

**IN THE COURT OF THE LX ADDITIONAL CITY CIVIL &
SESSIONS JUDGE, BENGALURU**

:Present:

Sri Vidyadhar Shirahatti, LL.M
LX Addl. City Civil & Sessions Judge,
Bengaluru.
I/C LIX Addl. City Civil & Sessions Judge,
Bengaluru.

Dated: This the 10th day of June, 2020

:Crl.Misc.No.2520/2020

PETITIONER/ Amulya Leona Leona
D/o Waji Noronha,
Aged about 19 years,
Studying BA II Year,
Resident of Gubbagadde Village,
Koppa Taluk, Chikkamagaluru
District.
Presently residing at Anai Apartment,
10th J Cross, Nagavarapalya, CV
Raman Nagara, Bengaluru City.

(By Sri.B.T.Venkatesh, Advocate)

RESPONDENT : V/s
State by SHO
Upparpet Police Station
Bengaluru.

(By Public Prosecutor)

ORDER

This petition is filed by the petitioner, who is accused
in Upparpet Police Station Crime No. 29/2020 for the
offences punishable u/s. 124(A), 153(A), 153(B) and 505(2)

of IPC.

2. The brief case of the prosecution is that:

On 20.02.2020 at about 6.50 p.m. the petitioner participated in protest against the CAA, NRC and NPR organized by some of the people. In the said programme, the petitioner was addressing the public raising slogans 'Pakistan Zindabad' several times and thereby she has attempted to bring enmity between different communities and she has affected the unity and integrity of the nation. Further alleged that she has instigated people at large to commit breach of peace and thereby she has committed an offence punishable u/s. 124(A), 153(A), 153(B) and 505(2) of IPC. On the basis of the said information, the respondent Police have registered the case against the petitioner and produced before the jurisdictional Magistrate and now the petitioner is in judicial custody.

3. The petitioner had filed this petition seeking regular bail. In the petition, it is contended that she is a law abiding citizen and has not committed any offences as alleged by the respondent Police and she has been falsely

implicated. The respondent Police have falsely implicated in this crime on mis-conceived reasons. The allegations made by the respondent Police do not constitute any offence muchless as alleged by the respondent. It is alleged that the respondent Police had conducted investigation into the case and there is no further need of the petitioner for custodial interrogation. The petitioner is a 19 years old girl who is pursuing her Second year B.A. in Journalism at NMKRV College, Bengaluru and she has to appear for the examinations. The petitioner is ready to abide by all the conditions imposed by this Court while granting the bail. Hence the petitioner has prayed to grant regular bail.

4. The learned Public Prosecutor has appeared and filed detailed objections and instructions sent by the I.O. It is contended that there are prima-facie materials against the petitioner as the I.O. has already collected the video footage of the said programme. Prima-facie, the petitioner along with absconded accused Avisiktha Adithya @ June and others have participated in the programme without the permission of the appropriate authority and shown the pamphlets written as 'FUCK ಹಿಂದೂತ್ವ' and also raised the

slogans against the Central Government and they have committed the offences to disturb the peace of the society in the name of religious feelings between the Hindus and other religious people. There was complaint registered against the petitioner and other accused before Halsoor Gate Police Station in Crime No. 261/2019 and 262/2019. Further it is alleged in the present case that the petitioner is continuing the same crime and it affected the public at large. If the petitioner is released on bail, she may abscond and she will not co-operate in the investigation. The investigation of the case is not yet completed. Hence prayed to reject the bail petition.

5. Heard the arguments by both sides and the learned counsel for the petitioner relied on the following decisions :

(1) 1962 Supp (2) SCR 769 : AIR 1962 SC 955 : (1962) 2 Cri LJ 103 -Kedar Nath Singh v. State Of Bihar.

(2) (1995) 3 Supreme Court Cases 214 – Balwant Singh and another v. State of Punjab.

(3) (1997) 7 Supreme Court Cases 431- Bilal Ahmed Kaloo v. State of A.P.

(4) (2014) 4 Supreme Court Cases 257 – Aveek Sarkar and another v. State of West Bengal and others.

(5) (1978) 1 Suupreme Court Cases 118 – Gurcharan Singh and other v. State (Delhi Administration).

6. Perused the materials on record.

7. The following points arise for my determination:-

1) Whether the petitioner is entitled for an order of regular bail under section 439 of Cr.P.C?

2) What Order?

8. My finding on the above points are as follows:-

Point No.1) : In the Negative.

Point No.2) : As per final order

For the following:

REASONS

9. **Point No.1**:- I have perused the averments made in the bail petition, FIR, complaint, objections and instructions sent by the I.O. through the larned Public Prosecutor and other materials produced along with the petition.

10. The case of the prosecution is that the petitioner

was raising slogans like 'Pakistan Zindabad' in a couple of times which were leading as protest organized by Imran Pasha, Imran Khan and Mohammed Ibrahim to protest the CAA, NRC and NPR Laws. The petitioner, with an intention to insult the people, to create disorder has stated the slogans and in fact to create any law and order problem and cause disturbance whatsoever raising of the slogans in public place. On the basis of the said facts, the respondent Police have registered the case against the present petitioner.

11. The learned counsel for the petitioner has vehemently argued that the petitioner has not committed any offence as alleged by the respondent Police. The respondent Police has alleged the petitioner used the words 'Pakistan Zindabad' in a public function organized by some of the people. It is very clear that the petitioner is not having any intention or *Mens rea*, which is an essential element of the offence established in Section 120(A) or 153 (A). Therefore, the present facts do not attract and do not show the involvement of the petitioner. Further it is argued that Pakistan is not declared as enemy country. If at all the

petitioner raises the slogans as 'Pakistan Zindabad' , it does not amount to any offence.

12. The learned counsel for the petitioner relied on the decisions of the Hon'ble Apex Court (*supra*). That Section 120 (A) and 505 of IPC have become void in view of the provision of Article 19 (1) of the Constitution of India.

13. On perusing the Judgment of the Hon'ble Apex Court it is clear that in the said case, the Appellant was convicted and had challenged the legality and correctness of the order of conviction. So, in that Appeal he has challenged the constitutional validity of Sec. 120(A) and 505 of IPC. However, in the present case, the question that arise before me is to grant bail or not. Therefore, the facts and circumstances and question before me is entirely different. Hence, the reported case is not applicable to the present case in hand at this juncture.

14. The learned Counsel for the petitioner argued that the petitioner is not having intention and *Mens rea*. Section

124 (A) and 153 (A) of IPC requires the *Mens rea* as an essential element of offence. The learned Counsel for the petitioner relied on the decisions of **Hon'ble Apex Court in Balwant Singh and another v. State of Punjab (supra)** wherein it was held that :

A. Penal Code, 1860- Ss. 124-A and 153-A- Applicability – Raising of certain casual slogans by two individuals a couple of times without any other overt act and without any intention to create disorder or to incite people to violence- People in general not affected by such slogans and they carried on with their normal activities- Held, in facts and circumstances of the case, Ss. 124-A or 153-A not attracted- *Mens rea* is an essential element of offence under S. 153-A.

15. The learned Counsel for the petitioner relied on the decisions of **Hon'ble Apex Court in Bilal Ahmed Kaloo v. State of A.P.(supra)** wherein it was held that :

A. Penal Code, 1860- Ss. 153-A(1)(a) and 505 (2) – Distinction between – *Mens rea* essential ingredient for both the offences – They cover two different fields of similar colour – Words “whoever makes, publishes or circulates” in S.505 (2) must be interpreted as supplementary to each other and not disjunctively – Appellant spreading the news that Kashmiri Muslims were being subjected to atrocities by the Indian

Army personnel – Held, none of the two sections attracted.

15. Therefore, the appellant therein was acquitted under Sec. 124 (A) and 153 (A) of IPC having challenged the conviction order of the Trial Court. However, in the present case, this Court has not recorded any evidence and has not received charge sheet. Even, the I.O. has not filed the challan or charge sheet. Therefore, it is very difficult to look into the materials in respect to the petitioner having Mens rea or not. Hence, the facts and circumstances are entirely different as this is a bail matter and it requires trial. Therefore, the above cases are not applicable for the present case in hand.

16. Further, the learned Counsel for the petitioner has relied on the decision rendered by the Hon'ble Apex Court in *Aveek Sarket and another v. State of West Bengal and other (supra)*. Facts of the above case is that a German magazine by name Stern having worldwide circulation published an article with a picture of Borrie Becker, a world renowned tennis player, posing nude with his dark skinned fiancée by name Barbara Feltus. The said article conveyed

a message to the people as obscene which is published in India also on 5.5.1993. While disposing the petition filed under Sec. 482 of Cr.P.C. for quashing of proceedings. However, the present petition is for considering the bail matter prior to completion of investigation. This Court is not touching the merits of the case as the I.O. has not completed the investigation and has not filed the charge sheet and this Court has not yet commenced the trial. The facts of the reported case and the present case is entirely different. Therefore, the above case is not applicable.

17. Further, the learned counsel for the petitioner has relied on the decision rendered by the *Hon'ble Apex Court in Gurucharan Singh and others v. State (Delhi Administration) (supra)*. It is laid down that what factors should be considered while cancellation of bail. Here this Court is considering the points whether the petitioner is entitled for bail or not. However, the above said case is not applicable as there is no question of cancellation of bail.

18. Further, the contention of the petitioner is that Pakistan is not declared as enemy country and therefore,

the offence is not attracted against the petitioner. However, it is my opinion that there are no materials to show that Pakistan is or not an enemy country. But the slogans which are alleged to have been used by the petitioner will certainly affect the feelings of public, law, order and public peace.

19. The learned Public Prosecutor argued that the petitioner is having an intention to commit offence to incite people to create disorder and raise the slogans and created law and order problem. While using the slogans like 'Pakistan Zindabad' by which disturbance was caused by using of the slogans couple of times due to which the people in general were affected and along with their normal activities. Earlier also the petitioner along with other accused used the word 'FUCK ಹಿಂದೂತ್ವ' and which caused hatred or disaffection towards the religion and Government as established by law in India. The above said decisions were relied on by the petitioner were not applicable as all the decisions were rendered by the Hon'ble Apex Court while discussing the Appeals after conviction by the Trial Court. In the present case the trial is yet to begin and the

I.O. has not filed the challan against the petitioner. If the petitioner is released on bail, she may again commit similar offence as already two cases were registered against her. Hence prayed to reject the bail petition.

20. On perusing the rival contentions, a plain reading of provision will show that the application would be attracted only when the accused brings or attempts to bring into hatred or contempt or to incite. In the present case the petitioner is also alleged to have used 'Pakisthan Zindabad' would affect peace, law and order. The said contention can be considered and it requires full-pledged trial. Therefore, the I.O. has not completed the investigation and has not filed the charge sheet. If the petitioner is released on bail, she may abscond or she may involve in similar offence which affect the peace at large. Therefore, I am of the opinion that still the investigation is not yet completed and the points which have been raised by the petitioner are to be considered at the time of full-pledged trial. If the petitioner is granted bail, she may abscond. Therefore, the bail petition of the petitioner is liable to be rejected. Accordingly, I answer Point No.1 in the Negative.

21. Point No.2: In view of my findings on Point No.1,

I proceed to pass the following;

ORDER

The petition filed by the petitioner u/Sec. 439
of Cr.P.C is hereby rejected.

* * *

*(Dictated to the Stenographer, transcribed and typed by him, after corrections,
pronounced by me in the Open Court on this the 10th day of June, 2020)*

(Vidyadhar Shirahatti)

LX Addl.City Civil & Sessions Judge,
Bengaluru.

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Bengaluru.