

23.02.2021

Present: Sh. Irfan Ahmed, Ld. Addl. PP for State.
Sh. Abhinav Sekhri, Ld. counsel for applicant/accused.

1. By way of instant order, I propose to dispose of an application moved on behalf of applicant/accused Disha A. Ravi for grant of bail.

2. It is submitted by Ld. Counsel for applicant/accused that applicant/accused is a permanent resident of Bengaluru having no criminal antecedents. It is submitted that applicant/accused has been falsely arrested in the present case on 13.02.2021 and was brought to New Delhi without obtaining any transit remand and remanded to police custody till 19.02.2021. It is submitted that applicant/accused is absolutely innocent and she has not committed any offence as alleged by the investigating agency. It is further submitted that the present FIR has been registered for the offences punishable u/s 153/153-A/124-A IPC.

3. It is submitted that Section 153IPC is aailable offence and applicant/accused is not required to be arrested in light of the guidelines of the Hon'ble Supreme Court in *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273. It is further submitted that investigating agency has maliciously added allegations u/s 124A IPC in order to portray a minor offence which is punishable up to life imprisonment. It is submitted that on a close reading of the provision, it is apparent that the offence is not *only* punishable with life imprisonment but also for a term of up to three years imprisonment, or even with fine alone. It is therefore submitted that all cases under Section 124-A cannot be treated alike and the facts of the present case makes it apparent that, at its highest, it only involves the alleged commission of minor offences and not those of a grave nature. It is submitted that the investigating agency has maliciously sought to sensationalize the allegations by way of invoking phrases such as "global conspiracy" only with a view to cause

tremendous prejudice to the personal liberty of applicant/accused.

4. Ld. Counsel for applicant/accused further submitted that as per the case of the prosecution, the toolkit documents circulating on social media and accessed by the police were *inter alia* seditious in nature showing disaffection against the government; the said document was allegedly created by an organisation called “Poetic Justice Foundation” and the aim of the creators of the document was *inter alia*, to promote disaffection against India; the statements made in the document were not merely statements, but allegedly incited violations of public order and certain alleged acts of public disorder in both India and abroad on 26.01.2021. It is argued that as per the claim of the prosecution, the alleged violence is attributed as being caused by way of the incitement to violence contained in the document; the applicant allegedly created and was part of a WhatsApp group which included persons who allegedly edited the toolkit and also communicated with other persons about the document; the applicant was also allegedly part of another WhatsApp Group which she later allegedly deleted and the Applicant allegedly shared the document with other persons including one Greta Thunberg, a noted environmental activist. It is contended by Ld. Defence counsel that *prima facie* perusal of the contents of the said toolkit confirm that no offences are made out and the contents of the document are squarely within the realm of protected speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. It is forcefully argued that applicant accused was merely exercising her fundamental right of free speech and expression to oppose the Farm Laws enacted by the government and if that tantamount to sedition she has committed the offence.

5. It is submitted by Ld. Counsel for applicant/accused that as has been held by Hon’ble Apex Court in the matter of *Kedar Nath Singh v. State of Punjab*, AIR 1962 SC 955 that mere words of such kind cannot constitute an offence under Section 124-A IPC. It is submitted that there must be either actual violence or the incitement to violence associated with the words and both are clearly absent in the facts of the present case, therefore, the alleged involvement or connection of the applicant

with the creation or sharing of the said toolkit cannot amount to the commission of any offence.

6. It is further submitted that applicant/accused is 22 years old having deep roots in the society; she is gainfully employed with Good Mylk, a company involved in creation of plant-based alternatives to animal-based foods and her efforts to promote climate justice and bring greater attention to environmental concerns have been recognised both nationally and globally and hence, there is no likelihood of applicant fleeing away from justice or obstruct the fair course of justice. It is submitted that till date, the applicant has fully cooperated with the investigation; the evidence is entirely documentary in nature and is based on electronic records / devices that are already in the possession of the investigating agency and the applicant does not enjoy any position to influence possible witnesses. It is further submitted that applicant/accused is ready and willing to abide by all conditions that may be imposed by this court while granting her bail.

7. It is further submitted that co-accused persons, whose alleged involvement in the purported conspiracy is far more serious than the applicant, have already been granted transit anticipatory bail by the Hon'ble High Court of Bombay which further confirms that the present case is fit case for grant of bail. It is submitted that the investigating agency has not followed the legal procedures at the time of arrest of applicant/accused as secured under Article 22 of the Constitution of India whilst carrying out purported investigation operations on 13.02.2021 and transporting her outside the jurisdiction of her *ilaqa* magistrate without permitting her to meet her counsel or securing any judicial orders.

8. It is further submitted that the investigation is complete *qua* the applicant as all recoveries from her have been made and no custodial interrogation is required by the investigating agency and no fruitful purpose would be served by keeping her behind the bars. It is further submitted that it is a settled position of law that denial of liberty can be neither punitive nor preventive and there is no justification for suspending the right to liberty of the applicant especially when she is

neither a threat to the investigation nor to the judicial process.

9. Ld. Additional Solicitor General has vehemently opposed the bail application arguing that the present case was registered against the creators of a 'Toolkit', a digital kit comprising of digital tools which were embedded in the main 'Toolkit' through multiple hyper links and which has been created and shared with the primary intent to incite disaffection towards the Government established by law in India and were directly linked to a secessionist group involved in seditious activities against India. It is submitted that the 'Toolkit' had contents in the Form of words which malignantly, or wantonly gave provocation to any person and also promoted or attempted to promote, on grounds of religion, race, caste, community and other grounds, disharmony and feelings of enmity, hatred and ill-will between different religions, racial language and regional groups, castes and communities. It is submitted that some of the links mentioned in the 'Toolkit' leads to another link www.askindiawhy.com having various pages of objectionable material.

10. It is further submitted that after the registration of the present FIR, it was revealed that the said 'Toolkit' was created by a pro-Khalistan secessionist group named "Poetic Justice Foundation' and there was a segment titled 'Prior Action' which included Digital Strike through hashtags on 26th January. It is submitted that the 'Toolkit' had a cheat sheet which contained a hyperlink to a website 'GenocideWatch.Org and perusal of the said web page shows the malicious nature of the content in the garb of solidarity with Farmers Protest and the contents comprised of falsehoods and provocative literature that was intended to spread disaffection against the Government of India and also to create ill-will amongst various groups. It is further submitted that perusal of the contents of 'Toolkit' would show that there were draft templates of social media posts which were to be used by recipients of the Toolkit to artificially amplify and make viral, false and fake news about death of protesters, violent repression by police, protesters being missing and so on and so forth.

11. It is further submitted that during further investigation, it was revealed that on 11.01.2021, a banned terrorist organization 'Sikhs

for Justice' issued an open communication declaring a reward of \$250,000 for anyone who will hoist the flag of Khalistan at India Gate on Republic Day and in the similar way, secessionist organization 'Poetic Justice Foundation' too had declared on 09.01.2021 its agenda for sabotaging the Republic Day ceremony through a 'Global Day of Action on India's Republic Day'. It is submitted that conspirators with this kind of vicious and sinister action plan succeeded in their objective by engaging in large scale violence on 26.01.2021 in which hundreds of police officials received injuries and national monuments were vandalized. It is further submitted that names of various persons came on record as owners and editors after going through the screenshots of the 'Toolkit' google document shared online and temporarily available on social media and on the basis of information gathered, name of accused Nikita Jacob zeroed in as prima facie involved in the conspiracy, search of her house was conducted on 11.02.2021 but the search discontinued in the night and she was asked to remain present on 12.02.2021 but on 12.02.2021, she absconded and later on, she obtained transit anticipatory bail.

12. It is submitted that so far as, applicant/accused Disha A. Ravi is concerned, she had rights as Editors to the 'Toolkit' and investigation disclosed that applicant/accused had created a whatsapp group by the name of "Intl Farmers Strike" on 06.12.2020 using her mobile number, including herself and other persons. It is submitted that it was also revealed that there is a connecting link between the creation of the 'Toolkit' and 'Poetic Justice Foundation" of Canada which is a secessionist organization advocating for creation of independent and separate state of Punjab by the name of Khalistan. It is submitted that during investigation, it has also been revealed that there is link between Indian conspirators including the applicant/accused and Kisaan Ekta.co (Vancouver) through an organization by the name of Extinction Rebellion and it has come on record that the whatsapp group "Intl Farmers Strike" was used in furtherance of a request that came from KisaanEkta.co. It is submitted that as part of the action plan, a zoom meeting was arranged on 11.01.2021 at 2.30 a.m in which around 60-70

people from across the world participated including Nikita, Shantanu and Mo Dhaliwal and Anita Lal, founders of Poetic Justice Foundation and acting in cohort with each other, accused Nikita, Shantanu and applicant/accused Disha alongwith other persons collaborated with each other which resulted in culmination of Toolkit Google Doc on 20.01.2021 which was subjected to further modification by the editors Nikita, Shantanu and applicant/accused and the said Toolkit was shared with Poetic Justice Foundation and several other individuals as part of the sinister plan “ 'Global Day of Action on India's Republic Day, 26th Jan.2021” . It is submitted that despite the well planned sinister plan, anti India forces could not succeed in spreading disaffection against Government and to counter the outrage, a vicious social media campaign to spread fake news was undertaken after 26.01.2021 and as part of this objective, applicant/accused shared the alleged toolkit with Greta Thunberg. It is submitted that on 13.02.2021, the police team reached the house of applicant/accused at Bengaluru but she denied having made any whatsapp group and also denied any knowledge about the said Toolkit. It is submitted that in the presence of local police, applicant/accused was examined and she admitted of deleting the whatsapp group which also is a serious issue as vital information and the process of making the Toolkit was present in the said whatsapp group. It is submitted that during examination of applicant/accused, mobile phone and laptop of applicant/accused were checked and the same were found to be containing incriminating material. It is submitted that considering the role of applicant/accused in editing the Toolkit document and deletion of important data, she was arrested on 13.02.2021. It is further submitted that mobile phone and laptop of applicant/accused are analyzed which are sufficient to prove that she was in touch with Shantanu, who as per the action plan was physically present in New Delhi from 20.01.2021 to 27.01.2021 and other persons and were local collaborators of the conspiracy to incite disaffection and precipitate violence on 26.01.2021 and they all used social media to peddle support for secessionist Khalistan narrative in the guise of Farmers Protests. It is submitted that applicant/accused was using

Telegram, Whatsapp and Signal App for all these communications. It is submitted that applicant/accused used her acquaintance with Greta Thunberg regarding the Toolkit which she shared on Twitter.

13. It is submitted that custodial interrogation of applicant/accused is required for recovery of deleted whatsapp group; for recovery of 'Toolkit' documents and other incriminating material; to confront her with co-accused Shantanu Muluk and Nikita Jacob to unravel the whole conspiracy; voluminous data has been analyzed and data which has been deleted is sought to be recovered and analysis of all the data would reveal more incriminating facts and involvement of other accused persons. It is further submitted that investigation in the present case is in very early stages and if applicant/accused is granted bail, there is every likelihood that she may hamper the fair course of investigation as she has already destroyed a crucial piece of evidence in the form of whatsapp chats or may indulge in similar activities. It is submitted that applicant/accused has already removed and deleted her traceable links with the original incriminating 'Toolkit' and she had also got the document removed in the guise of uploading an updated 'Toolkit' document.

14. Ld. APP has additionally argued that since the order of Ld. CMM remanding the accused to judicial custody has now attained finality therefore the instant bail application under Section 439 Cr.PC is legally not maintainable.

15. I have heard the rival submissions and carefully gone through the record including the material provided to me in a sealed envelope.

16. I would first prefer to deal with the issue of maintainability as agitated by the Ld. APP. In my considered opinion there is no legal bar in entertaining the instant bail application and the argument of the Ld. APP is taken on record only to be rejected.

17. Before proceeding ahead, it would be relevant to reproduce herein Section 124A and Section 153A of Indian Penal Code for ready reference.

124A. Sedition.—Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]

153A IPC: 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, [or]

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be

trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,]

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

18. The nub of the issue is whether applicant/accused Disha was merely involved in peaceful protest and dissent against the farm acts or she was actually involved in seditious activities under the guise of protesting against the said legislation.

19. Dealing with the interpretation of the word 'Sedition', as prescribed u/s 124 A of the Indian Penal Code, Hon'ble Apex Court has dealt with the acts which are proscribed and have a tendency to cause 'disaffection against India' and has observed herein as under in the matter of **Kedar Nath v. State of Bihar AIR 1962 SC 955**:

“The provisions 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 disturbance of public peace by resort to violence**. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in

interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress [vide (1) Bengal Immunity Company Limited v. State of Bihar and (2) R.M.D. Chamarbaugwala v. Union of India. Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence”.

20. Evidently, law proscribes only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. 'Violence' seems to be the gravamen of the charge.

21. Ld. Addl. Solicitor General, during the course of arguments, fairly conceded that there is no direct evidence establishing the link between the applicant/accused and the violence that took place on 26.01.2021 in Delhi. However, he argued that the conduct of the applicant/accused viewed against the attendant circumstances would unambiguously establish that there was a 'larger conspiracy' to perpetuate violence by secessionist forces and the protest against the farm laws was merely a facade to conceal the real sinister designs.

22. Hon'ble Mumbai High Court in the matter of **Arun G. Gowli v. State of Maharashtra, 1998 Cr.LJ 4481 (Bombay)** has observed that conspiracy cannot be proved merely on the basis of inferences. The inferences have to be backed by evidence.

Therefore, it would be apt to analyze the material collected by the investigating agency to substantiate the allegations of the 'larger conspiracy'. The material collected against the applicant/accused can be broadly categorized under the following sub-heads:

1. **Engagement with secessionist forces.**

(a). It is pointed out by the Ld. ASG that a pro-Khalistani secessionist group namely 'Poetic Justice Foundation' (herein after referred to as PJF) and people associated with it are directly linked with creation of the 'Toolkit' document. It is submitted that one Mo Dhaliwal

and Anita Lal, known pro-Khalistan activists, are the persons behind PJF. It is further submitted that on 11.01.2021 at about 2.30 a.m, the associates of the applicant/accused, namely Nikita and Shantanu attended a zoom meeting wherein around 60-70 people from across the world participated including Mo Dhaliwal and Anita Lal. It is forcefully argued by the Ld. ASG that *you cannot go to a dacoit asking for donations*. It is submitted that the applicant/accused alongwith founders of PJF used social media to peddle support for secessionist Khalistan narrative in the guise of Farmers Protest.

Ld. Addl. Solicitor General fairly admitted that PJF is not a banned organization and even no criminal action is pending against the abovesaid Mo Dhaliwal and Anita Lal. Furthermore, there is nothing on record to establish any direct link between the applicant/accused and Mo Dhaliwal and Anita Lal. Still further, there is nothing on record to suggest that there was any call, incitement, instigation or exhortation on the part of the applicant/accused and the abovesaid organizations and its associates to foment violence on 26.01.2021. In my considered opinion, it is not mere engagement with persons of dubious credentials which is indictable rather it is the purpose of engagement which is relevant for the purpose of deciding culpability. Any person with dubious credentials may interact with a number of persons during the course of his social intercourse. As long as the engagement/interaction remains within the four corners of law, people interacting with such persons, ignorantly, innocently or for that matter even fully conscious of their dubious credentials, cannot be painted with the same hue. In the absence of any evidence to the effect that the applicant/accused agreed or shared a common purpose to cause violence on 26.01.2021 with the founders of PJF, it cannot be presumed by resorting to surmises or conjectures that she also supported the secessionist tendencies or the violence caused on 26.01.2021, simply because she shared a platform with people, who have gathered to oppose the legislation. There is not even an iota of evidence brought to my notice connecting the perpetrators of the violence on 26.01.2021 with the said PJF or the applicant/accused. It is brought to my notice by the Ld. Defence counsel

and not disputed by the Ld. ASG that till date, more than hundreds of persons involved in the violence have been arrested and interrogated by the Delhi Police but no evidence connecting the applicant/accused with the actual perpetrators of the violence has been brought forth on record by the prosecution till date.

(b). It is further submitted by Ld. ASG that during further investigation, it was revealed that on 11.01.2021, a banned terrorist organization 'Sikhs for Justice' issued an open communication declaring a reward of \$250,000 for anyone who will hoist the flag of Khalistan at India Gate on Republic Day.

There is absolutely no link established on record between the applicant/accused and the said banned organization.

(c). It is submitted that during investigation, it has also been revealed that there is link between Indian conspirators including the applicant/accused and Kisaan Ekta.co (Vancouver) through an organization by the name of Extinction Rebellion and it has come on record that the whatsapp group "Intl Farmers Strike" was used in furtherance of a request that came from KisaanEkta.co.

It has neither been averred nor proved that Kisaan Ekta.co is an organization with seditious agenda.

2. Use of 'Toolkit'

It is submitted that in the main body of the Toolkit google Cloud Document, there was a segment titled "Prior Action" which included Digital Strike through Hashtags on January 26 and earlier, Tweet Storm from 23rd January onwards, physical action on 26th January and Joining the Farmers' March into Delhi and then back to the border. Another part of the same document mentioned tasks such as disruption of India's cultural heritage such as 'Yoga' and 'Tea' and targeting Indian embassies abroad.

It would be relevant to reproduce herein the relevant portion of the said 'Toolkit' under the segment "Prior Action":

1. **Share solidarity Photo/Video Message** by email to scrapfarmacts@gmail.com, preferably by **25th January** (solidarity messages for farmers at Delhi's border)
2. **Digital Strike: #AskIndiaWhy** Video/Photo Message- **On or Before 26th January.**
3. **TweetStorm- 23rd January onwards-11.30 pm UTC/5 pm IST-** Feel free to tag @ PMOIndia@nstomar (Minister of Agriculture & Farmer Welfare), your own heads of state & others who ought to take note, like the IMF, WTO, FAO, World Bank (Tweetbank).
4. **Zoom session (Ask your Questions)** with a Greens with Farmers' Coalition representative from Alliance for Sustainable & Holistic Agriculture on 23rd January, 2020(We will be happy to organize another session. Write to us at scrapfarmacts@gmail.com)
5. **XR Global Insta Live** at 9.30 am UTC/3 pm IST*on **26th January(India's Republic Day)** with farmers at the borders of Delhi and environmental workers & activists worldwide.
6. **Physical Actions** – Near Indian Embassies, Govt. offices, Media houses (or even Adani-Ambani offices) globally- **26th January.**
7. Watch out or (or Join) the **Farmers' March/Parade** (a first of its kind)into Delhi and back to the borders on 26th January.
8. **Call/Email any of your govt representatives** and ask them to take action, **Sign online Petitions** and take action to **Divest** from monopolists and oligopolists like Adani-Ambani.

(* tentative time)

Get a complete picture through the Farmers Protests' Cheat-sheet.

(#AskIndiaWhy)

The perusal of the said 'Toolkit' reveals that any call for any kind of violence is conspicuously absent. In my considered opinion, Citizens are conscience keepers of government in any democratic Nation. They cannot be put behind the bars simply because they choose to disagree with the State policies. The offence of sedition cannot be invoked to minister to the wounded vanity of the governments. (**Niharendu Dutt Mazumdar v. Emperor AIR 1942 FC22**). Difference of opinion, disagreement, divergence, dissent, or for that matter, even disapprobation, are recognised legitimate tools to infuse objectivity in state policies. An aware and assertive citizenry, in contradistinction with

an indifferent or docile citizenry, is indisputably a sign of a healthy and vibrant democracy.

This 5000 years old civilization of ours has never been averse to ideas from varied quarters. The following couplet in Rig Veda embodies our cultural ethos expressing our respect for divergent opinions.

आ नो भद्राः क्रतवो यन्तु विश्वतोऽदब्धासो अपरीतास उद्भिदः। अर्थ - हमारे पास चारों ओर से ऐसे कल्याणकारी विचार आते रहें जो किसी से न दबें, उन्हें कहीं से बाधित न किया जा सके एवं अज्ञात विषयों को प्रकट करने वाले हों। (*Let noble thoughts come to me from all directions*).

Even our founding fathers accorded due respect to the divergence of opinion by recognising the freedom of speech and expression as an inviolable fundamental right. The right to dissent is firmly enshrined under Article 19 of The Constitution of India. In my considered opinion the freedom of speech and expression includes the right to seek a global audience. There are no geographical barriers on communication. A Citizen has the fundamental rights to use the best means of imparting and receiving communication, as long as the same is permissible under the four corners of law and as such have access to audience abroad. Reliance is placed upon **Secretary, Ministry of I&B v. Cricket Association of Bengal (1995) 2 SCC 161**.

It is further argued by Ld. ASG that the Toolkit has embedded hyper links with an intent to malign India abroad. Two such hyper links were brought to my notice. The first one led to the website askindiawhy.com and the second one led to Genocide.org.

The first page of the said askindiawhy.com has been placed on record by the Ld. Defence counsel. The said page was not disputed by the prosecution. Therefore, I have no reasons to presume that there was some other objectionable material and even if it was there, it was not brought to my notice by the prosecution for the reasons best known to them. The first page (available on record as Annexure P5, Page no. 21) merely depicts a picture of gathering of few persons with the following material :

GLOBAL FARMERS STRIKE

FIRST WAVE

WILL YOU BE PART OF
THE LARGEST PROTEST IN
HUMAN HISTORY?

*(A picture showing gathering of few people embedded in the
page)*

*TO STAND UP AGAINST INDIA'S FAILING DEMOCRACY
(AT THE BEHEST OF THE FASCISTIC RULING PARTY, RSS-
BJP)*

*TO STAND UP AGAINST UNREGULATED COPORATISATION
OF THE FARMING SECTOR,*

(Photocopy of the said page is annexed alongwith the instant
order)

I find absolutely nothing objectionable in the said page.

Upon perusal of the material available on Genocide.org, it is revealed that it carries certain facts about the status of human right violations in somewhere about 40 countries including India. I concur with the Ld. ASG, without commenting upon the sanctity of the information, that the imputations are really objectionable in the said website. However, even if the said imputations are found to be objectionable in nature, I cannot but disagree with Ld. ASG that the said material is seditious in nature. The imputations may be false, exaggerated or even with a mischievous intent but the same cannot be stigmatized being seditious unless they have tendency to foment violence. I am supported by the judgment of the Hon'ble Punjab & Haryana High Court in the matter of **Balbir Singh Saina v. State of Haryana 1989 SCC 93 (P&H)** wherein a pamphlet carrying a heading

'Atrocities of Army on students' was not found to be seditious by the Hon'ble Punjab and Haryana High Court as it did not incite people to violence and there was no intention of causing public disorder and the FIR as such was quashed.

3. **Conduct of the applicant/accused**

It is claimed that applicant accused created a WhatsApp group by the name of " Intl farmers strike" and added certain persons in the group. It is submitted that she deleted the group chat from her phone in an attempt to destroy the crucial evidence linking her with the toolkit and PJF. She is alleged to be one of the editors of the toolkit. It is further contended that she tried her best to conceal her identity so that legal action could not be taken against her. It is further alleged that she gave a global audience to the secessionist elements by manipulating support of international youth icon Ms. Greta Thunberg. It is also claimed that her co-accused Shantanu came to Delhi to ensure the execution of the plan.

In my considered opinion creation of a WhatsApp group or being editor of an innocuous Toolkit is not an offence. Further, since the link with the said toolkit or PJF has not been found to be objectionable, mere deletion of the WhatsApp chat to destroy the evidence linking her with the toolkit and PJF also becomes meaningless. Further, it is rightly pointed out by Ld Defence Counsel that the protest march was duly permitted by the Delhi police therefore there is nothing wrong in co-accused Shantanu reaching Delhi to attend the protest march. Still further, the attempt to conceal her identity seems to be nothing more than an anxious effort to stay away from unnecessary controversies.

23. It is also alleged that applicant/accused sought the support of international personalities using her previous acquaintance. It is pointed out that the applicant/accused shared the toolkit with Ms. Greta Thunberg. It is submitted that the applicant/accused gave a global audience to the seditious elements by manipulating support of international youth icon Ms. Greta Thunberg.

24. It would be worthwhile to observe that there is nothing on record to suggest that the applicant accused subscribed to any secessionist idea.

Further, the prosecution has, except for pointing out that applicant/accused forwarded the toolkit to Ms. Greta Thunberg, failed to point out as to how the applicant/accused gave global audience to the 'secessionist elements'.

25. It is further highlighted that the applicant/accused alongwith her associates under the pretext of protesting against the farm laws have resolved to vandalize Indian Embassies and specifically attack symbols of India i.e. Yoga and Chai.

26. Except for a bare assertion, no evidence has been brought to my notice to support the contention that any violence took place at any of the Indian Embassies pursuant to the sinister designs of the applicant/accused and her co-conspirators.

27. I am conscious of the fact that it is very difficult to collect evidence for the offence of conspiracy but I'm equally conscious of the fact that what is difficult to prove for the prosecution in the affirmative is virtually impossible for the defence to prove in the negative. I'm also conscious of the fact that the investigation is at a nascent stage and police is in the process of collecting more evidence, however, the investigating agency made a conscious choice to arrest the applicant accused upon the strength of material so far collected and now they cannot be permitted to further restrict the liberty of a citizen on the basis of propitious anticipations.

28. Prosecution has also opposed the release of the applicant accused on bail on the ground that she is required to be confronted with other co-accused persons. However, I concur with the learned defence counsel that if the other co-accused persons, who are on anticipatory transit bail, can be confronted with the applicant accused in custody then there is no rule of law or prudence, at least that I am aware of, that a person is mandatorily required to be detained in custody to be confronted with other co-accused persons. The applicant accused is already reported to have been interrogated in police custody for almost about five days and placing any further restraint upon her liberty on the basis of general and omnibus accusation would be neither logical nor legal. No specific article, sought to be recovered from the possession of the accused, has

been brought to my notice. The resistance to the bail plea seems to be more of ornamental in nature.

29. Considering the scanty and sketchy evidence available on record, I do not find any palpable reasons to breach the general rule of 'Bail' against a 22 years old young lady, with absolutely blemish free criminal antecedents and having firm roots in the society, and send her to jail.

30. As a cumulative effect of the aforesaid discussion I am of the considered opinion that the applicant accused deserves to be released on bail subject to filing of personal bond/surety bond in the sum of ₹ 1 lakh with two sureties each in the like amount and subject to the following conditions:-

- 1) She shall continue to cooperate with the ongoing investigations and shall join the investigation as and when summoned by the IO;
- 2) She shall not leave the country without the permission of the court;
- 3) She shall scrupulously appear at each and every stage of the proceedings before concerned Court so as not to cause any obstruction or delay to its progress

31. Needless to say that nothing observed herein shall have any bearing upon the merits of the case.

32. Application is disposed off accordingly.

33. Copy of the order be given dasti.

(Dharmender Rana)
ASJ-02, NDD/PHC/New Delhi
23.02.2021