

A.F.R.

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1612 of 2022

Applicant :- Sidhique Kappan

Opposite Party :- State Of U.P.Thru.Prin.Secy.Home Lko.

Counsel for Applicant :- Ishan Baghel

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. Heard Sri I.B. Singh, learned Senior Counsel assisted by Sri Ishan Baghel and Avinash Singh Vishen, learned counsel for the applicant, Sri Vinod Kumar Shahi, learned Additional Advocate General assisted by Sri Shivnath Tilahari, learned A.G.A. and perused the material available on record.

2. Applicant seeks bail in Crime No.199 of 2020, under Sections 153-A, 295-A, 120B I.P.C., Sections 17, 18 of U.A.P. Act and Sections 65 and 72 of I.T. Act, Police Station Mant, District Mathura, during the pendency of trial.

PROSECUTION STORY:

3. As per prosecution story, the applicant alongwith three co-accused persons, namely, Athikurrehman, Alam and Masood, were lodged at the Police Station Mant vide G.D. No.41/20:52 hours on 05.10.2020 and six smart phones, one laptop and pamphlets were recovered from them. After an inquiry, it came out that the applicant and other co-accused persons were travelling to disturb the harmony of the area. It is alleged in the F.I.R. that the applicant and other co-accused persons were heading to Hathras where the ill-fated incident of rape and murder had been committed with an intention to create caste struggle and to incite riots. The said persons are said to have been collecting funds and running a website 'Carrd.com'. It was also revealed that the said collected funds were used to break the social harmony and incite violence. The pamphlets read as 'AM I NOT INDIAS DAUGHTER MADE WITH Carrd' etc. It was also found that the incident of mob lynching, exodus of labourers and the Kashmir issues were also highlighted through the same website. The website also imparts training pertaining to concealing one's identity during demonstrations and to ways to incite violence. The website was

found to be full of misinformation thereby distorting true facts. There was another website operated by the laptop which had the heading 'Justice For Hathras'. The matter was registered under various sections of I.P.C., U.A.P. Act and I.T. Act.

RIVAL CONTENTIONS:

4. Learned Senior Counsel for the applicant has stated that the applicant is innocent and has been falsely implicated in the case. No pamphlets or printing papers were being carried out by the applicant or other co-accused persons in the car. The applicant is unaware of any website with the name of 'Carrd.com' and 'Justice For Hathras'. The applicant was going to Hathras to discharge his duty as a professional journalist and was illegally detained by Mant Police, District Mathura in violation of his fundamental rights. The applicant is not a member of P.F.I. and was not acting at the behest any of their office bearers. Learned Senior Counsel has further stated that the applicant was not going to Hathras on the directions of P.F.I. and furthermore that P.F.I. is not banned organization altogether. The applicant has never used any platforms to spread disharmony or further class/communal conflict. The applicant only used to post his journalistic writings and links pertaining to his job of mass communication.

5. Learned Senior Counsel has further stated that the applicant has never ever participated in any secret workshop with an aim of furthering caste conflict in India. So, no question arises of applicant being involved with any other persons to commit violence under the guise of class/communal conflict across the State. The applicant had himself conducted a workshop on wikipedia editing which were open to all and related to journalistic and non-political activities. The applicant is an honest and law abiding journalist and has not received any funds from abroad. The applicant had himself interviewed including Anсад Badruddin, the State President of B.J.P. Kerala, Central Minister from Kerala and the Members of Muslim League and B.J.P. etc. Learned Senior Counsel has further stated that the acquaintance of the applicant with Anсад Badruddin does not make him a criminal. There is no iota of evidence available on record to suggest that he was involved in illegal activities taken up by Anсад Badruddin or any other person. There is nothing on record to suggest that the applicant had ever written an article on social media promoting terrorist Gulzar Ahmed Wani. He had not made any video

whatsoever of Hathras incident.

6. Learned Senior Counsel has also stated that a friend of the applicant was writing a book on Ex-SIMI leaders and sent a draft of his book to the applicant. The said friend had also requested the applicant to conduct interviews of Ex-SIMI leaders who were now MP's from Trinamool Congress. This is an open secret. The applicant is an honest journalist and does not post any biased reports on the basis of his political leanings. He has never been directed by any P.F.I. leader to report in a biased manner. The applicant has no acquaintance with any terrorist named Professor Jilani. Learned Senior Counsel has further stated that the applicant was a former employee of Tejas Weekly Newspaper which is associated with P.F.I., as such, he was in touch with many P.F.I. activists, but has nothing to do with the organization. The money transferred to his account is his hard earned money and has nothing to do with any offence whatsoever. Some allegations were levelled against the applicant by one website 'Indus Scroll' whereby the applicant had sent a legal notice to the website for their defamatory and false averments. The applicant has written several journalistic reports on the plights of dalits and minorities, but none of them promotes any sort of rivalry between the communities. The applicant had no prior association with co-accused Alam, who happens to be the driver of the car.

7. Learned Senior Counsel for the applicant has also stated that the provisions of U.A.P.A. Act are not applicable to the applicant as the amended sanction under the Act has been taken by the Department on 08.06.2021. The said sanction is *ipso facto* illegal at the outset and has been challenged by the applicant by filing a petition under Section 482 Cr.P.C. in the High Court which is still sub-judice. The applicant was first of all produced before the S.D.M. Mant, Mathura and was sent for judicial custody till 19.10.2020. Learned Senior Counsel has vehemently argued that the Kerala Union of Working Journalist filed a Habeas Corpus Petition on 05.10.2020 in the Supreme Court, which was to be taken up on 07.10.2020 and the same day, F.I.R. No.199 of 2020 was registered against the applicant and other co-accused persons under Sections 153-A, 295-A, 124A, 120B I.P.C., Sections 17, 18 of U.A.P. Act and Sections 65 and 72 of I.T. Act. Learned Senior Counsel has stated that at the time of filing of charge-sheet, sanction was not produced alongwith it rather it was produced later on. The sanction for prosecution was taken by the A.T.S. on

31.03.2021 and was filed on 09.04.2021, which had come on record on 12.04.2021 after an application moved by the prosecution. Learned Senior Counsel has further stated that later, on 24.08.2021, the State notified for creation of a Competent Authority to grant sanction under U.A.P. Act, thus sanction granted earlier to that is illegal. The case was transferred to the Special Court Lucknow in December, 2021. Learned Senior Counsel has further stated that there is no criminal history of the applicant.

8. Per contra, Sri Vinod Kumar Shahi, learned Additional Advocate General assisted by Sri Shivnath Tilhari, learned A.G.A. for the State has vehemently opposed the bail application on the ground that the applicant is a resident of Kerala and has nothing to do with the incident of Hathras and had deliberately with malafide intent come with the co-accused persons and was arrested at Mathura.

9. Sri Shivnath Tilhari, learned A.G.A. for the State has categorically stated that the applicant was found carrying pamphlets 'How To Escape' while inciting riots and he and other co-accused persons were received financial assistance through illegal means to go to Hathras alongwith other terrorist persons with a plan to spread social disharmony and incite class war. The applicant had conducted a secret workshop with other persons with an aim to furthering the caste conflict across the country.

10. Learned A.G.A. has further stated that the co-accused persons had collected funds from foreign national mediums which was utilized by co-accused persons for illegal activities. The applicant was in regular touch with co-accused persons, namely, Rauf Sharif and Athikurrehman, and there are call detail records (CDRs) to corroborate the same, which has been filed in the counter affidavit as annexure SCA-3. Learned A.G.A. has further stated that on the analysis of the mobile recovered from the applicant, there is an F.S.L. report which suggests that there are WhatsApp chats wherein the applicant was a member of hit squad of Anсад Badruddin, which have also been filed by the State. It is also pertinent to note that the co-accused persons, namely, Anсад Badruddin and Firoz, were arrested by the police in F.I.R. No.4 of 2021, under Sections 121A, 120B I.P.C., 13, 16, 18 and 20 of U.A.P. Act, Sections 3, 4 and 5 of Explosive Substances Act and 3/5 Arms Act by the A.T.S. Lucknow and a heavy amount of explosives were recovered from them. There are number of WhatsApp chats of the applicant with the General

Secretary of P.F.I. Kamal K.P., which also revealed about the alleged workshop having been conducted by the applicant and other co-accused persons. The said workshop is stated to have been conducted to incite riots across the country, by raking up issues of C.A.A. and Babri Masjid demolition. In all, 45 papers pertaining to banned organization 'SIMI' have been recovered from the laptop of the applicant. He has also received tainted money which is on record.

11. Learned A.G.A. has further stated that during the search of the house of the applicant at New Delhi on 11.11.2020, 47 papers in Malyalam language were recovered pertaining to SIMI. Two AK-47 guns were also shown in the said documents, which also contains the popular slogan of SIMI 'Welcome Mohammad Gajni'. Learned A.G.A. has further stated that the present offence is covered by Section 43(D) (5) of U.A.P. Act. Learned A.G.A. has fairly conceded the fact that he does not press the arguments pertaining to Section 124A owing to the latest judgment of the Apex Court. Learned A.G.A. has further stated that no proper cause has been shown by the applicant pertaining to his presence near Hathras at such crucial time when State was going social unrest, rather he has used journalism as a cover to fulfill his ulterior motives.

CONCLUSION:

12. It has come up in the investigation that the applicant had no work at Hathras. The State machinery was at tenterhooks owing to the tension prevailing due to various types of information being viral across all forums of media including the internet. The said sojourn of the applicant with co-accused persons who do not belong to media fraternity is a crucial circumstance going against him.

13. The defence taken by the applicant that he is a journalist and only owing to his professional duty, he wanted to visit the place of Hathras incident stands nullified by the averments in the charge-sheet and the persons, he was arrested with, while travelling in a car. The tainted money being used by the applicant and his colleagues cannot be ruled out.

14. The legislature has framed the U.A.P. Act to control such instances. The Courts interpret the laws enacted by the legislature which becomes *functus officio* after the framing of the statute.

15. In the matter of *National Investigation Agency vs. Zahoor Ahmad Shah Watali*¹, the Apex Court, while overturning the High Courts order of granting bail to the accused, has stated that Section 43(D)(5) prohibits a Court from granting bail to accused if on a perusal of a final report filed under Section 173 Cr.P.C., the Court is of the opinion that there are reasonable grounds to believe that the accusations against such person are *prima facie* true. The Apex Court has also observed that the High Court had applied an altogether wrong approach by examining and evaluating the evidence in detail. The Court is not supposed to delve into the admissibility and inadmissibility of documentary and oral evidence at the stage of bail.

16. A perusal of the charge-sheet and documents adduced, *prima facie* reveal that the applicant has committed the offence.

17. Considering the facts and circumstances of the case, submissions advanced by learned counsel for the parties, nature of offence, evidence on record, considering the complicity of accused, severity of punishment and the settled law propounded by the Apex Court in the case of *Zahoor Ahmad Shah Watali* (supra), at this stage, without expressing any opinion on the merits of the case, this Court is not inclined to release the applicant on bail.

18. The bail application is found devoid of merits and is, accordingly, *dismissed*.

19. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 02.08.2022

Ravi Kant

1 (2019) 5 SCC 1