

Court No. - 42

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 23020 of 2021

Applicant :- Sharjeel Imam

Opposite Party :- State of U.P.

Counsel for Applicant :- Nikhil Mishra, Ayush Khanna

Counsel for Opposite Party :- G.A.

Hon'ble Saumitra Dayal Singh, J.

1. Heard Sri Nikhil Mishra, learned counsel for the applicant, Sri Manish Goyal, learned Additional Advocate General and Sri A.K. Sand, learned AGA-Ist for the State.

2. The instant bail application has been filed on behalf of the applicant - **Sharjeel Imam** with a prayer to release him on bail in **Case Crime No. -55 of 2020, under Sections -124A, 153A, 153B and 505(2) I.P.C., Police Station -Civil Lines, District -Aligarh**, during pendency of trial.

3. Having heard learned counsel for the parties, at present:

(i) the applicant is accused of offences under Sections-124A, 153A, 153B and 505(2) I.P.C.;

(ii) against FIR lodged on 25.01.2020, the applicant is in confinement since 18.09.2020;

(iii) Sri A.K. Sand, learned AGA-Ist would point out that the applicant has not been under custody for the said period in this case alone. Earlier, he was confined in another case. As to criminal history, besides four other FIR lodged arising on the contents of the same speech delivered by the applicant on 16.10.2020, two other cases being Case Crime Nos.59 of 2020, Police Station-Crime Branch, Delhi and 242 of 2019, Police Station-New Friends Colony, Delhi, involving offences under

Sections-302 and 307 IPC are also stated to be pending against the applicant;

(iv) chargesheet has already been submitted, however, trial has yet not commenced;

(v) on *prima facie* basis, only for purpose of grant of bail, it has been submitted by learned counsel for the applicant, in the first place ingredients of offence are not made out, inasmuch as, the applicant had not exhorted the listeners to take up arms or to engage in any violent act as may have threatened the integrity and unity of the country or to commit any act of hatred against any community. Also, he would submit that in any case, there is no material on the case diary as may suggest that the words spoken by the applicant had any effect on any of the listeners. Though the speech was delivered on 16.01.2020 and the FIR was lodged nine days thereafter, no incident occurred as may be read as evidence in support of the effect caused by the applicant's speech. There is absolutely no evidence as to that. Second, it has been submitted, the FIR could not have been registered except with prior sanction obtained under Section 196 Cr.P.C. Third, it has been submitted that the FIR was lodged on an afterthought with a delay of nine days. Last, it has been submitted that multiple FIRs were lodged against the applicant arising from the same occurrence. Thus, reference has been made to the following cases lodged:

State	Case No.	Offence	Date & Time
Assam	PS Crime Branch, Guwahati Case No.01/2020 ("Assam FIR")	121(A), 124(A), 153(A), 153(B) IPC and S.13(1), 15(a)iii, 18 UAPA	25-01- 2020 (1600 hrs.)
Uttar	PS Civil Lines,	124A, 153A,	25.01.202

<i>Pradesh</i>	<i>Aligarh FIR No.55 of 2020</i>	<i>153B and 505(2) IPC</i>	<i>0 (1734 hrs.)</i>
<i>Manipur</i>	<i>PS Imphal Case No.16(1) of 2020</i>	<i>121/121(A)/124(A) 120B/153(A) IPC</i>	<i>25-01- 2020 (1810 hrs.)</i>
<i>Delhi</i>	<i>PS Crime Branch Case No.22/2020 ("Delhi FIR")</i>	<i>124A/153A/505 IPC (Section 13 UAPA subsequently added)</i>	<i>25-01- 2020 (2030 hrs.)</i>
<i>Arunachal Pradesh</i>	<i>PS CBPS Case No.02/2020 ("AP FIR")</i>	<i>124A/153A/153B IPC</i>	<i>26-01- 2020 (1000 hrs.)</i>

4. Opposing the bail application, learned Additional Advocate General would submit, the content of the FIR clearly bring out all ingredients of offences under Sections-124A, 153A, 156, 153B and 505(2) IPC. Heavy reliance has also placed on the criminal history of the applicant involving similar cases and also involving cases of heinous offences including offences under Section 302 IPC. Further, reference has been made to the antecedent of the applicant in habitually engaging in such illegal activities prior and after the occurrence. Thus, it has been submitted that applicant may not be released on bail as he is likely to endanger public order by violating the bail terms.

5. Having heard learned counsel for the parties and having perused the record, without referring to the exact allegation made against the applicant, it may be noted that on an undisputed basis neither the applicant called any one to bear arms nor any violence was incited as a result of the speech delivered by the applicant. The exact imputations made and the effect prompted by the applicant by words uttered or gestures made etc. may remain to be examined at the trial which is yet to commence. Inasmuch as the applicant has remained confined

for more than one year and two months against a maximum punishment that he may suffer on conviction being three years, for that reason alone the applicant has become entitled to bail, at this stage, in the undisputed facts of this case.

6. The other ground being pressed by learned counsel for the applicant may not be accepted. The bar created by Section 196 Cr.P.C. is as to cognizance and not registration of an FIR for a cognizable offence. As to the delay, the same is of nine days. Without drawing any final conclusion as to the same the matter is left to be examined by the trial court. For the purpose of grant of bail, the same is not considered to be relevant in the entirety of the facts and circumstances of the present case. As to this being second FIR lodged against the applicant, learned Additional Advocate General has informed that the applicant has himself applied before the Supreme Court for consolidation of all five cases.

7. Therefore, the said issue also falls outside the scope of present proceeding. In any case, the speech having been inside the State of U.P. and the FIR having been registered with respect to that occurrence at Aligarh, no fundamental jurisdictional defect is shown in the registration of the instant case. Last, as to criminal history of the applicant, the same may remain to be considered in appropriate case. However, at present, considering the period of detention undergone, in the context of the fact allegation made, the same may not deprive the applicant to bail.

8. In view of the above, without expressing any opinion on the final merits of the case, let the applicant involved in the aforesaid crime be released on bail, on his furnishing a personal bond of **Rs.50,000/-** with two sureties of the like amount to the satisfaction of the court concerned, with the following

conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressuring the witness, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

9. In case, of breach of any of the above conditions, the bail being granted shall be cancelled.

10. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 27.11.2021
S.Chaurasia

SAUMITRA
DAYAL SINGH

Digitally signed by
SAUMITRA DAYAL SINGH
Date: 2021.11.29 14:53:53
+05'30'