

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

Cr.M.P.(M) No.569 of 2020

Decided on: 30.04.2020

Ramjhan Bhatt

.....petitioner

Versus

State of H.P.

..... respondent

.....
Coram

The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹

For the petitioner :

**Mr. N.K. Thakur, Senior Advocate, with
Mr. Divya Raj Singh, Advocate, for the
petitioner, through video conferencing.**

For the respondent :

**Mr. Anil Jaswal, Additional Advocate
General for the respondent,
through video conferencing.**

Jyotsna Rewal Dua, J (Oral)

Petitioner, who is presently in custody, has moved the instant bail petition, seeking regular bail under Section 439 of Criminal Procedure Code in FIR No.32/2020, dated 04.04.2020, under Sections 153-A, 295-A and 505(2) of the Indian Penal Code, registered at Police Station, Fatehpur, District Kangra, H.P.

2. I have heard learned counsel for the parties through video conference and gone through the status report filed today by the respondent-State.

3. The gist of the prosecution case against the bail petitioner as it comes out from the status report is that on 4.4.2020, a complaint was lodged by Smt. Surjit Kumari, Pradhan Gram Panchayat, Tehsil Fatehpur, District Kangra at Police Station, Fatehpur, District Kangra. The Complainant alleged that the bail petitioner had posted objectionable message on his facebook account on 3.4.2020.

¹ *Whether reporters of the local papers may be allowed to see the judgment?*

This message insulted Hindu God and hurt Hindu religious sentiments. Such kind of message could create an atmosphere of animosity and generate hatred between the members of different communities of the area.

On the basis of above averments, instant FIR was registered.

4. According to the status report, investigation was carried out in the matter and the mobile phone of the petitioner was seized. The local residents of the area were quite agitated against the meetings of 'Tabligi Jamat' held in Delhi and wanted to take law in their hands for punishing the bail petitioner for allegedly hurting the Hindu religious sentiments. It was apprehended that these people would have endangered the life of the bail petitioner which could have led to communal tension, therefore, he was not released on notice under Section 41A of the Code of Criminal Procedure.

5. Learned senior Advocate for the petitioner submitted that Section 295(A) of the Indian Penal Code carries the maximum punishment of three years. The bail petitioner is behind the bars w.e.f 4.4.2020. He has not committed the offence alleged against him. He has been falsely implicated with the alleged offence. Learned senior Advocate for the bail petitioner has further submitted that the petitioner is a local resident and he undertakes to abide by all the conditions, which may be imposed upon him in case of grant of bail and that the bail petitioner will not influence the witnesses or temper with the prosecution evidence in any manner. Per contra, learned Additional Advocate General argued that release of the petitioner might lead to communal tension and may create law and order problems in the area.

6. Hon'ble Apex Court in (2017) 7 Supreme Court Cases 760, titled as **Mahendra Singh Dhoni Vs. Yerraguntla Shyamsundar** has held that

applicability of penal provision of Section 295A of the Indian Penal Code is limited to deliberate and malicious acts rather than casual observations that are not driven by malicious intent. Para-6 of the judgment being relevant is extracted hereinafter:-

“6. On a perusal of the aforesaid passages, it is clear as crystal that Section 295-A does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of a class of citizens. It penalises only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. The Constitution Bench has further clarified that the said provision only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Emphasis has been laid on the calculated tendency of the said aggravated form of insult and also to disrupt the public order to invite the penalty.

The message in question allegedly posted by the bail petitioner was subsequent to the incident relating to spread of Covid-19 by certain member of ‘Tabligi Jamat’. Whether the message allegedly posted by the bail petitioner comes within the provisions of Section 295A of Indian Penal Code or not, is to be seen on the basis of evidence to be led during the trial.

7. As per the status report, the petitioner was arrested on 4.4.2020. Bail Petitioner has submitted in the petition that he is resident of village, Jubans, P.O. Bandal, Tehsil Salooni, District Chamba, H.P. Therefore his presence can always be secured in the trial. Nothing is to be recovered from the petitioner. In the facts and circumstances of the case, he cannot be kept behind bars for an indefinite period. Present petition is, therefore, allowed. Petitioner is ordered to be released on bail in the aforesaid FIR on his furnishing personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one local surety in the like amount

to the satisfaction of the learned trial Court having jurisdiction, subject to the following conditions:-

- (i) The petitioner is directed to join the investigation of the case as and when called for by the Investigating Officer in accordance with law. He shall fully cooperate the Investigating Officer and will appear before him in the concerned police station as and when called in accordance with law.
- (ii). The petitioner shall not temper with the evidence or hamper the investigation in any manner whatsoever.
- (iii). The petitioner will not leave India without prior permission of the Court.
- (iv). The petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer.
- (v). In case of launching of prosecution, petitioner shall attend the trial on every hearing, unless exempted in accordance with law.
- (vi). Petitioner shall inform the Station House Officer of the concerned police station about his place of residence during bail and trial. Any change in the same shall also be communicated within two weeks thereafter. Petitioner shall furnish details of his Aadhar Card, Telephone Number, E-mail, PAN Card, Bank Account Number, if any.

In case of violation of any of the terms & conditions of the bail, respondent-State shall be at liberty to move appropriate application for cancellation of the bail. It is made clear that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an opinion on the merits of the matter. Any observation hereinabove shall not be

taken as an expression on merits of the case and learned Trial Court shall decide the matter uninfluenced by any of observations made hereinabove.

With the aforesaid observations, the present petition stands disposed of, so also the pending miscellaneous applications, if any.

The registry is directed to send a copy of this order to the District and Sessions Judge concerned through e-mail. The competent Court/Authority attesting personal surety bonds shall not insist upon certified copy of this order and shall download the same from the website of the High Court for purpose of office record.

Copy of this order be supplied by the Secretary/Private Secretary to the learned counsel for the parties through e-mail.

(Jyotsna Rewal Dua)
Judge

30.04.2020
(Rohit)