

Certified Copy
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& Sessions Court, Bidar

Cri. Misc. No.76/2020

IN THE COURT OF PRINCIPAL DISTRICT AND SESSIONS JUDGE,
AT BIDAR.

DATED: THIS THE 3rd DAY OF MARCH 2020

PRESENT:

Smt. Managoli Premavathi.
Principal District & Sessions Judge,
Bidar.

CRI. MISC. NO.76/2020.

PETITIONER:

Abdul Qadeer S/o Abdul Aziz, age 60 years,
occupation: President of the Allama Iqbal
Educational Society and Founder of Saheen
Group of Institutions, R/o # 4-1-93, near
Mumtaz Functional Hall, Noor Khan
Taleem, Bidar.

(By Sri Srimale Keshavarao H. Advocate)

-VERSUS-

RESPONDENT:

The State of Karnataka, through New
Town Police Station, Bidar,
represented by the Public Prosecutor,
Bidar.

(By Public Prosecutor, Bidar.)



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ORDER

1. This is a petition filed by accused/ petitioner U/**Sec.438** of **Cr.PC** seeking a direction to respondent police to release him on bail, in the event of his arrest in **Crime No.10/2020**, registered by respondent Police for offences punishable under Sections 504, 505(2), 124A, 153A of IPC.

2. The facts leading to the petition are as below;

One Sri Neelesh, has lodged an information alleging that, he is social worker and a citizen of India. The Management, Head of Shaheen Educational Institution, Bidar, have used Children studying in that school to perform an enactment and to convey a false message to public that, if CAA and NPR Acts are brought into enforcement, Muslims in the country have to leave the country and he has made children to use vulgar words against Prime Minister Sri. Narendra Modi and the drama has been uploaded in social media ie Facebook and have attempted to bring disharmony between two communities and have given a wrong message to society through the drama and have tried to oppose the Laws intended to be brought in force. Mohamed Yousuf Rahim has uploaded drama in Facebook and



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has tried to cause disharmony between two communities and public at large. Hence prayed to take action against Head and Management of Shaheen Educational Institution, Bidar and Mohd. Yousuf.

3. On strength of said information, SHO has registered a case in Crime No.10/2020 for above said offences. Petitioner being the President of the institutions now apprehending his arrest in the hands of respondent police has filed this petition seeking anticipatory bail on following among other grounds.

His name does not figure in FIR. But there is a reference of President or Head of the school and Management Committee Members etc . He is the president of Shaheen Group of Institutions, which is one of the most reputed institutions and known for its excellent performance. The institution is getting excellent results and it is also known for its humanitarian services to the cause of society and by the recognizing the services rendered to the society, the Govt. of Karnataka has given Rajyotsava Award and also honorary doctorate award to him. He has not committed any offences as alleged in the FIR and the information is lodged by persons who are inimically disposed towards him and also the institution with a malafide intention to damage his reputation. The

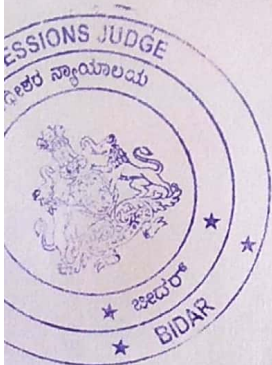


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ingredients of the offences of which crime is registered are not at all attracted. The men of Respondent police are making hectic efforts to arrest him and as such, he has got reasonable apprehension. He being President of the educational institution needs to be present in the school/office and to look after the administration. He has to look after administration and the examinations are fast approaching and admissions are also ensuing. So his presence is very much needed. He is the sole earning member in his family. In the event of his arrest and remand, his family members will be put great hardship and starvation and his image in the society is going to be marred. He is ready and willing to abide any terms and conditions and to offer sufficient surety to the satisfaction of the court. On these among the grounds, prayed to grant them anticipatory bail.

4. The learned Public Prosecutor has filed objections opposing petition and it is contended that, there is a prima facie case against Accused/petitioner for having committed offences for which case has been registered and as such, he is not entitled for anticipatory bail. The Investigating Officer has visited the spot, recorded statements of some of the witnesses who have stated that, on 21-01-2020 when the children who enacted the drama, they uttered

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dialogue thus;

“ಅವರು ನಾಟಕದಲ್ಲಿ ಫಿರದೋಸ ಬೇಗಂ ಇವಳು ಮೋದಿ ಬೋಲರಾ ಮುಸ್ಲಿಮಾನೋಕೋ ಹಿಂದುಸ್ಥಾನ ಚೊಡಕೆ ಏ ಚಲೇ ಜಾವ್ ಬೋಲರೈ ಅಂತ ಸೈಮಾ ಶಬ್ರೀನ್ ಇವಳು ಓದೇರೆ ಬಾಬಾ ಓಕೈಕೋಕಿ ಅಂತ ಹೇಳಿದಾಗ ಮತ್ತೆ ಫಿರದೋಸ ಬೇಗಂ ಇವಳು ಅವು ಮೋದಿ ಬೋಲರಾ ಬಾಪ್ ದಾದಾವೋಂಕೆ ಕಾಗಜಾತ್ ಬತಾವೋ ಬೋಲರಾ ನಹಿ ಬತಾಯೇತೋ ಹಮೇ ಮುಲ್ಕ ಚೋಡಕೆ ಚಲೇ ಜಾವ್ ಬೋಲರಾ ಅಂತ ಹೇಳಿದ್ದನು, ಆಗ ಅಹನಾ ಪರವೀನ್ ಇವಳು ತು ಕಾಗಜಾತ್ ಕಹಾಸೆ ಲಾವು ಮೈ ಮೇರೆ ಸಸೂರೆ ಮರಕೋ ಸೌ ಸಾಲ ಹುವಾ ಅಬ್ ಉನೋ ಖಬರಮೆ ಹೈ ಕ್ಯಾ ಖಬರ ಖೋಡಕೆ ಲಾವು ಮೈ, ಹಮಾರೆ ಸಾಮನೆ ಚಾಯ ಬೇಚತೇಸೊ ಪೊಟ್ಟಾ ಹಮಾರಕೋ ಕಾಗಜಾತ್ ಬತಾವ ಬೋಲರಾ ಉಸಕೂ ಬುಲಾ ಮೈ ಪುಚತೂ ಉನೀ ಕಹಾ ಪೈದಾ ಹುವಾ ಉಸಕೇ ಕಾಗಜಾತ ಕಹಾ ಹೈ ನಹಿ ಬತಾಯೇತೋ ಮೈ ಉಸಕೋ ಚಪ್ಪಲ ನೀಕಾಲಕ್ಕೆ ಮಾರತೂ ಅಂತ ಆಕೆ ಹಾಕಿಕೊಂಡ ಚಪ್ಪಲ ತೆಗೆದು ಕೈಯಲ್ಲಿ ಹಿಡಿದುಕೊಂಡು ಪಾತ್ರ ಪ್ರದರ್ಶನ ತೋರಿಸಿದ್ದಳು ನಂತರ ಈ ಮೇಲಿನ ಎಲ್ಲರೂ ಕೂಡಿಕೊಂಡು ಹಮ್ ಕಾಗಜ್ ನಹಿ ದಿಖಾಯಿಂಗೆ ಅಂತ ಹೇಳುತ್ತ ನಾಟಕದಲ್ಲಿ ಪಾತ್ರ ಮಾಡಿರುತ್ತಾರೆ ”

Thus it is found that, the Head of the school and President Dr. Abdul Khadeer, Managing Committee Members Mohd. Bilal, Abdul Khaliq, Mohd. Mehtab and Allauddin, Farida Begum have used the children, abated them to play the enactment with intent to bring disharmony between the different communities and also made them to state derogatory words against prime minister and have tried to create disharmony in the public by giving false information and as such, he is not entitled for anticipatory bail. The students who played



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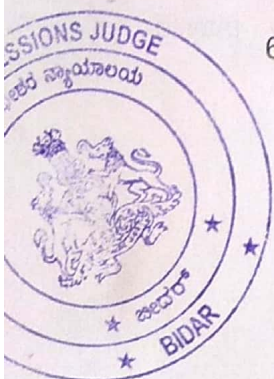
enactment were enquired who have stated of Headmistress, President and Managing Committee Members abating them to play drama. The President and Managing Committee Members, Head Master of the school have made use of small children studying in their school to oppose the law intended to be brought in force and also uploaded the enactment in the social network and caused grave harm to the society and hence petitioners are not entitled for bail. Since date of registration of the crime, Accused/petitioner have gone absconding. Accused/petitioner is financially well off and by use of their muscle power they may give threat to witnesses, obstruct investigation, destroy evidence collected, repeat similar offences. flee away and cause delay in disposal of the matter if anticipatory bail is granted. As such, investigation is still in progress and at this stage if anticipatory bail is granted, it may obstruct the fair investigation. The offences alleged are grave in nature and against the nation and as such, he is not entitled for bail. On these among other grounds, prayed to reject petition.

5. Heard both sides.

6. The following points arose for my determination:

1. Whether accused/petitioner has made out sufficient grounds for grant of pre-arrest bail?

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2. What order?

7. My findings to the above points are as under:

Point No.1: In "affirmative"

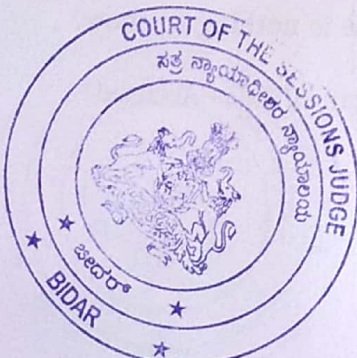
Point No.2: As per final order, for the following stated;

REASONS

8. POINT NO.1: Accused/petitioner along with petition has produced certified copies of FIR and information, paper cuttings, photographs, Aadhar card.

9. Crime has been registered for the offences punishable under sections 504, 505(2), 124-A, 153A of IPC. Among them, offences punishable under sections 124-A and 153-A of IPC are non-bailable and cognizable in nature. The name of petitioner is not found in the FIR. But there is reference of President, Management Committee Members of Shaheen school. As such, the petitioner being Head/President of the Shaheen school apprehending his arrest in the hands of respondent police is well founded. He is not yet arrested in this crime. Hence he can maintain petition.

10. The learned counsel for Accused/petitioner has argued that, there is a huge protest in the entire nation against CAA and NRC enactments which are intended to be brought in force by Govt. and



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every citizen of the country has right to submit his view whenever a new Act is proposed to be brought in force and opposing an enactment itself cannot be termed as sedition. He also urged that, it is only disapprobation of the laws and a man may oppose, criticize or comment upon act of the Government and freely express his opinion upon it but it cannot be treated as sedition and hence contended that Sec. 124A of IPC is not made out. He further argued that, on entire reading of the FIR, no where there is reference of another religion or race against which the animosity could be brought and as such, Sec. 153A of IPC is not attracted. He further urged that, the derogatory statement is allegedly made against the prime minister, but the aggrieved person is not the complainant as required under law and as such, Sec. 504 of IPC. is not made out. He also urged that the ingredients of Sec. 505(2) are not at all attracted. He urged that, as there is nothing to show that, alleged words uttered by children in the drama are creating or promoting enmity, hatredness or ill will between classes and as such, the offences u/section 505 is also not made out. He further urged that it is also a drama enacted in the school and there is nothing to show that the play was enacted at the instigation of the Accused/



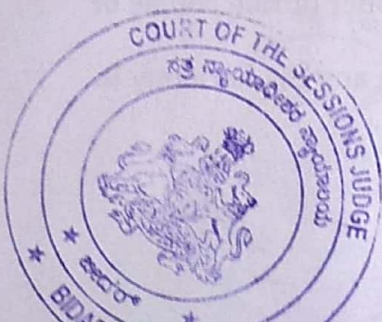
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petitioner and hence prayed to allow the petition. He urged that the Accused/petitioner have earned good name and fame not only in Bidar but also outside and he has no criminal antecedents and if he is arrested and sent behind the bars, their image in the society will be marred and he is ready and willing abide by any conditions. He therefore prayed to allow the petition and to grant anticipatory bail.

11. The learned Public Prosecutor on other hand has urged that, the Accused/petitioner have made use of small children studying in the school to play the enactment and he has made them to utter the words causing sedition and disharmony between the different communities and as such, he is not entitled for bail. He further urged that since the date of registration of the crime, Accused/petitioner have gone absconding and their presence is required for the purpose of investigation. Hence prayed to reject the petitions.

12. I have gone through material placed on record carefully. On careful perusal of the information and other records it is found that, the artist Kum. Ahana Parveen spoke derogatory words of using chappal against Prime Minister Sri Narendra Modi. On plain reading of the contents extracted above which were used by children in the drama, it is found that, through the drama, he has protested against

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CAA and NRC and the drama has been played in the school function. The extracted portion is only offensive part as per case of prosecution. But the dialogue, if read as a whole, no where they make out sedition against the Govt. and as such ingredients of section 124A of IPC are not prima facie made out. What the children have expressed is that, they will have to leave the country if they do not produce the documents and except that, there is nothing to show that, he has committed the offence of sedition. The dialogue in my considered opinion does not go to bring into hatred or contempt or to excite disaffection towards Govt. In the entire nation, it is found there are rallies and protest for and against CAA, NRC and as a citizen, everybody has got the right to express disapprobation of the measures of the Govt. with a view to obtain their alteration by lawful means. The dialogues were during course of enacting a play in the school and the said play has been enacted on 21-01-2020, but information has been lodged on 26-01-2020. If at all it were not uploaded on face book, even the public could not have come to know about the dialogue of that drama. The records do not make out the presence of Accused/petitioner during course of enacting the drama. The drama has not caused any dis harmony in

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the society. Considering all the circumstances, I am of the opinion that the ingredients of section 124A of IPC are prima facie lacking.

13. So far as the offence u/section 153A is concerned, there is no reference of any other community in the drama. But all the artists have said is that the Muslims will have to leave the country, if they do not produce the documents as required under the proposed CAA, NRC Acts. When there is no another religion in the entire drama, there is no question of causing disharmony between the two religions, which is the main requirement of the offence punishable u/section 153A of IPC. The dialogue make out that the artists have made use of derogatory words against the Prime Minister Sri Narendra Modi. But admittedly he is not the complainant. In Criminal Petition No.200388/2019 her lordship has observed that for application of offence u/section 504 of IPC, the person who was subject to the alleged abuse if not come before the state and complain of insult and annoyance for the offence punishable u/section 504 of IPC is not constituted. Even otherwise the offences alleged are not exclusively punishable with death or imprisonment for life. The mental status of the accused to insult or cause annoyance to the person abused needs to be decided during the



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trial.

14. On perusal of the records produced by the Accused/petitioner, it is found that the Shaheen Educational Institution is imparting good qualitative education to the students and the institution has earned several awards for its achievements in the field of education. There are no allegations that the Accused/petitioner is involved in antisocial activities or any other crimes. Except this case there are no other crimes registered against any of the Accused/petitioner. He has established a good Educational Institution and has earned name and fame over the seas. Considering all these facts, because of registration of this crime if he is arrested and sent behind the bars his image in the society would be definitely affected. It is not the intention of the legislature. The intention of legislation is to protect innocents and complicity of Accused/petitioner in this crime needs to be decided at trial. Every individual has got right to liberty. In the presence of the allegations made out, custodian interrogation of the Accused/petitioner may not be necessary. It is also submitted that the main Investigation is completed and whatever is required to be seized in support of the investigation has already been seized. Even otherwise they can be ordered to appear before the Investigating



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Officer and to extent their fullest cooperation. There are no just and legitimate reasons to refuse anticipatory bail to the Accused/petitioner. Hence I am of the opinion that the Accused/petitioner is entitled for an order of anticipatory bail subject to conditions. Accordingly, I answer point no.1 in **affirmative**.

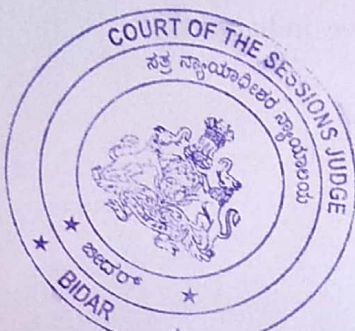
15. **POINT NO.2:** In view of my findings to above point, and for reasons stated above, I proceed to pass following:

ORDER

The petition filed by Petitioner under **Section 438 of Cr. PC** is hereby allowed.

In the event of arrest of Accused/Petitioner in **Crime No. 10/2020 of New Town Police Station, Bidar**, he is ordered to be released on bail, on his executing personal bonds in a sum of Rs.2,00,000/- with ^{a solvent &} **three sureties** to the like sum to the satisfaction of Investigating Officer or Officer arresting him, subject to following conditions;

- i. Accused/Petitioner shall appear before Investigating Officer **within a week** from the date of this order and in that event, Investigating Officer to release him on execution of bonds as per this order.
- ii. The Accused/Petitioner shall mark his attendance before the respondent police **once in a week preferably on Monday between 8 am to 2 pm**, till



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filing of final report and also whenever called upon by the Investigating Officer and to extend his fullest cooperation in investigation.

- iii. Accused/Petitioner to appear before the jurisdictional Magistrate and to execute bonds as per this order on or before **one month** from the date of this order.
- iv. Accused/Petitioner shall not contact the informant in any manner.
- v. Accused/Petitioner shall not involve in any crime.
- vi. Accused/Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court, or to any police officer or tamper with the evidence.
- vii. Accused/Petitioner shall appear before the Court concerned on all dates of hearing unless prevented by any genuine cause and **exempted by the Court.**
- viii. Accused/Petitioner shall not leave the jurisdiction of trial Court, till the disposal of the matter except with prior permission of trial Court.
- ix. Accused/Petitioner shall surrender their passport if any before the court from the date of this order. In the event if he is not having the passport, they shall submit their affidavit to that effect before court.
- x. The accused/Petitioner shall not leave the jurisdiction of this court except with the prior permission till the final disposal of the case.
- xi. The accused/Petitioner shall not leave India without prior permission.



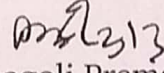
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In the event of breach of any conditions, prosecution is at liberty to move for cancellation of bail.

Intimate conditions to the respondent police.

(The order is dictated to the Typist and computerized by him, corrected by me and then pronounced in the open Court, on this the 3rd day of March 2020).



(Smt. Managoli Premavathi)
Principal District & Sessions Judge,
Bidar.

