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**IN THE COURT OF XLIX ADDL. CITY CIVIL AND SESSIONS
JUDGE, [SPECIAL COURT FOR TRIAL OF NIA CASES],
(CCH-50) AT BENGALURU**

DATED : 30th March, 2022

PRESENT:

Dr. Kasanappa Naik, M.A., LL.M., Ph.D.
XLIX Addl. City Civil & Sessions Judge,
[Special Court for trial of NIA Cases],
(CCH-50) Bengaluru.

Spl.C.C.No.506/2019

COMPLAINANT : State represented
by CCB, Bengaluru
Banasawadi Police Station
Bengaluru.

(By : Sri J.N. Arun,
Learned Public Prosecutor)

Vis

ACCUSED : Faiz Rashid
S/o Fahim Rashid
Aged about 20 years
R/at No.03, 8th Cross
II 'A' Main, Ramaiah Layout
Anupet Clinic Building
Kacharakanahalli
Bengaluru.

(By : Sri V.J. Benjamine, Advocate)

ORDERS

The learned counsel appearing for the accused – Faiz Rasheed, has filed this application under Section 227 of Cr.P.C.,

praying the Court, to discharge the accused from this case for the offences punishable under Sections 153-A, 124-A and 201 of the IPC and Section 13 of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'UAPA').

2. It is contended in the application that the accused has not committed any offence as alleged by the complainant Police, but he is innocent, a student of Engineering and a bright student during his school and college days. He belongs to respectable family consisting of his parents and sisters and he is in judicial custody since long time. It is contended that the accused has been falsely implicated in this case and that there are no materials to prove the guilt of the accused for the offences alleged by the complainant Police. It is contended that the offences alleged against the accused are not punishable with death or life imprisonment. It is contended that there is no physical act of the accused to connect him to the alleged offences. The allegations as stated in the FIR and complaint are not reflecting any of the offences alleged by the Police. The Information and Technology Act does not state that the messages forwarded in WhatsApp are punishable when the person using mobile has got no any ill-intention and he has no knowledge of the meaning and the repercussion of the act which is not known to him and that the accused has no any intention to cause any wrong to the society. There are no any act committed by the accused with an intention to cause wrong to the Nation or the society. The accused has not created any messages or sentences in WhatsApp to prove the guilt of the accused for the alleged offences. He has not made any comments over the religion intentionally or to cause harm to the

society. The materials furnished before the Court are all different once either they are forwarded or they have come in his mobile and thus, prayed to allow the application.

3. The learned Public Prosecutor has filed his detailed objections denying the averments of the application. It is stated that the accused has posted derogatory comments in his Facebook Account with an ill-intention to disturb the unity and integrity and supported the persons who have committed horrible acts and he has tried to create enmity, jealousy between two groups and two religion and thereby, committed the offence of sedition. The accused has committed the offence which affect the integrity of the Nation and the offences alleged against him are punishable with imprisonment for life. The acts of the accused are intended to cause loss of public life and damage to public properties and in case, he is discharged from this case, he may commit similar offence. It is further stated that on the basis of FIR, complaint, statement of witnesses and further, on verification of information retrieved from the mobile phone seized from the possession of the accused, it *prima facie* reveal that the accused has committed the offences alleged in the charge-sheet and that there are sufficient materials to frame charge against the accused person. It is further stated that the averments of the application of the accused are all far from truth and since it *prima facie* establish that the accused has committed the offences alleged in the case, his application is liable to be rejected.

4. I have heard the learned counsel appearing for the accused in part. It is seen that the sufficient chance was gratned to the counsel for the accused to conclude the arguments, but, the

learned counsel for the accused failed to address his further arguments. I have heard the learned Public Prosecutor, and perused the entire materials on record .

5. The points that arise for my consideration are as under:-

1. *Whether the accused has made out grounds for discharging him from this case under Section 227 of Cr.P.C.?*
2. *What order?*

6. My findings on the above said points are as under:-

- Point No.1 : In the negative;
- Point No.2 : As per final order,
for the following:-

REASONS

7. **Point No.1** :- The learned counsel for accused has contended that the accused is innocent and that except this case, there is no other case pending against him. The accused has no connection with any communal gang or terrorist. The alleged acts of the accused have not resulted in any violence. It is argued that one mobile phone can be misused and that nothing happened in the society even after seeing the alleged messages of the accused. There is no materials to establish that the offence under Section 153 of the IPC as it is not clarified how the accused promoted the communal disharmony. The offence under Section 124-A of the IPC is punishable with imprisonment for three years or which may extend to life imprisonment. The ingredients of Section 13 of the UAPA has not been made out.

8. On the other hand, the learned Public Prosecutor has argued that accused has posted derogatory remark on his Facebook account degrading Indian Army, who died in Pulwama attack, wherein, 44 CRPF Jawans are martyred. The offences committed by accused are serious in nature and in this case, the I.O., has already filed charge-sheet against the accused for the offences alleged including offence under Section 13 of the UAPA, which are serious in nature. It is also argued that this Court has already taken cognizance of the offences and there is sufficient materials on record to frame charge against the accused person. It is further argued that at this stage, the Court is not required to go into deep to appreciate the materials on record and that the Court has to see *prima facie* case as to whether there are sufficient grounds to frame charge and thus, prayed to reject the application.

9. Having heard both the sides, I have carefully perused the materials on record.

10. It is seen that in pursuant to complaint filed by Sri. K.N. Yeshwanth Kumar, the Police Inspector of Cyber Crime Police Station, Bengaluru City on 17.02.2019 at 3.15 p.m. the SHO of Banasawadi Police Station has registered the case in Cr.No.85/2019 against this accused and others for the offence under Section 153A, 124A, 201 of the IPC and Section 13 of the UAPA and issued FIR. The averments of complaint reveals that a person by name Faiyaz Rasheed holding Facebook account has supported the death of CRPF men in a terrorist attack that took place on 14.02.2019 and that said person has mentioned in the facebook account that '*Ek musalmaan 40 par bhaari pad gaya*

Kashmir ka hero', further, *'ye tho mob lynching, ram mandir, 2002 ka chota sa badla tha.. trailer smajana kyuki picture abhi bakhhi hai chutiyo'* and *'how's the khauf Indian army?'* and thus, prayed for action.

11. It is further seen that the complaint was investigated and finally, the Assistant Commissioner of Police, CCB (SE Squad), Bengaluru City has filed charge sheet against this accused for the offences under Sections 153A, 124A, 201 of the IPC and Section 13 of the UAPA. The accused was arrested on 17.02.2019 and since then, he is in judicial custody. A careful perusal of the documentary evidence available on record reveals that, whole Nation was grief stricken in view of death of 40 CRPF men in Pulwama attack and the accused has *prima-facie* posted the derogatory remarks downplaying the Indian Army.

12. The principles of law to be born in mind while considering the application under Section 227 of Cr.P.C., has been laid down by the Hon'ble Supreme Court in the case of *M.E. Shivalingamurthy v. Central Bureau of Investigation, Bengaluru - (2020) 2 SCC 768*, which is as follows :-

"The legal principles which are applicable in regard to an application seeking discharge of an accused, are reiterated herein. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution. He has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. Such evidence would consist of the statements recorded by the police or the documents produced before the Court. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the

defence evidence, if any, 'cannot show that the accused committed the offence, then, there will be no sufficient ground for proceeding with the trial.' If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused. It is open to the accused to explain away the materials giving rise to the grave suspicion. The Court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the Court, any basis infirmities appearing in the case and so on. This, however, would not entitle the Court to make a roving inquiry into the pros and cons. At the time of framing of the charge, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 Cr.P.C. The expression, 'the record of the case', used in Section 227 Cr.P.C., is to be understood as the documents and the articles, if any, produced by the prosecution.

The Criminal Procedure Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police.

Thus, as regards the contours of the jurisdiction under Section 227 Cr.P.C., the principle established is to take the materials produced by the prosecution, both in the form of oral statements and also documentary material, and act upon it without it been subjected to questioning through cross-examination and everything assumed in favour of the prosecution, if a scenario emerges where no offences, as alleged, is made out against the accused, it, undoubtedly, would ensure to the benefit of the accused warranting the trial court to discharge the accused.

It is not open to the accused to rely on material by way of defence and persuade the Court to discharge him. In view of the decisions of the Supreme Court that the accused can only rely on the materials which are produced by the prosecution, it must be understood that the grave suspicion, if it is established on the materials should be explained away only in terms of the materials made available by the prosecution. No doubt, the accused may appeal to the broad probabilities to the case to persuade the Court to discharge him."

The Hon'ble Supreme Court in the case of *Hemchand v. State of Jharkhand* - (2008) 5 SCC 113, it is held at Para 9 and 10 as under :-

"9. It is beyond any doubt or dispute that at the stage of framing of charge, the Court will not weigh the evidence. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidence is brought on records at the trial. The documents whereupon the appellant intended to rely upon were: (i) an order of assessment passed by the Income Tax Authority and (ii) his declaration of assets.

10. It is one thing to say that on the basis of the admitted documents, the appellant was in a position to show that the charges could not have been framed against him, but it is another thing to say that for the said purpose he could rely upon some documents whereupon the prosecution would not rely."

The Hon'ble Supreme Court in the case of *Sanghi Brothers (Indore) Private Limited v. Sanja Choudhary and others* - (2008) 10 SCC 681, it is held at Para 10 and 11 as under :-

"10. In State of Maharashtra v. Som Nath Thapa - (1996) 4 SCC 659- this Court observed as follows: -

“31. Let us note the meaning of the word ‘presume’. In *Black's Law Dictionary* it has been defined to mean “to believe or accept upon probable evidence”. In *Shorter Oxford English Dictionary* it has been mentioned that in law ‘presume’ means ‘to take as proved until evidence to the contrary is forthcoming’. *Stroud's Legal dictionary* has quoted in this context a certain judgment according to which ‘a presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged’. In *Law Lexicon* by P Ramanath Aiyar the same quotation finds place at p. 1007 of 1987 Edn.

32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

11. Sections 227, 239, and 245 deal with discharge from criminal charge. In *State of Karnataka v. L. Muniswamy* – (1977) 2 SCC 699 - it was noted that at the stage of framing the charge the court has to apply its mind to the question whether or not there is any ground for presuming the commission of offence by the accused. The Court has to see while considering the question of framing the charge as to whether the material brought on record could reasonably connect the accused with the trial. Nothing more is required to be inquired into. (See *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Choradia* – (1989) 1 SCC 715 and *State of W.B. v. Mohd. Khalid* – (1995) 1 SCC 684.)”

The Hon'ble Supreme Court in the case of *State of Rajasthan v. Fatehkaran Mehdu* - (2017) 3 SCC 198, has held at Para 26 as under :-

“26. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. has been time and again explained by this Court. Further, the scope of interference under Section 397 Cr.P.C. at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with scheme of Code of Criminal Procedure.”

The Hon'ble Supreme Court in the case of *Asim Shariff v. National Investigation Agency* - (2019) 7 SCC 148, has held as under :-

“18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as

distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 Cr.P.C., it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record.”

The Hon'ble Supreme Court, in the case of *Sheoraj Singh Ahlawat v. State of U.P.*, reported in (2013) 11 SCC 476, has held as under :-

“At the stage of framing of charge the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. The Court is not expected to go deep into the probative value of the material on record and what needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At this stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”

13. Thus, a conjoint reading of the decisions of the Hon'ble Supreme Court, as mentioned above, it is clear that while dealing with the application under Section 227 of Cr.P.C., the Court is not required to hold mini trial and that the Court has to see whether *prima facie* case is made out to proceed against the accused. It is further well settled that the Court need not undertake roving and fishing enquiry into the case.

14. In this case, in support of the allegations made in the charge-sheet, the I.O., has cited 18 witnesses and produced sufficient number of documents and materials objects and also conducted mahazar and seized one Samsung Galaxy J-7 mobile from the accused and under mahazar dated 17.01.2017, its contents have been retrieved which indicate the objectionable materials. Further, under mahazar dated 20.02.2019, the detailed screen shots of Facebook contents of the accused was retrieved which indicate that he has posted objectionable contents repeatedly downplaying the Indian Army and supporting the person who has alleged to have caused explosion in Pulwama attack, wherein, 44 CRPF Jawans are martyred. The I.O., has produced the certificate under Section 65-B of the Indian Evidence Act, in support of the digital evidence produced in the case. The screen shots indicate that he has glorified the person who alleged to be responsible for Pulwama attack and it is also seen that some persons have replied about posting of derogatory messages of the accused opposing the same and this goes to show that there are every chance of breaking public peace and causing communal violence between the communities.

15. The offences alleged against the accused under Section 13 of the UAPA is *prima facie* made out as the acts of the accused fall under the definition of unlawful activities as provided under Section 2 (o) of the UAPA. Further, the prosecution at this stage has produced materials to show *prima facie* that the offences committed by the accused under Section 153-A of the IPC. Further, there is sufficient material at this stage to hold that the offence under Section 124-A of the IPC is made out. There being specific allegation that the accused has deleted messages

from his mobile phone would show the offence under Section 201 of the IPC.

16. Thus, on entire consideration of the materials on record, I am of the clear opinion that the accused has not made out any grounds to discharge him from the offences alleged and that the prosecution has produced sufficient materials, both oral and documentary to frame charge against accused and therefore, I find that the application filed by the accused under Section 227 of Cr.P.C., is liable to be rejected. Hence, I have answered this point in the negative.

17. **Point No.2** :- In view of my findings on the above said point, the application filed under Section 227 of Cr.P.C., by accused is liable to be rejected. Hence, I proceed to pass the following:-

ORDER

Application filed by the accused - Faiz Rasheed under Section 227 of Cr.P.C., is hereby rejected.

(Dictated to the Judgment Writer, directly computerized by him, corrected and then pronounced by me in open Court on this the 30th March, 2022)

(Dr. KASANAPPA NAIK),
XLIX Addl. City Civil & Sessions Judge,
(Special Court for trial of NIA Cases),
(CCH-50) Bengaluru.