

Case :- BAIL No. - 8591 of 2020

Applicant :- Mohammad Nadeem (Anticipatory Bail)

Opposite Party :- State of U.P.

Counsel for Applicant :- Aftab Ahmad, Yusuf Uz Zaman Safwi

Hon'ble Chandra Dhari Singh, J.

The present application under Section 438 Cr.P.C. has been filed by the applicant namely Mohammad Nadeem seeking anticipatory bail apprehending arrest in FIR No.249 of 2020, under Section 153-A IPC, Police Station Kursi, District Barabanki.

It is alleged in the FIR that when the complainant Anil Kumar alongwith one Amit Kumar Singh reached in Village Bahrauli, Khartua, he was informed by the people of the village that one Mohammad Nadeem (the present applicant), who is an active member of Popular Front of India (hereinafter referred as 'PFI') is propagating that since the foundation laying ceremony of Temple at Ayodhya is being done at the land of mosque, therefore, every Muslim has to come forward to protect the site of Babri Masjid. It is further alleged in the FIR that due to this propaganda, there was a probability of communal tension between two communities and communal harmony may be disturbed and public peace may be breached.

Shri Yusuf Uz Zaman Safwi, learned counsel for the applicant has submitted that all allegations made in the FIR are false and fabricated. It is submitted that lodging the instant FIR is nothing but off-shoot to the protest as well as the petition filed by the applicant against his illegal detention by the police personnel of Police Station Kursi, Barabanki. It is further submitted that the instant FIR is nothing but an attempt to cover up the illegality committed by wrongful and unauthorized detention in violation of fundamental right to life and liberty of the applicant by the police personnel. The applicant is public spirited person and a reputed social work activist. It is further submitted that the applicant is a member of PFI, aim and object of which is to promote education amongst poor children and also to work for

uplifting the poor people of the society.

Learned counsel has submitted that after lodging of the instant FIR, the applicant moved anticipatory bail application before the Court below and vide order dated 28.09.2020, Additional District and Sessions Judge, Court No.1, Barabanki has rejected the said anticipatory bail application without considering the submissions and contentions made by the applicant and without applying its mind to the facts and circumstances of the case.

Learned counsel has submitted that the contention of the first information report do not make out the accusation against the applicant to be true rather make it *per se* believable as not a single person has been named who has told the complainant about the spread of hatred by the applicant. It is submitted that nature and gravity of the accusation is not such as is apparent from the reading of FIR which requires arrest of the applicant. There is no criminal history of the applicant and he is a family person, living a simple life and there is no possibility of his running away or fleeing. The investigation is going on and no charge sheet has been filed yet.

Learned counsel has submitted that in view of the above, the instant anticipatory bail application may be allowed.

Per Contra, Shri Rajesh Kumar Singh, learned Additional Government Advocate has vehemently opposed the submissions made by the applicant's counsel and submitted that the applicant is involved in propagating against foundation laying ceremony of Temple at Ayodhya and to promote feeling of enmity, hatred or ill-will between the two communities. It is submitted that the allegations as made in the FIR against the applicant is too serious. On the earlier occasion also, the applicant was involved in similar nature of offence. He is habitual of disturbing harmony of the society by spreading hatred between the two communities.

Learned Additional Government Advocate has submitted that during investigation, investigating agency has found material against the applicant. It is further submitted that the applicant is not merely an ordinary member of PFI but he is an office bearer of PFI and is involved in anti-social/anti-national activities. The applicant is required for custodial interrogation to conduct fair

investigation of the offence as alleged in the instant FIR.

Learned Additional Government Advocate has submitted that the instant anticipatory bail application is devoid of merit and be accordingly rejected.

I have heard learned counsel for the parties and perused the record. I have also perused the contents of the FIR as well as the counter affidavit filed by the State.

Perusal of the FIR reveals that the applicant is spreading the propaganda about the foundation laying ceremony of Temple at Ayodhya and also trying to promote feeling of enmity, hatred or ill-will between the two religious communities.

Section 153A (1) of the Indian Penal Code, 1860 consists three clauses of which clauses (a) and (b) alone are relevant here. Clauses (a) and (b) of Section 153A (1) I.P.C are extracted below:

"153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.-

(1) Whoever-

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility,

(c)

shall be punished with imprisonment which may extend to three years, or with fine, or with both."

Promotion or attempt to promote feelings of enmity, hatred or ill-will between different religious or racial or language or regional groups or castes or communities is necessary to attract Clause (a) of Section 153A(1) of I.P.C as mentioned above. Commission of an act which is prejudicial to the maintenance of harmony between such groups or castes or communities, which disturbs or is likely to disturb the public tranquility, is necessary to attract Clause (b) of Section 153A(1) of I.P.C

mentioned above.

Mens rea is a necessary ingredient of the offence under Section 153A I.P.C. It is necessary that at least two groups or communities should be involved. 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 people to violence is the *sine qua non* of the offence under Section 153A I.P.C. To attract Section 153A I.P.C., real intention to incite one group or community against another is absolutely essential. Thus, inciting the feelings of one community or group against other community or group can attract the provisions of Section 153A I.P.C.

In the instant case, the comments/propaganda made by the applicant with regard to one religion or community are capable of inciting one community or group against other community. Therefore, *prima facie*, the offence punishable under Section 153A IPC is attracted to the facts of the case.

The fundamental right to freedom of speech and expression in a secular State is not an absolute license to injure and hurt the religious feelings and faiths and beliefs of fellow citizens. A person who takes the risk of dissemination of blasphemous messages is not entitled to get the discretion of the Court exercised in his favour.

In view of the above, I do not find any merit in the instant anticipatory bail application. Consequently, the instant application for anticipatory bail is ***rejected***.

It is made clear that the observations made in this order are only for the purpose of deciding the application for anticipatory bail and the same shall not have any bearing on the investigation or the trial of the case.

Order Date :- 5.4.2021

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