

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF MAY 2020

BEFORE

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

CRIMINAL PETITION No.2184/2020

BETWEEN:

MOHAMMED MUJEEB
S/O MOHAMMED HAFEEZ
AGED ABOUT 38 YEARS
R/AT NO.156, 3RD CROSS
K.NARAYAN PURA MAIN ROAD
SHIRDI SAI NAGAR
BANGALORE – 560 077

... PETITIONER

(BY SRI MOHAMMED TAHIR, ADVOCATE)

AND:

STATE BY ELECTRONIC CITY PS
REP. BY STATE PUBLIC PROSECUTOR
OFFICE AT HIGH COURT
BANGALORE – 560 001

... RESPONDENT

(BY SRI VINAYAKA V.S., HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C. PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CRIME NO.75/2020 REGISTERED BY THE ELECTRONIC CITY POLICE STATION, BENGALURU PENDING ON THE FILE OF C.J.M., BENGALURU.

THIS CRIMINAL PETITION COMING ON FOR ORDERS THIS DAY, THE COURT **THROUGH VIDEO CONFERENCE** MADE THE FOLLOWING:

ORDER

Electronic City Police have registered Crime No.75/2020 against the petitioner for the offences punishable under Sections 153A, 505, 270, 109 IPC on the basis of the complaint of one Mahesh Mallayyanavar, the Police Sub-inspector of Electronic Police Station.

2. It is alleged that the petitioner with an intention to promote disharmony and hatredness, to disturb the public tranquility and to create feeling of insecurity amongst the people on the religious basis, has uploaded the following messages on his face book platform:

- i) Let's Join hands, go out sneeze with open mouth in public place, spread the virus"***
- ii) "spread the word to end the world" and***
- iii) "my stun gun is ready-killing dogs".***

3. The petitioner was arrested on 29.03.2020. Since then he is in judicial custody.

4. Learned counsel for the petitioner submits that the major offence alleged is one under Section 153A IPC for which the maximum punishment prescribed is imprisonment upto 3 years only. He further submits that the petitioner is ready to co-operate for investigation and trial and he may be granted bail with suitable conditions.

5. Learned HCGP opposes the petition on the ground that the punishment prescribed for the offence is not the sole criteria, but the nature and gravity of the offence has to be appreciated. He further submits that in the investigation, there is a clue that the petitioner has links with unorganized terrorist groups and that has to be unearthed in the further investigation. He further submits that having regard to the antecedents of the petitioner, at this stage it is not a fit case to grant him bail.

6. It is no doubt true that out of the offences alleged, the major offence is one under Section 153A IPC which carries imprisonment upto 3 years. The

offence under Section 270 IPC is bailable one and 505 IPC though non-bailable offence carries imprisonment upto 2 years. Whether the punishment prescribed is the sole criteria in considering the bail application needs to be examined.

7. The petitioner was a 38 year old Software Engineer in a reputed company. Therefore, it can be said that he was aware of the implications of his acts. Though the petitioner sought bail on the ground of his mental health condition, the documents produced to support the said claim were all purportedly issued by some private practitioner. When this Court proposed to send the petitioner to NIMHANS for evaluation of his mental health condition, learned counsel for the petitioner submitted that he does not press that ground.

8. The Investigating Officer's report along with the Case Diary were made available for the perusal of the Court. They *prima-facie* show that though the petitioner was well educated and well employed,

uploaded the above stated messages and they are likely to cause disharmony, hatredness and hostile to the humanity. They are likely to cause panic amongst the people when the entire world is undergoing a traumatic situation due to Covid-19 pandemic.

9. The investigation records show that the petitioner has the history of travel to and stay in Bahrain and Kuwait for some years. As per the CD records the petitioner was influenced by some elements preaching religious fanaticism and antinational ideas, he even shared a Pak Whatsapp number for islamic information. The investigation records further show that the petitioner was having six bank accounts in various banks.

10. As per the CD records, the Investigating Officer has seized incriminating materials and even an Officer of National Investigation Agency participated in the investigation to examine the link of the petitioner in the national security issues. The investigation is still

underway and whether the offences confine to the one stated in the FIR is not yet known.

11. The petitioner seeks bail under section 439 of Cr.P.C. on the basis of his fundamental right of personal liberty envisaged under Article 21 of the Constitution of India. Section 437 and 439 of Cr.P.C. have their source under Article 21. But at the same time the very preamble of the Constitution reads as follows:

"We, the people of India have solemnly resolved to constitute India into a **sovereign** socialist secular democratic republic and to secure to all its citizens:

JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship'

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of individual and the unity and **integrity of the nation.**"

(Emphasis supplied)

12. Therefore, sovereignty, fraternity and integrity of the India take precedence over Article 21

the fundamental right of liberty. Under such circumstances, the fact of the offences quoted in the FIR carrying the punishment upto three years cannot be the sole criteria in consideration of the bail application, that too when the investigation is still pending. Therefore it is not a fit case to grant bail and the petition is dismissed accordingly.

13. At this stage, learned counsel for the petitioner seeks liberty to file fresh petition after the charge sheet is filed. If there are any changed circumstances, it is open to the petitioner to seek such relief.

**Sd/-
JUDGE**

KG/KA