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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 15th September, 2021

Decided on: 24th September, 2021

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BAIL APPLN. 3240/2021

PREET SINGH

..... Petitioner

Represented by: Mr Vishnu Shankar Jain, Advocate.

versus

THE STATE OF NCT DELHI

..... Respondent

Represented by: Mr Tarang Srivastava, APP for the State with SI Ramkesh Meena, PS Connaught Place.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition, the petitioner seeks regular bail in case FIR No. 152/2021 under Section 188/269/270/153-A IPC, 3 Epidemics Disease Act and 51(b) of Disaster Management Act registered at PS Connaught Place.

2. Learned counsel for the petitioner contends that the petitioner is in custody in the above-noted FIR since 10th August, 2021 and all offences except Section 153-A IPC are bailable offences. Further, even going through the various video footages, the petitioner while giving his interview to the Press or making any statement has not passed any offensive remarks against any particular religion which could incite violence and hence has committed no offence under Section 153-A IPC. As per the footages

available the event took place from 10.00 AM to 11.45 AM when no offence under Section 153-A IPC was committed and the petitioner had left the spot at around 2.00 PM. Thus the slogan shouting which took place at 4.00 PM and is the genesis of the FIR in question was not done by the petitioner and the petitioner was not even present at the spot at that time and hence cannot be prosecuted for the act of the people who indulged in slogan shouting at 4.00 PM. It is stated that even as per the statement made to the Press, the petitioner's demand was of a Hindu Rashtra which cannot be said to be an offence under Section 153-A IPC. Reliance is placed on the decisions reported as (1997) 7 SCC 431 Bilal Ahmed Kaloo Vs. State of A.P.; (1988) 1 SCC 668 Ramesh S/o Chotalal Dalal Vs. UOI; (2021) SCC Online SC 258 Patricia Mukhim Vs. State of Meghalaya & Ors.; (2021) SCC Online Bombay 1127 Sunaina Holey Vs. State of Maharashtra and (1994) SCC Online Bombay 461 Joseph Bain D'Souza & Anr. Vs. State of Maharashtra & Ors.

3. Learned APP for the State opposing the bail application states that the petitioner was a co-organizer of the event and is thus responsible for the incitement which continued till the evening. Even in the interview given by the petitioner along with the co-accused Pinki Chaudhary inciting words against the other community have been stated. The decision of the Supreme Court in Bilal Ahmed Kaloo (supra) is not applicable on the facts of the case. Even the decision in Sunaina Holey relates to a facebook post and is thus not applicable to the facts of the present case. It is stated that video coverage of the incident clearly makes out the offence punishable under Section 153-A IPC. Reliance is placed on the decision of the Supreme Court reported as (2004) 4 SCC 684 State of Karnataka Vs. Praveen Bhai

Thogadia.

4. The above-noted FIR was registered on the complaint of a Head Constable from PS Connaught Place who was on duty at Bank of Baroda, Sansad Marg near Jantar Mantar. He stated that on 8th August, 2021 while he was on duty along with the other staff, at 9.00 AM approximately many protestors having flags and banners in their hands came for protest for an unknown programme. They were made to understand that preparation for 15th August were going on, farmers were also on protest and guidelines under the DDMA have also been issued. Imposition of Section 144 Cr.P.C. in the area was also informed and that no one can protest at that place without permission. However, they were very aggressive for their demands. Out of those, few people were making objectionable remarks about a particular religion. The people present there were also not following the rules of social distancing and few people were without masks. Since the protestors were protesting without permission and have violated the DDMA guidelines, Section 144 Cr.P.C. order No. 1231-59/SO/ACP/Connaught Place dated 21st June, 2021, legal action be taken against them.

5. A status report has been filed in response to the present petition as per which Ashwani Upadhyay, Convener, Unite India Movement sent an e-mail on 4th August, 2021 to the DCP, New Delhi District and Preet Singh, the petitioner herein, President, Save India Foundation, submitted an application with the request to allocate them suitable place and provide appropriate security on 8th August, 2021 from 10 AM to 5 PM. In the e-mail and the letter it was stated that Quit India Movement was launched on 8th August, 1942 and they wanted to celebrate it. The two applications were considered and rejected in view of the directions of the DDMA prohibiting all types of

social/political/sports/entertainment/cultural/academic/religious/festival and other related gatherings and congregations, as also to prevent and control the outbreak of the pandemic. The organizers also gave an undertaking that the gathering would be restricted to 50 – 60 persons. However, the permission was denied keeping in view the enforcement of DDMA guidelines, ongoing Parliament session and imposition of Section 144 Cr.P.C. in New Delhi District.

6. As per the status report, since it was learnt through social media that the organizers were inviting people to gather at Jantar Mantar on 8th August, 2021 and there was possibility of a large gathering on the occasion, hence adequate force including paramilitary forces were deployed at the spot. On 8th August, 2021 at around 9 AM, from various parts of Delhi and India and from various Hindu organizations people started gathering in front of Park Hotel near Jantar Mantar with the number of people increasing rapidly. The organizers were asked repeatedly to stop and restrict the number of persons as stated in the undertaking given to the Police. Large number of people gathered around the place of function at around 10.30 AM. Since people were not maintaining social distancing and most of them were not wearing mask and maintaining social distancing, the organizers were told to reduce the number of persons as per the undertaking and also disperse as early as possible but they did not pay heed. Later it was informed by some people that some of the participants were raising objectionable slogans against a particular community in their interview to the various media groups even when the programme was going on. However, they could not be identified on the spot. Later on in the day some videos surfaced in social media explaining how some people had made such objectionable slogans. Pursuant

thereto above-noted FIR was registered and investigation was carried out to identify the said persons. Initially Sections 188/269/270/153-A IPC, 3 Epidemic Disease Act and Section 51 Disaster Management Act was invoked, however during the investigation Sections 120-B/34 IPC was also added.

7. According to the status report petitioner was the co-organizer of the event along with Ashwani Upadhyay and his mobile number was the pilot number, he had reached Jantar Mantar along with the supporters of Save India Foundation and started the programme without going into the depth of the possibility of repercussions of joining the event. It is stated that as planned by the petitioner and his co-accomplices, people gathered in huge numbers and seeing this opportunity petitioner and his associates conspired to use the platform to create communal disharmony and to give communal colour to their plan. It is stated that on the one hand the petitioner gave an undertaking for a gathering of 60 to 70 persons and on the other hand he flashed his personal mobile number at all places requesting people to join them at Jantar Mantar on 8th August, 2021 at 10.00 AM. He erected hoardings in this regard. It is further stated that from the CDR analysis of the petitioner's phone, presence of the petitioner from the night of 7th August, 2021 till 2.00 PM on 8th August, 2021 has been established and when the programme was going on, the petitioner along with Bhupender Tomar @ Pinki Chaudhary and Deepak Singh made hate speeches and used hate words. Nine accused have already been arrested.

8. State relies upon an interview of the petitioner and Pinki Chaudhary simultaneously to the Press wherein main conversation is with Pink Chaudhary and the petitioner has stated certain facts like:

“Hindu Rashtra to doo april ko hi ho ho-jayega”,

“yogi eek hai bhogi soo hai, soo yogi kee jarorat hai”,

“kuch loag es desh mein abhi gadhe baaki hai, unhe gadhe par bithake unhe aagee sarka deenge. Shayar nahi hai ye kayar hein, band kamre me toh kuch be kah deeve, yahan dahado naa, yahan hum khade hain, aaoo aamna saamna kar-loo”

9. Learned counsel for the petitioner and learned APP for the State have addressed extensive arguments on the issue whether the words spoken by the petitioner make out an offence under Section 153A IPC or not, however, at this stage it would not be appropriate for this Court to express any opinion on the said determination which is required to be gone into at the stage of charge or during trial. However, the interview by the petitioner was not an isolated interview and was part of simultaneous conversation with number of speakers. Further large number of people gathered at the spot due to petitioner co-organizing the protest and therefore the petitioner would be liable for any offence committed in furtherance of the common object of the assembly. However, as per the video footages and the call records of the petitioner, the petitioner left the spot at around 2.00 PM whereafter the main provocative words/ slogans were shouted by the co-accused at around 4.00 PM.

10. The petitioner has been in custody since 9/10.08.2021. The petitioner is no more required for custodial interrogation. It is, therefore, directed that the petitioner be released on bail on his furnishing a personal bond in the sum of ₹50,000/- with two surety bonds of the like amount subject to the satisfaction of the learned Trial Court/ Duty Magistrate, further subject to the condition that the petitioner shall not leave the country without the prior permission of the Court concerned and in case of change of residential

address and/or mobile phone number, the same will be intimated to the Court concerned by way of an affidavit.

11. Petition is disposed of.
12. Order be uploaded on the website of this Court.

