

IN THE HIGH COURT OF JAMMU AND KASHMIR  
AT SRINAGAR

Reserved on: 11.09.2020  
Pronounced on:24.09.2020

Bail App No.67/2020

Zakir Hussain ...Petitioner(s)

Through: - Mr. M. A. Rathore, Advocate.

Vs.

UT of Ladakh through Director General of Police  
and others ...Respondent(s)

Through: - Mr. T. M. Shamsi, ASGI

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

(ORDER)

1) Instant petition has been made by the petitioner under Section 439 read with Section 437 of the Code of Criminal Procedure for enlarging the petitioner on bail. In the petition, it has been submitted that the petitioner has been falsely implicated in case FIR No.34 of 2020 for offences under Section 124A, 153A, 153B, 505(2) and 188 of IPC registered with Police Station, Kargil.

2) It is averred in the petition that the petitioner was taken into custody on 19.06.2020 and due to some political enmity and animosity, some people are trying to malign him which has led to filing of aforesaid FIR. It is further averred that the petitioner

approached the Court of learned Principal Sessions Judge, Kargil, by way of a bail application but the same was dismissed vide order dated 28.07.2020. According to the petitioner, the order of learned Principal Sessions Judge, Kargil, is not sustainable in law and, therefore, he has approached this Court by way of instant petition. Giving his background, the petitioner has averred that he is a democratically elected Councilor of LAHDC and is a patriot as well as a law abiding citizen of the Country. Lastly, it has been contended that even if the allegations made in the FIR against the petitioner are taken at their face value, still then the offences of which he has been charged are not made out against him.

3) The petition has been contested by the respondents by filing reply thereto. In their reply respondents have submitted that the petitioner has made highly objectionable and derogatory comments against the Country and its armed forces and uploaded the said remarks on social media and, therefore, the offences mentioned in the FIR are made out against him. The respondents have denied the assertion of the petitioner that there has been any victimization or revenge against the petitioner by the respondents.

4) I have heard learned counsel for the parties and perused the record of the case as well as the case diary.

5) As per the case of the prosecution, on 18.06.2020, Police received an information from reliable sources that an audio clip

containing objectionable conversation pertaining to the armed forces of the Country having reference to clashes between Indian Army and armed forces of China that took place in Galwan Valley, has gone viral on social media. On the basis of this information, the subject FIR was registered by the police and investigation of the case was set into motion. During the investigation of the case, an audio clip of 6.3 minutes duration was seized and it was found to contain a conversation between the petitioner/accused, Zakir Hussain, and co-accused Nissar Ahmad Khan. The conversation contains extremely objectionable expressions and sentences allegedly used by the petitioner against the Country, its leadership as well as against the Indian Armed Forces. Accordingly, the petitioner was arrested on 19.06.2020.

6) So far as the contents of the transcript of conversation alleged to have been made by the petitioner are concerned, *prima facie*, it appears that the petitioner has used certain expressions and sentences in the said conversation which are extremely objectionable. Certain parts of the conversation are not only derogatory against the leadership of the Country but even against the Armed Forces of the Country and there are certain other portions of the conversation alleged to have been made by the petitioner which go against the sovereignty and integrity of the Country.

7) Learned counsel for the petitioner has vehemently contended that even if it is assumed that the petitioner had made the conversation and uploaded the same on the social media, still then the offence

under Section 124A and 153A of IPC is not made out against the petitioner. According to him, in order to make out a case under Section 124A of IPC, it is necessary that the offensive remarks or speech should lead to some sort of violence or agitation from the public, which is not the case here. The learned counsel petitioner has relied on the judgment of the Supreme Court in **Balwant Singh and Anr. vs State of Punjab** reported in (1995) 3 SCC 214 to bring home this point. He has referred to the following observations of the Supreme Court contained in paras 8 and 9 of the aforesaid judgment:

*“8. Section 124A IPC reads thus:*

*"124A. Sedition - whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fate may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.*

*Explanation 1 - The expression "disaffection" includes disloyalty and all feelings of enmity.*

*Explanation 2 - Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by Lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.*

*Explanation 3 - Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this Section."*

*A plain reading of the above Section would show that its application would be attracted only when the accused*

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*brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by words either written or spoken or visible signs or representations etc. Keeping in view the prosecution evidence that the slogans as noticed above were raised a couple of times only by the appellant and that neither the slogans evoked a response from any other person of the Sikh community or reaction from people of other communities, we find it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever the charge of sedition can be founded. It is not the prosecution case that the appellants were either leading a procession or were otherwise raising the slogans with the intention to incite people to create disorder or that the slogans in fact created any law and order problem. It does not appear to us that the police should have attached much significance to the casual slogans raised by two appellants, a couple of times and read too much into them. The prosecution has admitted that no disturbance, whatsoever, was caused by the raising of the slogans by the appellants and that in spite of the fact that the appellants raised the slogans a couple of times, the people, in general, were un-affected and carried on with their normal activities. The casual raising of the Slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India, Section 124A IPC, would in the facts and circumstances of the case have no application whatsoever and would not be attracted to the facts and circumstances of the case.*

*9. In so far as the offence under Section 153A IPC 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. In our opinion only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or effect public tranquility, that the law needs to step in to prevent such an activity. The facts and circumstances of this case unmistakably show that there was no disturbance or semblance of disturbance of law and order or of public order or peace and tranquility in the area from where the appellants were apprehended while raising slogans on account of the activities of the appellants. The intention to*

*cause disorder or incite people to violence is the sine qua non of the offence under Section 153 A IPC and the prosecution has to prove the existence of mens rea in order to succeed. In this case, the prosecution has not been able to establish any mens rea on the part of the appellants, as envisaged by the provisions of Section 153A IPC, by their raising causally the three slogans a couple of times. The offence under Section 153A IPC is, therefore, not made out.”*

8) From the aforesaid observations of the Supreme Court, it is clear that mere expression of derogatory or objectionable words may not be a sufficient ground for invoking the provisions contained in Section 124A or 153A of IPC. The said provisions would apply only when the written or spoken words have the tendency or intention of creating disorder or disturbance of public peace by resort to violence. It will be premature for this Court to comment on the question whether the alleged conversation made by the petitioner and uploaded on the social media has the tendency of creating disorder or disturbance of public peace by resort to violence. The same has to be considered by the trial court while framing charge against the petitioner, against whom, the challan is stated to have been filed during the pendency of this bail petition.

9) As noted above, the challan in the case has been filed, which means that the investigation of the case is complete. The petitioner is not alleged to have committed an offence which carries capital punishment, as such, the rigor of Section 437(1)(i) of the Code of Criminal Procedure is not attracted to the instant case. Besides this, the petitioner is an elected representative of LAHDC having deep

roots in the community, as such, the chances of his fleeing from justice are very remote.

10) Apart from what is observed in the foregoing para, the Case Diary shows that immediately after commission of alleged offence by the petitioner, he has published a public apology and expressed his regrets. This conduct of the petitioner subsequent to the commission of alleged offence, lends assurance against repetition of similar offence by the petitioner.

11) For the foregoing reasons, this petition is accepted and the petitioner is admitted to bail subject to the following conditions:

- (I) That he shall furnish personal bond with one surety in the sum of Rs.50,000/ to the satisfaction of the trial court;
- (II) That he shall appear on each and every date of hearing before the trial court;
- (III) That he shall not tamper with prosecution witnesses;
- (IV) That he shall not leave the territorial limits of Union Territory of Ladakh without prior permission of the trial court.

12) Copy of this order be supplied to the learned counsel for the petitioner through available mode.

(Sanjay Dhar)  
Judge

Srinagar  
24.09.2020  
"BhatAltaf, PS"

*Whether the order is speaking: Yes/No*  
*Whether the order is reportable: Yes/No*