ने इंजनियरिंग कराई उसके बाद वहां से लेकर कार लोन होम लोन, उसके बाद मे गाड मरा के यहां तक पहुचा उसके बाद भी मै डिसाईट नही कर सकता कि मै जिंदगी भर किसके साथ सेक्स करूंगा यह डिसाईट करेगे बेहन चौद मेरे मां बाप कितने लोगो को यह लगता है कि यहां इंडिया सेक्स एजूकेशन महत्वपूर्ण हमुझे यह लगता है कि 10 की किताब में ऐसा एक चेपटर आता है जहां पर हम

री-प्रोडक्शन सेक्स के बारे में सिखते हैं। फेन्कली देखो यही होता है लोगो को 4 थी से पता है में बता रहा हूँ टिचर यह चेपटर पढा रहा था”।

Learned State counsel further submits that as per case diary, the matter is still under investigation and the charge sheet yet to be filed. The investigating authority has submitted an application for police remand of the applicant to collect voice sample for forwarding the same alongwith seized samples of clippings to the Forensic Laboratory for matching the voice report.

He has relied upon the judgment of Hon'ble Supreme Court in the case of **Amish Devgan Vs. Union of India (2021) 1 SCC 1** to bolster his submissions.

Paragraph 104 is quoted below:

“104. The word ‘attempt’, though used in Sectins 153A and 295A of the Penal Code, has not been defined. However, there are judicial interpretations that an ‘attempt to constitute a crime’ is an act done or forming part of a series of acts which would constitute its actual commission but for an interruption. An attempt is short of actual causation of crime and more than mere preparation. In **Aman Kumar Vs. State of Haryana [Aman Kumar v. State of Haryana, (2004) 4 SCC 379 : 2004 SCC (Cri) 1266]** it was held that an attempt is to be punishable because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment.

and also paragraphs 105 to 108.

With the aforesaid submissions, learned State counsel prays for dismissal of the bail applications.

5. Learned counsel for the complainant has vehemently opposed the bail application making following contentions:

(i) the applicant and his associates in the standup comedy on 01/01/2020 have made nefarious, filthy and indecent jokes deliberately against the Hindu Gods, Lord Maryada Purshottam and Mata Seeta. The applicant alongwith coaccused regularly making such nefarious jokes in social media for the last 18 months on various occasions, despite protest on various social media

platforms by Hindu devotees;

(ii) the applicant and his associates with *mala fide* intention deliberately hurting the religious feelings of Hindus and to incite communal riots. Such acts establish *mens rea* on the part of the accused persons;

(iii) in fact, the applicant and his associates are highly influential persons and 'urban naxals' hurting the religious feelings of Hindus under the garb of freedom of speech and expression; and

(iv) the applicant is resident of Peethampur, District Dhar (MP) and the co-accused, Munnawar Faruqi is resident of Junagarh, District Junagarh State of Gujarat;

(v) similar case has been registered against the applicant at Georgetown Police Station, Prayagraj, State of U.P.,

The applicant has criminal antecedents and there is tendency of outraging religious feelings of particular class of citizens. Therefore, if the applicant is released on bail pending investigation and process of collection of more incriminating material, the same shall be seriously jeopardized.

With the aforesaid submissions, learned counsels for the objector prays for dismissal of the bail applications.

6. Heard.

7. **Constitution of India; Chapter IVA; Fundamental Duties** was inserted by forty-second amendment in the year 1976, aims to regulate the conduct, behaviour and to bring excellence in case of every citizen of India ensuring uniformity of India into a cohesive society.

Article 51A. Fundamental duties, provides that "it shall be the duty of every citizen of India -

... ..
(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional

diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

... ..”

Part III – Fundamental Rights although confers rights but the duties and obligations are inherent thereunder. Every right is coupled with duty.

8. Liberty of an individual has to be balanced with his duties and obligations towards his fellow citizens; **[M.C.Mehta Vs. Union of India and others (2003) 5 SCC 376]** referred to.

9. Intensity of crime and degree of involvement with an element of *mens rea* adjudge impact of crime in the society.

10. **Section 295A IPC** penalizes such acts of insults or those varieties of attempts to insult the religion or the religious beliefs of that class which perpetrated with the deliberate and malicious intention of outraging religious feelings of that class **Ramji Lal Modi vs. State of U.P., AIR 1957 SC 620**, referred to.

11. The prosecution is required to establish that the intention of the accused to outrage religious feelings was malicious, deliberate and directed to a class of persons and not merely to an individual. In fact, what is punishable under this section is not so much the matter of discourse, written or spoken, but as the manner with which it intended.

12. This Court has carefully perused the case diary. The statements of witnesses recorded under section 161 Cr.P.C., particularly; statements of the complainant Eklavya Singh Gaud and witness, Kunal. Emphasis laid on some portions of the statements by the learned Public Prosecutor have already been reproduced in the form of his contention. The evidence/material collected sofar, suggest that in an organized public show under the garb of standup comedy at a public place on commercial lines, **prima facie**; scurrilous, disparaging utterances, outraging religious feelings of a class of citizens of India with deliberate intendment, were made by the applicant.

13. Learned counsel for the applicant tried to submit that the applicant, Munnawar Faruqi came on an invitation from the organizers of the comedy show and was though present on the spot at the show but did not utter anything as alleged.

14. In the light of the statements of the complainant and the witnesses referred above, the seized articles, viz., video footage of the show and the seizure memos detailed above, at this stage it is difficult to countenance to the submissions of the learned counsel for the applicant as complacency of the applicant cannot be ruled out, besides vulnerability of his acts in public domain. It is not a case of no evidence. Moreso, the investigation is in progress. The possibility of collection of more incriminating material and complacency of other persons cannot also be ruled out. Further, it has come on record that similar nature of offence has been registered against the applicant at Police Station Georgetown, Prayagraj, State of Uttar Pradesh.

15. That apart, there is also specific assertion by the learned counsel for the complainant that the applicant alongwith other coaccused persons allegedly making outraging filthy jokes in social media deliberately against Hindu Gods, Lord Shriram and Goddess Seeta hurting religious sentiments of Hindus for the last 18 months despite, protest on various social media platforms. There is nothing on record to the contrary.

16. Be that as it may, this Court refrains from commenting upon contentions of the parties touching on merits but, regard being had to the material seized and the statements of the witnesses and that the investigation is in progress, no case is made out for grant of bail.

Both the Mis. Cr. Cases stand dismissed.

The observations, if any made in the order on facts are only for the purpose of deciding these bail applications and shall have no bearing on pending trial.

17. Before parting with the case, it is considered apposite to observe that our country is a beautiful country and sets an example of coexistence amid diversities; be it religion, language, culture,

geographical locations etc, to the world at large. Mutual respect, faith and trust amongst all citizens of India are basic tenets of co-existence, in a welfare society governed by the principles of rule of law.

It is the constitutional duty of every citizen of the country and also of the States to promote harmony and the spirit of common brotherhood amongst all the people of India irrespective of religious, linguistic, regional or sectional diversities and to value and preserve the rich heritage of our composite culture (Article 15A (e) and (f) of the Constitution of India.

States must endeavour that ecosystem and sustenance of coexistence in our welfare society is not polluted by negative forces and must strive for achievement of goals as enshrined under Article 51A(e) and (f) of the Constitution of India in particular as these provisions are part of our vibrant Constitution and not dead letters.

A copy of the order be placed in the connected case.

(Rohit Arya)
Judge
28-01-2021

Patil