

**IN THE COURT OF THE V ADDL. DISTRICT &
SESSIONS JUDGE, DHARWAD SITTING AT HUBBALLI.**

PRESENT

**SHRI. GANGADHARA. K.N.
B.A., LL.M.
V Addl. Dist. & Sessions Judge,
Dharwad sitting at Hubballi**

DATED THIS THE 9th DAY OF MARCH 2020

Crl.Misce No.152/2020

BETWEEN

1. Basit Aashiq Sofi Baramulla,
Age: 22 yrs, Occ: Student,
 2. Talib Majeed,
Age: 20 years, Occ: Student
 3. Amir Mohi Uddin Wani,
Age: 20 years, Occ: Student
- All are R/o Jammu & Kashmir

...Petitioners/Accused **no.1 to 3**
(By Sri.Prasanna R Adv)

AND

The State of Karnataka,
Through P.S.I.
Rural PS., Hubballi.

...Complainant/Respondent

(Rep.by Public Prosecutor
Hubballi)

ORDER

Petitioners are the Accused no. 1 to 3 in Hubballi rural P.S., crime No.37/2020 which was registered for the offences punishable U/s 124A, 153A(b), 153B(c), 505(2) R/w 34 of IPC., approached this Court by seeking the regular bail under Section U/S. 439 of Cr.P.C.,

2. The petitioners in their petition contended that initially Hubli Gokul Road Police station on receipt of information from the Principal of KLE Institute Technology, located at Gokul Road, Hubli, had registered the case against them for the above said offences in their station crime No.10/2020, now on want of jurisdiction it has been transferred to the Hubali Rural Police station.

3. The Police by taking up the investigation, arrested these Accused, were released on bail under Section 169 of Cr.PC., After securing sufficient to implication, again re-arrested produced before the Jurisdictional IIIrd JMFC, Hubli. Since 17.2.2010 they are in judicial custody. They are all pursuing their Engineering Degree in the KLE Institute Technology, placed at College Hostel named Prerana located at Kundgol Cross, Hubli.

4. Now they sought the regular bail in the hand of this court on various grounds like, they are students, term

examination is coming near, they are required to concentrate on their study, otherwise whole year their efforts will get wasted. They are ready and willing to abide any conditions which may imposed by this court and will ready to appear before the IO as and when called for investigation.

5. On receipt of Notice, learned Public Prosecutor, appeared files detailed objections stating that, on receipt of information on the offence from the Principal of the College, the police registered the case against these petitioners. In the Information stated that, these Petitioners are the Engineering students, named Basith, Talib and Amir, who recorded their video wherein they raised pro-Pakistan slogan, by singing along with the line of some Hindi Song, by raising their hand by calling the slogan as Pakistan Zindabad....., circulated the Video in Whats app group with an intention to create hatredness, spoiling the communal harmony and also exciting the like minded to do so, this was brought into his knowledge by the group of students. As the Petitioners were made this with an intention to provoke the sentiments of the other students. Their act is an anti-national, which requires criminal action against them.

6. Presently Investigation is under progress, the offences are heinous in nature, Initially they were enlarged

on bail U/s 169 Cr.P.C., as the police were collecting the materials, now the Investigation agency had collected sufficient materials implicate the petitioners for the alleged offences in the FIR, being benefiting from the all privileges of this country, got the sponsorship to study their Engineering degree, but acting against to its interest. At this stage detailed investigation is required to know the depth and width of their activities, also to know who is behind it, what prompted them to do so, for avoiding the distraction to the investigation agency, until the completion of the investigation, their custody would required be extended.

7. Further, they are permanent resident of State of Jammu and Kashmir, if they are released on bail, it is very difficult to secure them, that would cause great hurdles in early completion of the Investigation, consequently contributes to delaying the trial too. Further, if they are allowed go free, there are chances of destroying the evidence of the prosecution, even there are chances to repeating the similar offences, in that event that will be an order of the day in the Country, which requires to be curtailed in an early stage itself. At this by considering the mood of the Society, there is threat to their life, even on the ground of their security also at this stage, they are not

deserves the bail in the hand of this court. Hence, prays to reject the bail petition.

8. Heard the arguments of the learned counsel for the petitioners, who in his argument contended that the Petitioners are tendered aged students, who came here to study on the sponsorship of Government of India, this is the Exam season, particularly Engineering students, every semester is vital, if they are skipped any of the exam, their career will get spoiled.

9. They are all resident of Jammu and Kashmir, they are part of us. We have adopted the re-formative criminal justice system, until proven guilty, we need to presume them as an innocents. In the Trial, if they are found guilty in the hand of the court, they are bound to undergo sentence of imprisonment, in case any finding of innocent, the amount of loss caused to their life, cannot be restored to the normalcy.

10. This country is governed by rule of law, constitution mandates the law enforcement agency to provide free and fair legal aid by giving Counsel of their choice. Thats how the system has been designed by our framers of the constitution. The system is not required to be influenced on any external pressure, not warranted to react to the emotions of the people. Purely, required view

whether the ingredients of the complaint are made out to invoke the offence like Section 124A of IPC.,

11. The Provision was originally not drafted by lord Macaulay, it was introduced by the British colonial rulers to keep checking the Freedom Fighters to check in event of attempting to Destabilize their government in India. But, subsequent political system using it as weapon on their opponents who airs their dis-probation on ill policies. In the present case also, the students with in the Four walls, in their Hostel room in lonesome, made the Video by playing the Songs, latter they deleted it. This will not attract the provisions of Section 124A and 153-A, in this regard even he has placed the reliance on the decision of Hon'ble Apxe Court in **Balwanth Singh And Another Vs., State of Punjab, reported in (1995) SCC 214**, wherein it was held that:

“12. It appears to us that the raising so some slogans only a couple of times by the two lonesome appellants, which neither evoked any response nor any reaction from anyone in the public can neither attract the provisions of Section 124-A or Section 153-A of IPC. Some more overt act was required to bring home the charge to the appellants”

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.....In situations like that, over sensitiveness sometimes is counter productive and can result in inviting trouble. Raising of some lonesome slogans, a couple of times by two individuals, without anything more, did not constitute any threat to the Government of India as by law established nor could the same give rise to feelings of enmity or hatred among different communities or religious other groups”

12. After arresting, they have been ordered for Four days Police custody, presently they are in judicial custody. Simply keeping them in judicial custody, would not serve any purpose. If they are released on bail, question of tampering does not arise. The Complainant is a big institution, they cannot not influenced by these Petitioners. If their application is allowed, they are ready to furnish the surety to the satisfaction of this court, will appear before the IO as and when called, will not leave the jurisdiction of this court. Even, Punishment for the offence under Section 124A varies to case to case, though its prescribes the Imprisonment for life, it may be punished up to 3 years, in the least the even guilty can be let off by imposing the fine alone.

13. Per contra, learned PP in its Arguments, vehemently contended that, the Petitioners being the citizens of this country, though by knowing the facts that,

there is a strained relationship between these two countries, any attempt of raising slogan of Pro-Pakistan would hurts the feelings, would excite, creates hatrednes, enmity between the community, as our country is facing the serious threat in the hand of the neighboring Country, we lost innocent soldiers, huge revenue has been spending to secure our territory and the citizens. The people like the Petitioners like persons are making hectic attempts to disturb the peace of the country, by way of demolishing the economy and political system adopted by process of law. These Petitioners by having intention to create the communal violence recorded the Video circulated in the Whatsapp group, which is highly unacceptable, their act cannot be viewed leniently.

14. Further, the Investigation under full swing, need to examine all their activities. Further, need to examine the reasons why and what prompted them to behave in this way. This is not the time to consider the bail petition of the Petitioners. Until the completion of the Investigation, the Petitioners are required to be continued judicial custody.

15. After hearing the Arguments, now the following point will arise for my consideration.

- 1) **Whether the petitioners are made out the grounds to grant the bail as prayed in their petition filed under Section 439 of Cr.PC?**

2) What order?

16. My finding to the above noted points are as under;

Point No.1: In the Negative.

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

REASONS

17.**Point No.1:-** It appears initially police by taking bond have released them U/s 169 of Cr.P.C., but again they have been arrested and produced before the jurisdictional magistrate JMFC III court at Hubli. Later case was transferred to Hubli rural P.S., on the ground of jurisdiction with in whose limits the offence was taken place, even the matter was also shifted to JMFC-II court at Hubli. Accused are now remanded to Judicial custody. The Accused no. 1 to 3 in Hubli Rural Police Station Crime no.37/2020 registered for an offence punishable under Section 124A, 153A, 153B, 505(2) and 34 of IPC approached this court by filing application U/s 439 of Cr.PC., by seeking the regular bail.

18. Learned Counsel for the Petitioners during his Arguments, he mainly urged on the point that, there are no ingredients in the information given to the police to invoke the provision under Section. 124A of IPC., Further, vehemently contended that firstly police have wrongly

invoked provisions of Section 124A they failed to distinguish between disaffection and disapprobation as laid down in the **Kedarnath Singh Vs. State of Bihar reported in AIR 1962 SC 955**. Disapprobation means expressing anything against to the policy of Government. In this matter they were not expressed anything against to the Government or to the country which they belongs, three students when they were in lonesome in the room raised slogans by playing in the line of some Hindi song, they were not having any intention to cause disaffection or disapprobation to their country. They are innocent, we must assimilate by treating they are part of us, no special reasons must be attached to them, required to be dealt in accordance with law. Their act was not made any impact on the Society to invoke the Section like 124A, this is an amounts to misusing the provision left by colonial rulers, further they deleted the video immediately.

19. Further, placed their reliance on the principles of the supra discussed *Kedarnath'* decision of the Hon'ble Apex Court, wherein further held that:

“The provision of the Sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbances of public peace by resort of violence. As

already pointed out, the explanations appended to the main body of the Section make strongly worded, would be within reasonable limits and would be consistent with the written or spoken, etc.,”

20. According to learned Counsel for the Petitioners, the petitioners were not intending to create any public disorder by airing any disapprobation or disaffection towards to the Government in power or against to this country.

21. But, If the information in the complaint are perused, there are reasonable accusation have been made out to invoke the provision. If the emotions of the country men is read, raising slogan of Pro-Pakistan is a serious, and unacceptable. The nature of the act allegedly did by the Petitioners may disturbs the embedded Indian Social fabric. Nobody should allow to go on child play, which may costs the life, liberty and faith of the innocent country men. Integrity and Security of this country stand tall in front of all. When the Investigation Agency expresses its apprehension that in the interest of country, would it require the through investigation on the incident

22. The nature of slogan raised creates unhealthy atmosphere, which may went to the extent creating the serious disturbances in the harmony of the Society amount of ripples in the mind of citizens created The

Petitioners were raised the Pro-Pakistan slogans, may having an intention to excite, or attempting to excite to create hatredness on India. Being Indians, if they expresses their affection to the country of Pakistan with whom we have disconnected all kinds of bilateral activities, the seriousness has reached its peak never before.

23. Further, this is not the stage to dissect the provision by looking back its history and intention under which it was incorporated. Further, its also early to examine quality of the evidence made available to prove the allegation against them. Its only to examine whether the Petitioners are made out the grounds for granting the bail, by following the settled position of law. In this regard, this court would like to extract the guidelines laid down by the Hon'ble Apex Court in **State of UP through CBI Vs. Amaramani Tripathi reported in AIR 2005 SC 3490**, wherein held as follows:

22. while a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary.

24. The Hon'ble Apex Court in **Prahlad Singh Bhati Vs. NCT Delhi, reported in 2001(4) SCC 280 held as follows,**

8. *The jurisdiction to grant the bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support of thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or state and similar other consideration”*

25. Learned PP in her Arguments mainly stressed on the facts that, the gravity of the offence is a serious in nature, which is so extensive to affecting the integrity of this Country, if the petitioners are found guilty by the Trial court, for which they are punishable up to imprisonment for life, as the offences alleged against them are too sensitive in nature, required detailed investigation. The petitioners are resident of Jammu and Kashmir, at this stage if they are released on bail, its difficult to secure their presence, as and when required by the IO. Hence, prays to reject the bail petition.

26. After hearing the arguments of the both the side, this court found that, every Young men, would

require to be part of the growth of this country, by meeting the spirit laid down under Article 51A(j) of the Indian Constitution. There are no good reasons found to develop the affectionate on the country with India severed the bilateral activities, due to strong threat to the Security of this country. This is an era where the ideas plays vital, good one fetches respect and commands, even they would contribute to the accelerating the economic growth of a country, but bad one not only spoils the progress, destroys the peace in the Society, firstly the bad one required to be prevented by not allowing it to hatch , Secondly it should be monitored to the extent that such an Idea shall not be come out of its shell. Early cleans by way of precaution is the need of the hour, fails which that would costs the freedom, as it is a costly affair, earned at the costs of sacrifice of the invaluable life of country men, that must not use it hastily to destroy their valuable contribution.

27. As observed by this court supra, the safety and security of this Country gets priority over all. We must allow the investigation Agency to do its job without any body's intervention, by considering the nature of allegation, until completion of the Investigation, the Petitioners are not entitled for the bail as prayed therein, even on any ground they are not made out the grounds to

grant the bail. Accordingly, answered the Point no.1 in Negative.

28.Point NO.2: In view of discussion made on the above point, I proceed to pass the following:

ORDER

Petition filed U/s 439 of Cr.P.C., by the Petitioners no. 1 to 3 is hereby dismissed.

(Dictated to the Stenographer transcribed and computerized by him, printout corrected, signed and then pronounced by me in open court on this 9th day of March 2020)

(GANGADHARA K.N.)

V-Addl.District and Sessions Judge.,
Dharwad sitting at Hubballi.

Bar & Bench

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