

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1821 OF 2022

Mr.Nikhil Shyamrao Bhamare. ... Petitioner.
V/s.
State of Maharashtra and another. ... Respondents.

Mr.Subhash Jha with Mr.Harekrishna Mishra i/b. Mr.Anirudh Ganu
for the Petitioner.
Mrs.A.S.Pai, Public Prosecutor for the Respondents.

CORAM : NITIN JAMDAR AND
N.R. BORKAR, JJ.

DATE : 21 June 2022.

P.C. :

By this petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973, the Petitioner is seeking the following prayer:

“(b) to issue a writ of certiorari and/or any other appropriate writ, order and or direction in the nature of certiorari thereby calling for the investigation papers concerning FIR No.124 of 2022 of Naupada police station, Thane and so also investigation papers concerning FIR No.470/22 of Goregaon police station, Mumbai and investigation papers of FIR No.165 of 2022 of Dindori Police Station, Nashik, FiR No.,83 of 2022 of Cyber Police Station, Shivajinagar, Pune, as well as other FIRs/complaints, if any, received in respect of or

concerning the impugned tweet dated 11th May, 2022, being Exhibit-'B' annexed herewith, the same may be pleased to quash and set aside."

2. List the petition for further hearing on 12 July 2022.

3. The learned counsel for the Petitioner prays for the grant of interim relief that the Petitioner be directed to be released on bail. We have heard the learned counsel for the parties on this interim prayer.

4. Several FIRs came to be filed against the Petitioner.

(i) FIR No.124/2022 at Naupada Police Station, Thane, on 13 May 2022 at 20.10 hours for the offence punishable under sections 107, 153, 153(A), 504, 506(2) of the Indian Penal Code. The FIR was in respect of a post stated to be put up by the Petitioner on the social media platform "Twitter" on 11 May 2022.

(ii) In respect of the same tweet, FIR No.165/2022 was filed at Dindori Police Station, Nashik, on 14 May 2022;

(iii) FIR No.13/2022 at Cyber Cell, Pune city on 14 May 2022;

(iv) FIR No.570/2022 at Goregaon Police Station, Mumbai on 14 May 2022;

(v) FIR No. 502/2022 at Bhoiwada Police Station, Mumbai on 14 May 2022; and

(vi) FIR No.292/2022 at Dehu Road Police Station, Pimpri Chinchwad on 15 May 2022.

5. It is common ground that these FIRs relate to the same post on social media and are on the same allegations. The gist of the allegations is that the Petitioner posted a message on the social media platform, which was in respect of a senior political leader of the ruling political party in the State, which post was intended to promote enmity in different groups on religion, place of birth, language etc.

6. The Petitioner was arrested in respect of the offence registered at Dindori Police Station, Nashik, Naupada Police Station, Thane, Cyber Cell, Pune city and Dehu Road Police Station, Pimpri Chinchwad on 13 May 2022. As regards the FIR registered at Dindori Police Station and Dehu Road Police Station, the Petitioner has been released on bail by the learned Magistrate. As regards FIR registered at Naupada Police Station and Cyber Cell, the Petitioner filed applications before the learned Magistrate, which were rejected. Regarding the order of rejection and for grant of bail, the Petitioner and the State have not taken any further steps. As a result, the Petitioner has continued to be in custody since 13 May 2022.

7. The learned counsel for the Petitioner submitted that considering the facts and circumstances of the case, this is a fit case where the prayer for grant of interim bail in a petition seeking to quash FIR needs to be considered. The learned counsel for the Petitioner relied on the decision of the Supreme Court in the case of

*Arnab Manoranjan Goswami v. the State of Maharashtra*¹. The learned counsel for the Petitioner submitted that the Petitioner is a student and all that he has done is a message on the social media, and the FIR in respect of the said post do not prima facie indicate that any offence is made out. The learned counsel further submitted that the continued custody of the Petitioner is entirely unwarranted and keeping the Petitioner in custody has serious repercussions on the society. The learned counsel for the Petitioner submitted that for the same post series of FIRs have been filed, which is entirely unwarranted and impermissible in law. The learned counsel submitted that it would be unjust to drive the Petitioner to different courts seeking bail in different FIRs. The learned counsel further submitted that it is not the case where the Petitioner would abuse the liberty or tamper with the investigation if released on bail.

8. The learned PP submitted that though it is correct that interim bail in a petition under Article 226 of the Constitution of India and under section 482 of the Cr.P.C. for quashing of FIR can be considered, at the same time as stated in the decision in the case of *Arnab Manoranjan Goswami*, the High Court will have to keep in mind that exercise of power must be in circumspection and not a substitute for the remedy of bail under section 439 of Cr.P.C. Learned PP submitted that the Petitioner has antecedents and an FIR No.134/2022 was lodged against the Petitioner at Vartaknagar Police Station under section 294, 500, 507 of IPC read with section 66(a)

¹ (2021) 2 SCC 427

of the Information and Technology Act.

9. In the decision of *Arnab Manoranjan Goswami*, the Supreme Court has considered the ambit of powers under Article 226 of the Constitution of India and under section 482 of Cr.P.C. for grant of interim bail in a petition filed for quashing of FIR. The Supreme Court has observed that the High Court should not foreclose itself from the exercise of powers when a citizen has been arbitrarily deprived of personal liberty in the exercise of State powers, apart from other parameters for consideration of bail. The interest of the public or State or other considerations also have to be kept in mind. We have considered rival contentions in the context of the above position of law for consideration of the prayer. For this purpose, the totality of the circumstances will have to be considered.

10. The Petitioner is a 22-year-old student. The earlier incident referred to by the learned PP is also in respect of electronic communication. Apart from this, we have not been shown any antecedents of the Petitioner. It cannot be said at this stage that the argument of the Petitioner that bare perusal of the contents of the Petitioner's post and the FIR, ingredient of the offence creating disharmony between two groups is not made out, is incorrect. Prima facie, we also find merit in the contention of the Petitioner that multiple FIRs for the same post in different cities were against the position of law and have resulted in great prejudice against the Petitioner, a student who has to apply in different courts for bail.

Regarding two such FIRs, the Petitioner has been granted bail, and the State has not challenged the same. It has not been demonstrated before us that if the Petitioner is released on bail, he will abuse the liberty or interfere with the investigation. Therefore, taking these factors cumulatively, we find that a case is made out for the grant of interim bail to the Petitioner.

11. The learned counsel for the Petitioner submits that the Petitioner has been released on bail on furnishing PR Bond of Rs.15,000/- with solvent surety by the Judicial Magistrate, Dindori and every FIR and bail order the Petitioner should not be directed to give solvent surety. The request made is reasonable.

12. Hence, the following order:

(i) In respect of FIR No.124/2022 registered with Naupada Police Station, Thane and FIR No.13/2022 registered with Cyber Cell, Pune City, the Petitioner shall be released on bail after furnishing P.R.Bond of Rs.15,000/-;

(ii) In respect of FIR No.570/2022 registered with Goregaon Police Station, Mumbai and FIR No.502/2022 registered with Bhoiwada Police Station, Mumbai, the Petitioner shall not be arrested till further orders;

As regards the conditions of bail, they have been so provided

in the order passed by the learned Judicial Magistrate in respect of FIR No.165/2022, and it is not necessary to direct any separate conditions in this order. The Petitioner is also asked to mark his attendance at Dindori Police Station every Sunday, which according to us, will suffice for the interim bail.

13. Stand over to 12 July 2022. Reply, if any, to be filed before the next date.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)