

IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
BARAMULLA
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SPECIAL COURT OF TRIAL OF OFFENCES U/S ULA (P)ACT FOR
DISTRICT OF BARAMULLA, BANDIPORA AND KUPWARA.

CN.R No.: JKBA010001462021

<u>File No.</u>	<u>Dt. Of Institution</u>	<u>Dt. Of Disposal</u>
297/ADJ Bla	22.02.2021	04.03.2021

In the case of;

Hilal Akbar Lone
S/o Mohd. Akbar Lone
R/o Naidkhai Sumbal
..... (Petitioner)

V/s

U.T. of Jammu & Kashmir
Through Station House Officer,
Police Station Hajin Bandipora

Adv. Syed Riyaz Khawar, Adv. Nazir Ahmad Malik,
Adv. Mr. A.M Mir, Adv. Mr. Munir Ahmad Bhat and
Adv. Neelofar Masood for petitioner

Ld. A.P.P for the U.T.

Present:

Sanjay Parihar
(J.O Code: JK00033)

In the matter of;
Bail Application.

FIR No.02/2021 P/S Hajin
U/Sec: 125-P R Act, 13 ULA (P) Act, 153-A, 188, 505 IPC

(1)

ORDER

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By the instant order, I propose to dispose of the application moved by petitioner namely Hilal Ahmad Lone for grant of bail. It is submitted by Ld. Counsel for the petitioner that petitioner is Advocate by profession and has not committed any offence, his father is member of Parliament from Baramulla Constituency and that on 25.12.2020 petitioner was detained in MLA Hostel Srinagar without any legal justification and later on he has been shifted to P/s Hajin in false and frivolous case FIR No. 02/2021 of that very Police station, in which he neither is directly or indirectly connected. That he has been Additional Advocate General for the State of J&K before the Hon'ble High court of J&K Srinagar and has been deprived of his personal liberty by implicating him in false and frivolous case. That basic rule is bail not jail and petitioner is ready to abide by directions as set by the court. That the case has been hoisted against him to frame him and defame his family who have political background. He is presumed to be innocent until proved guilty and in the instant case there is no material against him to warrant his continuous detention.

As per police report it was on 09.01.2021 P/S Hajin from reliable sources learned that above named petitioner is involved in antisocial, anti-government activities and has been consistently instigating and provoking common

people to go for anti-national activities, and for that video has been thrown in the Social Media which was purportedly shoot in Gund Jahangeer area, in which the petitioner is shown to be addressing anti-national activities and shown to be delivering unlawful speech against government institutions, besides he is promoting enmity on the grounds of Religion, Caste, Race, Place of Birth etc. He was trying to organize a movement, so as to cause harm to the public at large and instigate them to work against public tranquillity.

Upon this case FIR No.02/2021 for offence U/s 125-P R Act,, 13 UL A (P) Act, 153-A, 188,505 IPC has been registered, and during the course of investigation site plan was prepared and the viral video available in Facebook was transformed/ copied in two C.D's in presence of Executive Magistrate 1st Class and during investigation he was produced before Executive Magistrate 1st Class and his voice sample was obtained ,which has been sent to FSL for expert opinion. That the evidence on record would showed that the petitioner had arranged a public congregation at Gund Jahangeer, where in view of DDC Elections -2020, had delivered anti-establishment speech which was highly provocative and instigating general public against integrity and security of the State. That speech has been given to cause hatred, disharmony in general public and also to disrupt peace and tranquillity, which is violation of Sec.125

Model Code of Conduct drawn for the said election. It is therefore stated that the accused had committed offence u/s 13 of ULA(P) Act and 125 of PR Act for which he was arrested on 15.02.2021 and is presently in judicial custody.

In their objections bail application is resisted on the premise that there is cogent and reliable evidence against the petitioner which necessitate, dismissal of his application. That the petitioner by his acts, has caused disharmony and instigated general public to disrupt peace and tranquillity. That the petitioner has committed non-billable offence, which is of serious nature, because he has posed threat to the national integrity and security of the State. That in case he is released it will adversely affect the normalcy, that has been achieved in the Valley, especially in District Bandipora. This court is the custodian of public interest and society at large and in order to maintain confidence of society the concession of bail should not be available to the petitioner.

I have gone through bail application, heard Ld. A.P.P and Counsel for the petitioner as well as perused record.

It is submitted by the Ld. Counsel for the petitioner that there is nothing on record or in the police report to show that petitioner has committed any Act of threatening the integrity of the country and in fact there are no ingredients for drawing of offence u/s 13 of ULA(P) Act. That the petitioner being from political class, was

canvassing for his party National Conference (NC) in the just concluded Panchayat Elections, as his father is member of Parliament, who was part of a political front, comprising of various political parties who had drawn Gupkar Alliance, who were critical of the policies a Gund Jahangeer adopted by the present government. In that background the petitioner being also a political worker, had been canvassing for candidates of National Conference and Gupkar Alliance, which fact is gathered from the allegations, that petitioner is accused of violating Model Code of Conduct for which he has been slapped with charges u/s 125 of PR's Act, which proves that what the petitioner was critical of the policies adapted by the present government. Thus had the fundamental right to express his dissent against the present establishment, therefore he was merely exercising his fundamental right of freedom of speech and expression to oppose the policies of present government and in order to muzzle that voice, he was slapped with the charges of serious offences of Unlawful Activities of Prevention Act, only with the object to keep him behind bars. Which is apparent from the fact that he was taken in custody in December 2020 and was slapped with proceeding u/s 107,151 Cr.P.C, for which he was detained at the behest of SHO P/S Sumbal and during his custody in said proceedings he has been handed over to P/S Hajin and slapped with present false case . Earlier he was detained under Preventive Detention Law as well, which

later had been withdrawn. That by framing false case of the nature U/s 153-A, 188,505 IPC and 125 of People's Representative Act would show that the petitioner has been accused of only to have violated the government instructions and there is not even any whisper in the police report as to when that video has been shot and even if there is video showing the petitioner to have made any kind of speech. Since the petitioner belongs to political family and his father being, Parliament member are diagonally opposed to the policies of the present dispensation, and in order to defame the petitioner and also weaken the status of his father, petitioner has been deliberately framed in the present case just with the sole purpose to muzzle the voice of people like the petitioner, and for that even a video can be morphed, misused just to get the petitioner implicated.

That the petitioner had worked as Senior Law officer and had got good credentials i.e. he defended the State Home Department before Hon'ble High Court of J&K Srinagar in the capacity of Additional Advocate General. That being in judicial custody as of now his further detention is unwarranted. Having regard to his background there is in fact, no chance of him fleeing from justice and would abide by all condition if any. That the investigation is complete, so his right is not to be curtailed by falsely implicating him in such offence as one u/s 13 of ULA(P) Act. That the allegations levelled against the petitioner can be taken to be one affecting peace and tranquillity which cannot be collude with to have been made with intent to cause

disaffection against India. Neither there is allegations that the petitioner has indulged in activity to support cessation of part of the territory nor has disrupted Sovereignty and Territorial integrity of county.

Per-Contra it is urged by Ld. APP that petitioner has indulged in activity of the nature to gave provocative speech, instigated people to attempt to promote disharmony on the ground of Religion, Race, Caste, Community and other grounds and has also indulged in creating disharmony and feeling of enmity, hatred and ill-will between different religions on the ground of Race, Caste and Community. That after the case was registered the voice samples of the petitioner have been taken which is being examined by FSL, so as to get evidence, whether the voice recorded in the video is that of petitioner . That offence u/s 13 of ULA(P) Act is of heinous nature, though it falls in Chapter III of Unlawful Activities Act, to which U/s 43-D ULA(P) Act, there is no legal bar on granting bail ,but having regard to the availability of the material against the petitioner he does not deserve the concession of bail. Since he belongs to a very affluent family, there is every likelihood that he may frustrate the investigation and the trial.

Further dwelling upon the allegations levelled he stated that the speech made by the petitioner was provocative one, that was bound to cause enormous law and order situation, because reference is made to what is terrorism and has branded the present dispensation as gang of terrorist. In as much as has also intended to hurt religious feelings of particular community

which was made with the intention to instigate violence, create instability with larger design of promoting disaffection against county at large. The expression "security of the State" and "Public order" have been subject of various discussions and judicial pronouncements. *In AIR 1932 PC 22*, it was held that:

" Difference of opinion, disagreement, divergence, dissent or for that matter even it is disapprobation are recognized 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.

In Arun Bhuyan V/s State of Assam 2011(3) SCC 377 and in Inder Das V/s State of Assam 2011(3) SCC 38, it was observed that:

"Mere membership of banned terrorist organizations is not sufficient, as that will not make a person criminal, is significant and decisive, this is because the fundamental rights guaranteed under Article 19 & 21 of the Constitution, giving right to form association and freedom of expression which cannot be lost sight of in considering, whether mere membership of banned organizations will make a person liable to be prosecuted for the offence under section 10 or 13 of Unlawful Activities Prevention Act."

In the above said perspective the, allegation are to be examined with reference to the offence under the Act. Sec. 13 of the Act provides punishment for Unlawful Activities. What is Unlawful Activity, is defined u/s 2(o) of the Act. The

Unlawful Activity, if we go by the definition takes within its preview any act, either spoken or written, signs or by visible representation or otherwise by an individual or association for cessation of a part of the country or disruption of its Sovereignty and territorial integrity of the county or to cause disaffection against the county. So the pivotal issue to be looked into is, whether on the allegations set out any offence u/s 10 or 13 of the Act has been made out against the petitioner or not.

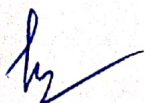
In order to attract Sec.153(A) IPC, there has to be allegations that the petitioner was promoting enmity between different groups on the ground of Religions, Race, Place of Birth, Residence etc, which offence is punishable with imprisonment which may extend to three years or with fine or both.

In Kedarnath V/s State of Bihar AIR 1962 SCC, it was held that:

“Only such activities as would be intended, or have tendency, to create disorder or disturbance of public peace by resorting to violence, would amount to cause disaffection against India. So law proscribes only such activity as would be intended to create disorder or disturbance of public peace by resorting to violence. Therefore violence seems to be grave men of the charge.

Section 125 of the Representation of the People Act 1951 makes punishable offence of promoting enmity between classes in connection with an election if a person promotes or attempts to promote on grounds of religion, race, caste, community or

language, feeling of anonymity or hatred between different classes of the citizen of India. Such offence is punishable with an imprisonment extending up to 3 years or fine or both. It is admitted case of the prosecution as discernible from the police report that petitioner was canvassing for a particular political party in the recently concluded local bodies elections and it is alleged that while the model code of conduct was in operation when the petitioner is alleged to have spoken voice of dissent, criticising the policies of the government of the day. Nowhere in the police report it is shown as to when the alleged video has come in existence. As per police report it was on 9th of January 2021 when it came to know on social media that a viral video of petitioner is doing the rounds which is promoting enmity between various sections of people and that is causing disaffection against the country. Whereas at the time of recording of 1st information report the petitioner was admittedly in custody in connection with proceedings under section 107 / 151 Cr.P.C. According to police report petitioners voice samples have been drawn and sent to expert for obtaining opinion as to whether it is the voice of the petitioner that is heard in the alleged video. Said report has not been received so far. Petitioner was canvassing for National conference a political party and it is not the case of the prosecution that said political party is an unlawful association in terms of the provisions of the UL AP act. Having said so from the allegations levelled in the police report and what is recorded in case diary , there is not any whisper that the petitioner had exhorted the assembly of people



to whom he was addressing on the day when the video was shot, to cause any kind of violence so as to throw out the government of the day. It is also not the case that the petitioner was in any way inciting people to commit any kind of violence. What is alleged therein is regarding the policies of the government of the day which according to the petitioner "is branding Muslims as terrorist, whereas its own people are terrorising others and preventing them from discharging their religious beliefs, he is Muslim who has to follow his religious dictates, go for prayers and take beef which is hallal". Such spoken words would not prima -facie lead to the commission of offence of unlawful activity of the type as provided in section 2(o) of the act. Where the requirement is that the words must be of the nature to bring cessation of a part of the country or disruption of its sovereignty and territorial integrity or to cause disaffection against the country. Having been proceeded under section 107/151 Cr.P.C, which are in the nature of preventive proceedings and were initiated while the said video was already visible in the social media. Whereas the the 1st information report has been recorded on 9th of January 2021 and on the other hand the above said preventive proceedings were taken much earlier on 21st of December 2020 which formed the basis for he being sent to custody by Executive magistrate 1st class Sumbal on 25/12/2020. It is relevant to state here that besides offence under section 13 of UL AP act 1967, the petitioner has also been booked under section 153-A IPC and 125 of Representation of Peoples Act, which offences are similar in nature; the only



difference being that sec. 125 of Representation of People's Act would be invoked only during currency of election thereto.

Having said so the allegations leveled against petitioner were only in the nature of effecting peace and tranquillity and at the most leading to hatred against a particular community or particular political party. Being the citizen of the country as well as belonging to a political party as his father is stated to be Member Parliament thus was propounded of particular political thought which is in dissent to the policies of the present establishment. There being not any allegation that he had called for cession of territory of the State from the Union of India nor there is any allegation that his words were intending to cause disaffection against the country. At the most the words allegedly spoken by him in the said video attract the offence of promoting enmities between various classes or questioning policies of the government of the day. However that itself cannot be branded as an Unlawful Activity within the ambit of Sec. 13 of the ULA(P)Act, Petitioner is stated to be person of repute besides had represented the Home Department of erstwhile government in the capacity as Additional Advocate General. It is not the case of the prosecution that while being released on bail the petitioner has the tendency to evade the process of law. During the course of arguments it was pointed out that petitioner earlier was detained under Public Safety Act (PSA) after abrogation of Article 370 whereafter, the same was withdrawn. Later in December 2020 he was kept in detention as a preventive measure which means the petitioner at the most could have been threat to public peace and tranquillity. But not

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the person who can be called to have posed threat to security, unity and integrity of the country. It is only when he has the tendency to cause disturbance of public peace by resorting to violence that would cause disaffection against India which in this case is not alleged. Having said so offence U/S 153-A IPC and Sec. 125 of Representation of People Act both are punishable with imprisonment of three years whereas under section 13 ULA(P) Act invites punishment of 7 years. Therefore, there is no legal impediment in ordering release on bail. Because nowhere it has been alleged that the petitioner has got any links with any banned organization. Infact he is nowhere alleged to be promoting or espousing the cause of terrorist organization . At the most the allegations would show that he had certain diversion of opinion against policies of the present establishment for which being part of a politics though he was entitled to frame an opinion. But that cannot be termed as voice of dissent amounting to cause disaffection against he country at large. The video alleged to have been shot is yet to be confirmed to have matched with the voice samples of the petitioner. ince the report of expert is awaited. For the sake of arguments if report tomorrow turns out to be negative or video turns out to be morphed then what would be fate of the case of the prosecution. These are questions which certainly weigh in favour of the petitioner. Therefore, the accusations against the petitioner can at the most be called to be the one effecting the "public order" but not to be termed one to have threatened the security of the State. Even otherwise also he is presumed to be innocent until proved guilty and has been in custody since 25th of December 2020, so his

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continuous incarceration is not going to help the cause of prosecution. After weighing the prosecution case and the right of liberty which is dearer to the very concept of justice, the later weighs in favour of the petitioner.

In view what has been stated herein above the petitioner can be released on bail at this stage as he has already undergone pre-trial detention for over more than two months subject to conditions of safeguarding and smooth fair completion of investigation of the crime, shall be released subject to furnishing of surety bonds to the tune of rupees two lacs (Rs.2,00,000/-) with one surety in the like amount on the condition that he shall remain present with trial, shall not harass and intimidate prosecution witnesses, shall not leave the territorial jurisdiction of this court without prior permission. In the event of repetition of offence the concession of bail is amenable to be withdrawn without any notice. Incharge Subsidiary Jail, MLA Hostel Srinagar after realizing personal bond of like amount shall set the petitioner at liberty.

Application is allowed and shall form part of main challan.

Announced
04.03.2021

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(Sanjay Parihar)
Special Judge,
(Addl. Sessions Judge)
Baramulla.