

State Vs. Aumkareshwar Thakur
FIR No. 175/2021
PS Special Cell
U/Sec. 153A/153B/354A(3) IPC & 66/67 IT Act

15.01.2022

Proceeding conducted through video conferencing(Cisco WebEx).

Considering the present Covid time and as per office order No. No.896/RG/DHC/2021 dated 30.12.2021 of Hon'ble High Court, all the matters are being taken up through video conferencing.

Vide this order I shall decide the bail application U/Sec.437 Cr.P.C. filed on behalf of applicant/accused Aumkareshwar Thakur.

Present: Ld. APP for the State through VC.

Sh. Sahil Bhalai and Sh. Tushar Giri, Ld. Counsels for the accused through VC.

IO Insp. Bhanu Pratap in person through VC.

Brief submissions as advanced by Ld. Counsel for the applicant/accused are as follows:

i) Ld. Counsel for the applicant/accused has submitted that the offences alleged against the accused are bailable in nature with maximum punishment of 3 years of imprisonment except offence punishable U/Sec.153A IPC which is non-bailable.

ii) Ld. Counsel for the accused during the arguments submitted that the basic ingredients of Section 153 A IPC are missing to attract the said section. He submits that the FIR does not indicate presence of two groups. Ld. Counsel for applicant/accused has relied on the judgment of Hon'ble Apex Court in **Manzar Sayeed Khan & Ors. Vs. State of Maharashtra & Ors.(2007) 5 SCC 1**, in which in Para No.13 it has been held that it is necessary that two such communities and groups should be involved for application of Section 153 A IPC. In the present case, there is no existence of two groups and there is a stray reference to the attempt made to target woman of a particular community. Further, he stated that



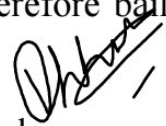
Section 153 B was mechanically added and it is not relatable with the present case. Further, taking cognizance of the offence U/Sec.153 A IPC, sanction has to be obtained. However, it was admitted that for investigation such sanction was not required.

iii) Ld. Counsel for the accused stated that police is working under the pressure of media and society as a lot of public sentiments involved in the matter and for past 6 months investigation is being carried out. He submitted that for consideration of bail, public sentiments is not a ground and the gravity of offence is to be determined by maximum sentence prescribed and not by any other standard or measure. He relied on the judgment of the Hon'ble Supreme Court in **Sanjay Chandra Vs. CBI (2012) 1SCC 40**, wherein it was observed that bail cannot be denied merely because of the sentiments of the community against the accused. He further stated that the arrest of the accused was in violation of the guidelines laid down by Hon'ble Supreme Court in **Arunesh Kumar Vs. State of Bihar (2014) 8SCC 273**, wherein he was not given any notice of his arrest.

iv) Further the Ld. Counsel for the accused has brought to the notice of the Court that present case is distinguishable on the facts with the complaint concerning Bulli Bai App in which graver offences have been invoked and the accused Neeraj Bishnoi has been denied bail.

v) Ld. Counsel for the accused stated that the accused is a young man and primary bread earner of his family. He has ailing mother who is dependent on him. The evidence is with the police and no further recovery is to be made from the accused. He submitted that all the conditions of the bail shall be fulfilled by the accused and therefore bail has been requested.

IO has also filed detailed reply and during submissions he



pointed out that the investigation carried out so far in the matter.

Matter was heard at length. Submissions and reply of IO perused.

REASONING:

During the arguments, Ld. Counsel for the accused impressed upon the non applicability of Section 153 A IPC as there is absence of two groups as required by the section 153 A IPC for promotion of feeling of enmity. He stated that there is no reference to the other community in the present FIR. On the contrary, as per the report of the IO and on the basis of the investigation conducted so far, it has come to the light that accused is a member of Trad Mahasabha and he created logic of the App namely "Sulli Deals" on GitHub. He and other persons posted pictures of various Muslim women for online auction. During submissions, IO submitted that the term Sulli itself is a disrespectful term aimed at insulting Muslim women. Prima-facie, at this stage the arguments of the Ld. Counsel for the accused does not hold water as certainly the woman of Muslim community only have been targeted by posting their pictures for auction.


Ld. Counsel for the applicant/accused has also submitted that bail cannot be denied merely only on the sentiments of the community and accused has unnecessarily been put to media trial. Be that as it may, the Court at this stage cannot ignore the peculiar facts of the case which reflect upon the severity and gravity of the alleged acts of the accused. Further the mis-use of technology and the impact of the alleged acts on the larger section of society cannot be reduced to negligible when being compared to the other offences with harsher punishment.

Presently the investigation is a developing investigation and the accused has been arrested after great and time consuming efforts

after following the MLAT process. The accused had consciously used Tor Browser so that his identity could not be disclosed and various complaints have been received against Sulli deals APP which are pending across India. The investigation is at nascent stage where crucial evidence and further chain of events are yet to be conclusively unearthed. Granting bail to the accused at this juncture will prejudice a fair investigation. Therefore, in the opinion of the Court, the accused is not entitled to bail at this stage.

On the basis of above observations and reasons, bail application of accused Aumkareshwar Thakur is dismissed.

Copy of order be given to the IO as well as to the counsel for the accused.


(Vasundhara Chhaunkar)
MM/Mahila Court-01/ND/15.01.2022