



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CrMP(M) No. 1425 of 2023

Reserved on : 26.06.2023

Decided on : 24.07.2023

Dr. Nadeem Akhtar ...Applicant

Versus

State of Himachal Pradesh ...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹

For the applicant : Mr. Adarsh K. Vashishta, Advocate.

For the respondent : Mr. H.S. Rawat and Mr. Tejasvi Sharma, Additional Advocates General, with Ms. Leena Guleria and Ms. Avni Kochhar Mehta, Deputy Advocates General, for the respondent-State.

Mr. Ashok Sharma, Senior Advocate, with Mr. Onkar Jairath, Mr. Jyotirmay Bhatt, Mr. Ankit Dhiman, Mr. Gaurav Kaushal, Mr. Sushmit Bhatt and Mr. Shyam Singh Chauhan, Advocates, for the complainants.

ASI Kuldeep Singh, I.O., Police Station Mehatpur, District Una, H.P.,

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

present in person, alongwith the police record.

Virender Singh, Judge.

Applicant-Nadeem Akhtar has filed the present application, under Section 438 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC').

2. By way of the present application, the applicant has sought the indulgence of this Court to direct the Police/Investigating Officer of Police Station Mehatpur, District Una, to release him on bail, in the event of his arrest, in case FIR No. 54 of 2023, dated 3rd June, 2023, registered under Section 295-A of the Indian Penal Code (hereinafter referred to as the 'IPC').

3. According to the applicant, he is a qualified ophthalmologist and running a private clinic at Mehatpur. He is living in the said area for the last more than twenty years and rendering services as a Doctor.

4. According to him, he is a law abiding citizen and holds all the religions in high estimation and respects them equally.

5. It is the case of the applicant that a false FIR has been registered against him, whereas, he is completely innocent and has nothing to do with the allegations, as levelled against him, in the application.

6. The applicant is apprehending his arrest in the above-mentioned case. According to him, if he is arrested, it will cause hardship, not only to him, but, to his family also and his reputation and goodwill as a Doctor and law abiding citizen will be tarnished. He has termed the contents of the FIR as based upon misconception.

7. Apart from this, the applicant has given certain undertakings, for which, he is ready to abide by, in case, directions, under Section 438 CrPC, are issued to the Police/Investigating Officer.

8. On the basis of the above facts, Mr. Adarsh K. Vashishta, learned counsel appearing for the applicant, has prayed that the bail application may kindly be allowed.

9. When put to notice, the police has filed the status report on 8th June, 2023, disclosing therein that the police of Mehatpur has received a complaint on 3rd June, 2023, which was forwarded to the Police Station from SP Office, Una. The

said complaint was moved by S/Sh. Vivek Bhardwaj, Ex-Councillor, Ward No. 4, Mehatpur Basdehda; Deepak Diwedi, Chairman, Vyapaar Mandal Mehatpur Basdehda and Subhash Arey, President, Vyapaar Mandal Mehatpur Basdehda. In the complaint, it has been mentioned that a person, by the name of Nadeem Akhtar (applicant), who is running an Eye Hospital, in the name and style of 'Eshan Hospital', had posted derogatory comments, on facebook, against Bhagwaan Bhole Shankar and Shivling.

10. According to the complainant, he is habitual of posting such type of posts on his facebook account and his act has outraged the religious feelings. The complainants have also mentioned that later on, this person has taken a false defence that someone has hacked his facebook ID. According to them, considering his posts on the facebook account, his activities come under suspicion.

11. It has been requested in the complaint that thorough investigation is required to be done as to whether this person has been associated with any anti-national activities. In the facebook post/comment, according to the complainants, the applicant has also insulted Nandi (a bull on

which Lord Shiva rides) and due to his act, there is lot of resentment in the persons, residing in the near-by villages.

12. On the basis of the said complaint, the police registered the FIR under Section 295-A IPC. Thereafter, the criminal machinery swung into motion. During investigation, the police has taken the print-outs of screenshots of the applicant's facebook ID. In the screenshot of the first page, one ox is licking the Shivling, upon which, the applicant, has commented, as follows:

“Are par wahan mila kya murkhon ye to bata do apne bachchon ko. Bata do baba nahin babaji ka mil gaya. Jab ye bachche kabhi bahar jayenge to inhi ke dost inka mazaak udayenge ki tumhare desh mein to ling is king. Saari duniya mein ye nautnki karke bhartiyo ko hansa ka patra bana diya. Dharm ki kuch baatein dabi chupi rehti hain wahin achha hai. Ye saari nautnki se sari duniya ab hum par hansegi.”

13. On the second page, the applicant has been stated to have made the following post:

“Gaubar aur gaumutra ki aapar safalta ke baad andhbhakton ke liye pesh hai Naya brain tonic Gadhe ki leedh”

14. Third page is the screenshot of the facebook ID of the applicant, according to which, the URL of the facebook ID of the applicant is <http://www.facebook.com/nadeem.akhtar.10485?mibextid=ZbWKwL>.

15. Initially, the police has recorded the statements of the witnesses. Thereafter, efforts were made to nab the applicant, but, he was not found.

16. It is the specific case of the police that on 5th June, 2023, in order to show their resentment, one rally was organized in Mehatpur Bazar and the effigy of the applicant was burnt. On 8th June, 2023, similar demonstrations were made in Una Bazar.

17. After perusing the status report, so filed, the interim protection was granted to the police to release the applicant on bail, in the event of his arrest.

18. On 16th June, 2023, the police has filed the supplementary status report, disclosing therein that on 13th June, 2023, the applicant joined the investigation and he was released on bail, as per the directions of this Court.

19. As per the status report, on 15th June, 2023, demonstrations were made against the applicant by Hindu Ekta Manch and Vyapaar Mandal, Mehatpur.

20. The matter was, thereafter, adjourned for 26th June, 2023. On that day, the police filed the supplementary status report, disclosing therein, that on the basis of the

statements, so recorded, Sections 153A and 505 (2) IPC have also been added, in this case.

21. It is their further case that on 10th and 13th June, 2023, the applicant associated himself in the investigation of the case. On inquiry, he has disclosed that he has created a facebook ID in the name of Nadeem Akhtar and is using the same for a considerable long time. Thereafter, the screenshot of his facebook ID was shown to him, which, according to the applicant, seems to be the screenshot of his facebook ID. When the second screenshot was shown to him, he has feigned his ignorance. So far as, the comment with regard to *gobar* and *gaumutra* is concerned, the applicant has disclosed that this comment was made by him on his facebook account on 17th December, 2020, at about 3.06 p.m. The mobile phone of the applicant was taken into possession, which was sent for analysis to RFSL, Dharamshala, on 18th June, 2023 and the report of the same is stated to be still awaited.

22. On 20th June, 2023, the Special Investigation Team was constituted, under the leadership of ASI Kuldeep Singh. IO ASI Kuldeep Singh has taken into possession ten coloured

screenshots and one pen drive, which were submitted before him, by the complainants.

23. According to the status report, the same contains the screenshots of the facebook profile of the applicant; in one page, the screenshot, with regard to the comments made by the applicant, outraging the religious feelings and in the rest screenshots, containing 8 pages, the applicant had made indecent comments on the leaders. The pen drive is also stated to be containing the post, by virtue of which, the applicant had regretted.

24. On 21st June, 2023, when, the applicant was associated, he has apprised the police that his facebook account has been hacked by someone or the same has been posted by someone by creating a fake ID. This had been disclosed by him with regard to the comments of Bhagwaan Nandi and Shivling.

25. On 22nd June, 2023, the facebook friend of the applicant, namely Sanjeev Kumar, has submitted five screenshots. From those screenshots, according to the police, it has been confirmed that the applicant has made derogatory comments on Nandi Bhagwaan and Shivling.

26. On 23rd June, 2023, C. Ajay Kumar, Cyber Cell, has submitted the printout of the screenshot of the mobile. This screenshot is of the mobile phone of accused (applicant), which was taken into possession, in which, when the Google history was checked, it was found that the applicant has searched as to how to delete the facebook history from mobile and how to modify screenshot of facebook comments.

27. This fact has been highlighted in the status report to show that after making the derogatory comments, the applicant has searched on the Google search engine as to how to delete the data and how to modify the comments.

28. A request has been made by the investigating agency to the organizer of Meta Platform, vide letter, dated 19th June, 2023, to provide the registration details of facebook ID of the applicant, registration details of mobile number with facebook account, as well as, IP details of the alleged facebook ID. The said report is stated to be still awaited.

29. It is the case of the police that due to the act of the applicant, leading to insult the religious feelings, there is a lot of resentment in the area and against the said facebook post, there are demonstrations.

30. It has been apprehended that in case, the interim order is made absolute, the people of the locality may indulge in aggressive demonstrations and it may also result in ethnic disputes. These facts have been highlighted in the status report, as an apprehension of the law and order condition in the area.

31. Lastly, it has also been apprehended that the applicant is very influential and clever person and in case, interim order is made absolute, he may coerce the witnesses and allure them not to depose against him.

32. Apart from this, an apprehension has also been expressed that in case, the interim order is made absolute, the applicant will not be available for the trial.

33. On the basis of the above facts, Mr. Tejasvi Sharma, learned Additional Advocate General, and Mr. Ashok Sharma, learned Senior Counsel, assisted by Mr. Onkar Jairath, learned counsel, appearing for the complainants, have prayed for the dismissal of the application.

34. The applicant has been named as accused, in a case, which has been registered under Sections 295A, 153A and 505 (2) IPC. No doubt, the applicant has joined the

investigation, as per the directions of this Court, but, as per the allegations, the applicant has posted, on his facebook account, the derogatory comments, which have hurt the religious sentiments of a particular section of the society.

35. The applicant is not a layman, but, an educated person, who is well aware about the effect of his alleged post and comments. While residing in the society, it is the duty of every person to give due respect to the religious belief of other members of the society. In the name of freedom of expression, the *laxman rekha* should not be crossed.

36. Moreover, the applicant has not made any complaint to the police, when, his facebook account was allegedly hacked by someone. The applicant is having status in the society and, as such, he carries more responsibility. He ought to have exercised more caution before allegedly making the comments or putting post on his facebook account.

37. While deciding the question of bail, this Court has to maintain a delicate balance between the individual liberty and the larger interest of the society.

38. As per the allegations in the F.I.R., the social media has been used by the applicant for hurting the religious

feelings of the followers of a particular religion. The police has specifically expressed certain apprehensions, in case, the interim order is made absolute. At this stage, those apprehensions cannot be said to be unfounded. Allowing the bail application, in this case, will also give a wrong signal to the society and it will encourage other persons to make such type of comments, allegedly causing resentment in the minds of followers of the other religions, which is also not good for the secular fabric of the country.

39. Considering all these facts and the ramification of the offences, alleged committed by the applicant, this Court is of the view that the applicant is not entitled for any relief, under Section 438 CrPC. Consequently, the bail application is dismissed.

40. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present bail application.

41. Record be returned to the quarter concerned.

(Virender Singh)
Judge

July 24, 2023
(*rajni*)