



2023:KER:47018

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. BABU

THURSDAY, THE 10TH DAY OF AUGUST 2023 / 19TH SRAVANA, 1945

BAIL APPL. NO. 5829 OF 2023

CRIME NO.702/2023 OF NILAMBUR POLICE STATION

PETITIONER/ACCUSED:

SHAJAN SCARIYA, AGED 54 YEARS,
DIRECTOR TIDING DIGITAL PUBLICATIONS, PATTOM,
THIRUVANANTHAPURAM, KERALA, RESIDING AT NO 14,
HIGH LAND PARK, MLA ROAD, KUDAPPANAKKUNNU,
THIRUVANANTHAPURAM, KERALA, PIN - 695043

BY ADVS.

S.RAJEEV

V.VINAY

M.S.ANEER

SARATH K.P.

PRERITH PHILIP JOSEPH

ANILKUMAR C.R.

RESPONDENTS/STATE:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.
- 2 STATION HOUSE OFFICER,
NILAMBUR POLICE STATION,
MALAPPURAM (CRIME NO. 702 OF 2023 OF NILAMBUR
POLICE STATION, MALAPPURAM), PIN - 679329
- 3 *K.S SCARIA (ADDL.R3), AGED 56 YEARS,
S/O K.K. SCARIA, KINAMTHOPPIL HOUSE,
KODATHIPPADI, NILAMBUR (PO),
MALAPPURAM DISTRICT, PIN-679 329.
*(ADDL.R3 IS IMPEADED AS PER ORDER DATED
10.08.2023 IN CRL.M.A NO.1/2023 IN
B.A.NO.5829/2023).
BY ADVS.
SRI.T.A.SHAJI, DIRECTOR GENERAL OF PROSECUTION
SRI.SANGEETHARAJ, PUBLIC PROSECUTOR
SRI.T.K.SAIDALIKUTTY FOR R3
SRI.B.RAMAN PILLAI FOR R3
P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC
PROSECUTOR
SHRI.SAJJU.S., SENIOR G.P.
M.I.JOHNSON
R.ANIL R

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
10.08.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



K.BABU, J.

B.A No.5829 of 2023

Dated this the 10th day of August, 2023

ORDER

This is an application filed under Section 438 of the Code of Criminal Procedure.

2. The petitioner is the accused in Crime No.702 of 2023 of Nilambur Police Station. He is alleged to have committed the offences punishable under Sections 153-A, 295-A, and 505 of IPC.

3. The above-referred FIR was registered on 07.07.2023 based on the allegation that the petitioner on 04.01.2023 through an online YouTube Channel interacted with a priest with a dishonest intention and published the contents of the same in the social media with the intent to promote disharmony or feelings of enmity, hatred or ill-will between different religious groups. It is further alleged that the petitioner, with deliberate and malicious intention, outraged the religious feelings of certain classes of citizens. The prosecution further alleged that the petitioner intentionally insulted and thereby gave provocation to members of certain religious groups knowing it



to be likely that such provocation would break the public peace.

4. Heard Sri.S.Rajeev, the learned counsel for the petitioner, Sri.T.A.Shaji, the learned Director General of Prosecution and Sri.B.Raman Pillai, the learned Senior Counsel appearing for the defacto complainant.

5. The learned counsel for the petitioner submitted that the petitioner had not committed any offences as alleged. The ingredients of the offences alleged are not made out from the alleged assertions made by the petitioner. The petitioner strongly apprehends that there is a larger conspiracy to trap him in non-bailable offences. Several top leaders of the ruling party are interfering in the matter to silence the petitioner from exposing the truth before the public. The learned counsel for the petitioner submitted that the petitioner is a senior journalist and is actively participating in preventing corruption and exposing public corruption through his channel, which provoked certain interested persons against whom the petitioner reported certain incriminating materials with proof. The petitioner pleaded that those persons are at loggerheads with him and they are intentionally trying to shut the



media through which the petitioner raises his voice against corruption.

6. The complete text of the conversation between the petitioner and the priest has been placed before this Court. I have gone through the entire text. The petitioner began his talk after referring to an incident in which an attempt to destroy a Christian church was made in North India. The petitioner referred to certain religious texts. The identity of the priest was not disclosed. In the beginning, the petitioner made it clear that his response was not after due deliberation but the result of instant feeling. At one point, he criticised forced conversion to religion. He also referred to misuse of the contents of religious texts.

7. The Investigating Officer submitted a statement extracting a part of the video to contend that religious fundamentalists spread the alleged video with the intent to insult certain religious groups and promote hatred and disharmony between different religions or communities.

8. The relevant question is whether the prosecution has *prima facie* established the offences punishable under Sections 153-A,



295-A and 505 of IPC.

9. In order to attract the offence under Section 153-A of IPC, the acts alleged must be with an intention to promote enmity between two groups on the grounds of religion, race, place of birth, residence, language etc., or such acts should be prejudicial to the maintenance of harmony and must instigate the feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities.

10. The essential ingredients to attract the offence under Section 295-A of IPC are as follows:

- “(i) That an insult (or an attempt to insult the religion or religious belief) was done to outrage the religious feelings of any class of citizens of India;
- (ii) That such an act was done by words (either spoken or written) or by signs or by visible representation or otherwise.
- (iii) That such an act must be with deliberate and malicious intention.”

11. To attract the offence under Section 505 of IPC, the essential ingredients are the following:

- “(i) That the accused made (published or circulated) any statement, rumour or alarming news;
- (ii) That the accused did so with intent to,
 - (a) Create or promote (or which he knew it likely to create or promote) any member of the Army, Navy or



Air Force to mutiny or otherwise disregard or fail in his duty as such;

(b) Cause fear or alarm to the public or a section of the public which may induce the commission of an offence against the State or against public tranquillity.

(c) Incite (or which is likely to incite) one class or community of persons to commit an offence against any other class or community.”

12. In Manzar Sayeed Khan v. State of Maharashtra [(2007) 5 SCC 1] on the scope of Section 153-A of IPC, the Apex Court held thus:

“.....The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of within the ambit of Section 153-A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning.”

13. In Bilal Ahmed Kaloo v. State of A.P. [(1997) 7 SCC 431] the Apex Court held that the common feature in both sections, viz., Sections 153-A and 505(2), being promotion of feeling of enmity, hatred or ill-will “between different” religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved.



Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections.

14. *Mens rea* is held to be a necessary ingredient for the offences under Sections 153-A, 295-A and 505 of IPC. On going through the texts relied on by the prosecution, I am of the view that the prosecution has *prima facie* failed to establish that the contents of the same in anyway point to the commission of the alleged offences. It is pertinent to note that in some parts of the video, there are reflections of the secular views of the petitioner. I am unable to find any malicious intention on the part of the petitioner in promoting feelings of enmity among different classes of people.

15. The learned Director General of Prosecution contended that the petitioner has criminal antecedents. The learned Director General of Prosecution has produced a list of cases in which the petitioner has been made accused.

16. The challenge of the petitioner is that he has been implicated in criminal cases at the instigation of some influential persons against whom the petitioner reported, through the media,



certain incriminating materials alleging corruption. I find force in the contentions of the petitioner.

17. The learned Director General of Prosecution submitted that the custodial interrogation of the petitioner is required.

18. The prosecution has miserably failed to produce any materials to show that the custodial interrogation of the petitioner is required.

19. While considering the scope of jurisdiction under Section 438 Cr.P.C., the Constitution Bench of the Apex Court in **Gurbaksh Singh Sibbia v. State of Punjab [(1980) 2 SCC 565]** held thus:

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility



of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in *State v. Captain Jagjit Singh* [AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216] , which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

20. In **Siddharam Satlingappa Mhetre v. State of Maharashtra**

[(2011) 1 SCC 694] the Apex Court held thus:-

"113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record."

{In *Sushila Aggarwal v. State (NCT of Delhi)* [(2020) 5 SCC 1] the declaration of law in *Siddharam Satlingappa Mhetre* that no condition can be imposed while granting order of anticipatory bail alone was overruled}

21. In **Sushila Aggarwal**, the Constitution Bench of the Apex



Court, following the decision in **Gurbaksh Singh Sibbia**, held that while considering an application for grant of anticipatory bail the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.

22. Having considered the entire circumstances on the touchstone of the principles mentioned above, I am of the view that the petitioner is entitled to Anticipatory Bail.

23. In the result, the Bail Application is allowed as follows:

- (a) The petitioner shall appear before the Investigating Officer on 17.08.2023 between 2.00 P.M. and 3.00 P.M. for interrogation. In the event of his arrest, he shall be released on bail on his executing bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like sum.
- (b) The petitioner shall appear before the Investigating Officer as and when required.
- (c) The petitioner shall not influence the witnesses or tamper with the evidence.
- (d) The petitioner shall fully co-operate with the



investigation, including subjecting himself to 'deemed custody' as observed in **Gurbaksh Singh Sibbia v. State of Punjab [(1980) 2 SCC 565]** and **Sushila Aggarwal v. State (NCT of Delhi) [(2020) 5 SCC 1]**.

I make it clear that the observations made in this order are only for the purpose of the disposal of this bail application.

**K.BABU,
JUDGE**

KAS

