

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No. 3740 of 2021

Mukesh Jain **Petitioner**
Mr.J.Samantaray, Advocate
-versus-
State of Odisha **Opposite Party**
Mr.M.K.Mohanty,
Additional Standing Counsel

CORAM:
JUSTICE S. K. PANIGRAHI

ORDER
06.07.2021

Order No.

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1. This matter is taken up by video conferencing mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. The petitioner is an accused in C.T. Case No.521 of 2020 arising out of Sahadevkhunta P.S. Case No.181 of 2020 pending in the court of learned S.D.J.M., Bhadrak for commission of offences punishable under Sections 153/153-A/153-B/295-A/504/505/506 of the Indian Penal Code read with Section 66(F) of the Information Technology Act,2008.
4. The allegation against the petitioner is that when the Bench headed by the Hon'ble Chief Justice of India of the Hon'ble Supreme Court of India refused to give permission for observance of the CAR FESTIVAL (Rath Yatra) in the year 2020 at Puri vide its order dated 18th June, 2020, the petitioner, who happens to be the National Chairman of Dharma Rakshyak Shri Dara Sena, felt aggrieved and uploaded a message in a WhatsApp group urging people to

join him on a mission to assault the Hon'ble Chief Justice of India with shoes. He did this with the conviction that the Hon'ble Chief Justice of India is solely responsible for halting the Rath Yatra and aggrieving Hindu sentiments therefrom. In the said message, the petitioner portrayed the Hon'ble Chief Justice of India as a Naxalite and Christian terrorist. The petitioner has also allegedly made provocative statement inciting hatred and communal disharmony among the people of the nation.

5. Learned counsel for the petitioner submits that different cases at different Police Stations of the country have been registered for the aforementioned WhatsApp message. In case of FIR No.14 of 2020 dated 25.06.2020 at South Avenue Police Station, New Delhi the petitioner was arrested by the Police, interrogated and later released on police bail. Similarly, in case of Cyber Crime P.S. Case No.16 of 2020 corresponding to G.R. Case No.691 of 2020 on the file of learned J.M.F.C., City Cuttack, the petitioner has been released on bail by this Hon'ble Court in BLAPL No.6814 of 2020 vide order dated 06.04.2021. The relevant paragraphs of the aforesaid judgment is extracted herein below:

7. Section 153-A of IPC provides for punishment for promoting enmity between different groups on ground 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. It is only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or affect public tranquility that the law needs to step in to prevent such an activity. The intention to cause disorder or incite people to violence is the *sine*

qua non of the offence under Section 153A, IPC and the prosecution has to prove the existence of *mens rea* in order to succeed. It is also important that Section 196(1)(a) of Cr. P.C. mandates the prior sanction of the Central Government for proceeding to prosecute the accused for that offence. The prosecution has failed to show that such sanctions have been obtained.

8. The basic rule in respect of an accused in a cognizable, non-bailable offence, and an under-trial is to grant him bail. The option to commit him to jail is the exception. This is because refusal of bail is a restriction on the personal liberty of the individual, which is guaranteed under Article 21 of the Constitution and, therefore, the personal liberty of the accused/under trial should not be curbed lightly. The Supreme Court also referred to **Vaman Narain Ghiya v. State of Rajasthan**¹, wherein the concept and philosophy of bail was discussed by the said Court as follows:

“6. “Bail” remains an undefined term in CrPC. Nowhere else has the term been statutorily defined. Conceptually, it continues to be understood as a right for assertion of freedom against the State imposing restraints. Since the UN Declaration of Human Rights of 1948, to which India is a signatory, the concept of bail has found a place within the scope of human rights. The dictionary meaning of the expression “bail” denotes a security for appearance of a prisoner for his release. Etymologically, the word is derived from an old French verb “bailer” which means to “give” or “to deliver”, although another view is that its derivation is from the Latin term “baiulare”, meaning “to bear a burden”. Bail is a conditional liberty. Stroud’s Judicial Dictionary (4th Edn., 1971) spells out certain other details. It states:

“... when a man is taken or arrested for felony, suspicion of felony, indicted of felony, or any such case, so that he is restrained of his liberty. And, being by law bailable, offereth surety to those which have authority to bail him, which sureties are

¹(2009) 2 SCC 281

bound for him to the King's use in a certain sum of money, or body for body, that he shall appear before the justices of goal delivery at the next sessions, etc. Then upon the bonds of these sureties, as is aforesaid, he is bailed-that is to say, set at liberty until the day appointed for his appearance.”

Bail may thus be regarded as a mechanism whereby the State devolutes upon the community the function of securing the presence of the prisoners, and at the same time involves participation of the community in administration of justice.

7. *Personal liberty is fundamental and can be circumscribed only by some process sanctioned by law. Liberty of a citizen is undoubtedly important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigational right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the police to investigate the case. It has to dovetail two conflicting demands, namely, on the one hand the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence viz. the presumption of innocence of an accused till he is found guilty. Liberty exists in proportion to wholesome restraint, the more restraint on others to keep off from us, the more liberty we have.*

8. *The law of bail, like any other branch of law, has its own philosophy, and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal. An accused is not detained in custody with the object of punishing him on the assumption of his guilt.”*

Further, in the case of **Prahlad Singh Bhati v. NCT, Delhi**², wherein the principles, which the Court must consider while granting or declining bail, have been culled out by the Supreme Court as follows:

“8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

8. Learned counsel for the State opposed the bail application of the petitioner with the submission that all of the offences registered against the petitioner are serious in nature having a grave impact on the society. Hence, his bail application should be rejected.

9. However, having heard the learned counsel for the parties and considering the factum of release of the petitioner by the order of this Court in BLAPL No.6814 of 2020 as well as

²(2001) 4 SCC 280

the length of detention of the petitioner in custody, this Court is inclined to allow the prayer of the petitioner. Accordingly, the court in seisin over the matter will enlarge the petitioner on bail by imposing some stricter terms and conditions that:-

(i) The petitioner shall cooperate with the investigation as and when required by the Investigating Officer;

(ii) He shall not indulge himself in any criminal activities in future;

(iii) He shall not mis-utilise the liberty granted to him and

(iv) He shall remain present before the trial court on each date of hearing of the case till its conclusion.

Violation of any of the aforesaid conditions shall entail automatic cancellation of the bail.

10. However, it is made clear that any of the observation made herein above with respect to the facts of the case, shall not come in the way or prejudicially affect the fair trial of the present case.

11. The bail application is accordingly disposed of.

12. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021.

LNB

(S.K.Panigrahi)
Judge