



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (ABA) NO.517/2024

Nitin s/o Vasant Rao Bode

..VS..

**The State of Maharashtra, thr.PS Incharge Yavatmal City, Taluka and District
Yavatmal**

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
**Shri N.S.Khandewale, Counsel for the Applicant.
Ms.T.H.Udeshi, Additional Public Prosecutor for the State.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 28/08/2024

PRONOUNCED ON : 02/09/2024

1. By this application, the applicant seeks anticipatory bail in connection with Crime No.549/2024 registered with the non-applicant/police station for offence punishable under Section 153-A(1)(b) of the Indian Penal Code.

2. Assistant Police Inspector Sarang Vijayrao Bompilwar, working in Anti Terrorist Squad at Yavatmal, lodged a complaint stating in it that on 3.6.2024 he received a letter from the office of the Special Inspector General of Police (Anti Naxal Operation) that the applicant has written an Article and circulated the same on WhatsApp titled as “भारतात

पुन्हा नक्षलवाद पेटनार, देश वाचविण्यासाठी सशस्त्र क्रांतीची गरज.” He also circulated in the Article a slogan as “जय भारत, जय संविधान, जय नक्षलवाद”. He is supporter of Naxalites and he promotes enmity between different groups on grounds of religion, race, place of birth, residence, language and as such he committed an offence. On the basis of the said letter and the complaint by the informant, First Information Report came to be registered under Section 153-A(1)(b) of the Indian Penal Code.

3. Heard learned counsel Shri N.S.Khandewale for the applicant and learned Additional Public Prosecutor Ms.T.H.Udeshi for the State.

4. Learned counsel for the applicant submitted that the applicant, serving as an Insurance Agent with utmost sincerity, is a law abiding citizen and believes in national integrity. He has no criminal antecedents against him, political affiliation, and connection with any Anti National Organizations or Naxalites. The act of the applicant as alleged does not promote prejudicial to maintenance of harmony or does not disturb public tranquility. He submitted that

allegations are not sufficient to attract Section 153-A of the Indian Penal Code as *mens rea* is absent. A plain reading of the said Section would show that its application would be attracted only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government. He further submitted that there was no disturbance of law and order or of public order or peace and tranquility in the area. He further submitted that insofar as custodial interrogation of the applicant is concerned, the same is not required. As such, learned counsel for the applicant prays that the application be allowed.

5. In support of his contentions, learned counsel for the applicant placed reliance on the decision of the Honourable Apex Court in the case of **Javed Ahmad Hajam vs. State of Maharashtra and anr, reported in (2024)4 SCC 156**, wherein it is observed that Section 153-A(1) is attracted when by words, either spoken or written or by signs or by visible representations or otherwise, an attempt is made to promote disharmony or feelings of enmity, hatred or ill-will between

different religious, racial, language or regional groups or castes or communities. Intention” is an essential ingredient of the said offence.

6. *Per contra*, learned Additional Public Prosecutor for the State vehemently opposed the application and submitted that the applicant wrote a message titled as “भारतात पुन्हा नक्षलवाद पेटनार, देश वाचविण्यासाठी शस्त्र क्रांतीची गरज” and circulated the same through social media i.e. WhatsApp. In the said message, the applicant stated that “भारत देशातील तरुणांनी शस्त्र क्रांतीकारक संघटन अर्थातच नक्षलवाद जिवंत करायचा आहे. प्रत्येक भारतीय नागरिकाने हातात शस्त्र घेतल्या शिवाय पर्याय नाही.” It is further stated a slogan as “जय भारत, जय संविधान, जय नक्षलवाद”. Learned Additional Public Prosecutor further submitted that the applicant made baseless and unsupported allegations against the Central Government led by the existing Honourable Prime Minister and to save lives of such persons armed revolution is needed against the Central Government. The said act of the applicant is an attempt to provoke and instigate the general public at large against the Central Government and he has indirectly generated an advanced ideology of Naxalism through the said message and,

therefore, the offence is registered against the applicant. Learned Additional Public Prosecutor submitted that during investigation, the investigating officer obtained CDRs of the applicant from 1.1.2024 to 13.6.2024 which show that the applicant made phone calls throughout States of the India i.e. Jammu & Kashmir, West Bengal, Karnataka, and Tamil and further investigation is being carried out as regards conversation between the applicant and persons to whom calls were made. He submitted that custodial interrogation of the applicant is required to recover mobile phone of the applicant. He submitted that the applicant posted the said provocative message through WhatsApp many times to general public and possibly he may again post the same. The said message was also made viral on one Group namely 'Bahujan Sangharsha Samtesathi'. By way of the said message, the applicant advised general public to resort armed revolution against the Central Government. As such, learned Additional Public Prosecutor prays that as custodial interrogation of the applicant is required to further investigate into the matter, the application be rejected.

7. After hearing learned counsel for the applicant and learned Additional Public Prosecutor for the State and perused investigation papers, it reveals that the applicant wrote a message titled as “भारतात पुन्हा नक्षलवाद पेटनार, देश वाचविण्यासाठी शस्त्र क्रांतीची गरज” and circulated the same through social media i.e. WhatsApp. In the said message, the applicant stated that “भारत देशातील तरुणांनी सशस्त्र क्रांतीकारक संघटन अर्थातच नक्षलवाद जिवंत करायचा आहे. प्रत्येक भारतीय नागरिकाने हातात शस्त्र घेतल्या शिवाय पर्याय नाही.” It is further stated a slogan as “जय भारत, जय संविधान, जय नक्षलवाद”. Statements of witnesses show that the applicant had circulated the said message.

8. As regards offence under Section 153-A of the Indian Penal Code is concerned, it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, language or regional groups or castes or communities.

9. The Honourable Apex Court in the case of **Balwant Singh and another vs. State of Punjab, reported in AIR 1995 SC 1725** held that where written or spoken words have tendency or intention of creating public disorder or disturbance of law and order or effect public tranquility, the law needs to step in to prevent such an activity.

10. As far as the offence in the present case is concerned, facts and circumstances show that there was no disturbance of law and order or public order or peace and tranquility in the area after the said message was circulated or on account of activities. The intention to cause disorder or incite people to violence is *sine qua non* of the offence under Section 153-A of the Indian Penal Code.

11. From investigation papers, it nowhere reveals that there was any *mens rea* on the part of the applicant to disturb the law and order or public order or peace and tranquility in the area where the applicant has circulated the said message. The offence is not punishable for more than seven years. There is no compliance by issuing notice under Section 41 of the

Code of Criminal Procedure. The investigating officer has not recorded any ground to show that why the arrest of the applicant is required. As far as custody of the applicant to seize his mobile phone is concerned, the same can be taken care of by imposing certain conditions.

12. In view of the above, following order is passed:

ORDER

1. The criminal application is **allowed**.
2. Applicant - Nitin s/o Vasantrao Bode shall be released on bail, in connection with Crime No.549/2024 registered with the non-applicant/police station for offence punishable under Section 153-A(1)(b) of the Indian Penal Code, on his executing a P.R.Bond in the sum of Rs.25000/- with one solvent surety of the like amount.
3. He shall attend the concerned police station once a week i.e. on Sunday between 10:00 am and 1:00 pm, till filing of chargesheet.
4. He shall produce his mobile phone before the investigating

officer and this period shall be considered as his custody for the purpose of Section 27 of the Indian Evidence Act.

5. He shall not induce or threat or promise to any witnesses connected with the crime in question and shall not tamper with the prosecution evidence.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!