

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Twentieth day of May Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice B.PUGALENDHI

CRL OP (MD) No.7257 of 2019

KAMALHASSAN

... PETITIONER/SOLE ACCUSED

Vs

STATE REPRESENTED BY,
THE INSPECTOR OF POLICE,
ARAVAKURICHI POLICE STATION,
ARAVAKURICHI,
KARUR DISTRICT.
CRIME NO.154/2019

... RESPONDENT/COMPLAINANT

For Petitioner : MR.K.VIJAYAN, Senior Counsel for
MR.K.GURUVIAH, Advocate

For Respondent : MR.A.NATARAJAN, State Public Prosecutor
Assisted by MR.R.ANANDHARAJ,
Additional Public Prosecutor

For Defacto Complainant : MR.M.KARUNANITHI, Advocate

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner apprehending arrest at the hands of the respondent Police for the alleged offences punishable under Sections 153(A) and 295(A) I.P.C., in Crime No.154 of 2019, has filed this criminal original petition.

2. The case of the prosecution is that the petitioner, a leader of a registered political party, during his election campaign for Aravakuruchi Constituency, has addressed a public meeting at Pallapatti on 12.05.2019 and in that meeting, he has stated that the first extremist in independent India is a Hindu, who is Nathuram Godse. The complaint was lodged on 14.05.2019 complaining that the reference of the petitioner about Nathuram Godse developed hatred among the people and the petitioner made the statement purposely to develop hatred among the people.

3. Heard Mr.K.Vijayan, learned Senior Counsel, appearing for the petitioner and Mr.A.Natarajan, learned Public Prosecutor, appearing for the State and Mr.M.Karunanithi, learned counsel for the de facto complainant.

4. The learned Senior Counsel for the petitioner, in support of this petition, has made the following submissions:

- (i) The complaint is a motivated one and lodged by a person belongs to Hindu Munnani and it has been lodged after two days, in order to target this petitioner during election.
- (ii) The petitioner has not made any statement about the Hindus as a whole and he referred only to Nathuram Godse, who was a Hindu Fundamendalist and committed the murder of Mahatma Gandhi, as he was acting against the interest of Hindus and he himself admitted in his statement before Gandhi assassination case as well as in his book titled "Why I killed Gandhi?"
- (iii) The petitioner has taken a film titled "Hey Ram" on this subject and has made a research for that movie and he is well aware of this historical event.
- (iv) Except certain motivated complaints, there is no problem whatsoever during speech at Pallapatti and also subsequently.
- (v) The offence under Section 153(A) and 295(A) I.P.C.requires certain procedures that no Court shall take cognizance on these Sections except with the previous sanction of the Central Government or the State Government and before according such sanction, the respective Governments, as the case, may order a preliminary investigation by a Police Officer not below the rank of an Inspector, as provided under Section 196(3) Cr.P.C., and the same has not been complied with in this case and therefore, the mere registration of the case itself without any preliminary investigation is bad in law.
- (vi) By selectively taking certain words, the complaint has been lodged and the respondent Police, without verifying the contents of the speech contextually has registered the present case.

Therefore, according to the learned Senior Counsel, the complaint is a motivated one and it is legally not sustainable and furthermore, no offence has been made out either under Section 153(A) or under Section 295 A IPC. Hence, considering the fact that the petitioner has fielded candidates for the Parliament Election as well as in the Assembly By-Election, seeks anticipatory bail.

5. The learned Public Prosecutor appearing for the State, expressing the concern of the State in maintaining the law and order

would submit that pursuant to the hatred speech made by the petitioner, 76 complaints were received so far from the aggrieved persons and it has created a hatred among the people. By referring to the dictum laid down by the Honourable Supreme Court in **Pravasi Bhalai Sangathan vs. Union of India and others [(2014) 11 SCC 477]**, he would submit that it is the duty of the executive to take appropriate action as against the hate speakers and the safety of the State is the supreme. In Paragraph No.27 of the said decision, the Honourable Supreme Court has held as follows:

"27.As referred to herein above, the statutory provisions and particularly the penal law provide sufficient remedy to curb the menace of hate speeches. Thus, person aggrieved must resort to the remedy provided under a particular statute. The root of the problem is not the absence of laws but rather a lack of their effective execution. Therefore, the executive as well as civil society has to perform its role in enforcing the already existing legal regime. Effective regulation of hate speeches at all levels is required as the authors of such speeches can be booked under the existing penal law and all the law enforcing agencies must ensure that the existing law is not rendered a dead letter. Enforcement of the aforesaid provisions is required being in consonance with the proposition *salus reipublicae suprema lex* (safety of the state is the supreme law)."

6. The learned Public Prosecutor would further submit that whoever promotes enmity between different groups on the grounds of religion, race, place of birth, residence, language etc., is liable to be prosecuted under Section 153(A) I.P.C., and whoever deliberately and maliciously intends to outrage religious feeling of any class by insulting its religion or religious beliefs is liable to be prosecuted under Section 295(A) I.P.C., and both offences are cognizable in nature and the complaint discloses the offence under Section 153(A) and 295(A) and therefore, the respondent Police have registered the case as per the dictum laid down by the Honourable Supreme Court, cited supra. However, they have not made any attempt to arrest the petitioner in view of the guidelines of the Honourable Supreme Court in **Arnesh Kumar vs. State of Bihar and another [(2014) 8 SCC 273]** and as per Section 41(A) of the Code of Criminal Procedure. In **Arnesh Kumar's** case, the Honourable Supreme Court has held as follows:

"7.3.In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? it is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine,

before arrest first the Police officers should have a reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause of Section 41 CrPC."

7. Therefore, the learned Public Prosecutor would submit that since there is no apprehension at this moment, this criminal original petition, seeking anticipatory bail is liable to be dismissed.

8. The learned counsel appearing for the *de facto* complainant has vehemently opposed the grant of anticipatory bail on the ground that the petitioner is repeatedly attacking Hindus and purposely has made this statement at Pallapatti, to appease the Muslim voters. He has also produced the details from Wikipedia that 99% of population at Pallapatti are Muslims.

9. Heard the learned counsel on either side and perused the materials filed in support of their contentions.

10. This Court has also viewed the videograph of the speech made by the petitioner at Pallapatti on 12.05.2019. It would be more relevant to extract the contents of the speech hereunder:

"தீவிரவாதம் இரு தரப்பிலும் இருக்கிறது. அது இருக்கக்கூடாது என்றேன். தீவிரவாதம் எங்கிருந்தாலும் தவறு என்று சொல்கிறேன். அது எந்த மதத்தின் பெயரில் இருந்தாலும் தவறு என்று சொல்கிறேன். அதை இங்கு இருக்கிற உண்மையான முஸ்லீம்ஸ் ஒத்துக்கொள்வார்கள். தீவிரவாதம் எங்கள் வழி அல்ல என்பதை அவர்கள் அடித்துச் சொல்வார்கள். அவர்கள் நம்பும் புத்தகத்தின் மேல் சத்தியம் செய்து சொல்வார்கள். எம்மதமும் அதைத்தான் சொல்லும். அப்படி இருக்கும்போது நான் இந்து தீவிரவாதி என்று சொல்லிவிட்டேன் என்று கோவித்துக் கொள்கிறார்கள். நான் இன்று சொல்கிறேன், முஸ்லீம்கள் நிறைய பேர் இருக்கிற இடம் என்பதால் அதை சொல்லவில்லை, காந்தியார் சிலைக்கு முன்னால் இதைச் சொன்னேன். சுதந்திர இந்தியாவின் முதல் தீவிரவாதி ஒரு இந்து. அவர் பெயர் நாதூராம் கோட்சே, அங்கு துவங்குகிறது அது. நான் காந்தியின் மானசீக கொள்ளுப் பேரன், அந்த கொலைக்கு பின்னணி கேட்க வந்திருக்கிறேன் நான் இன்று, அப்படி நினைத்துக் கொள்ளுங்கள். இது சமரச இந்தியாவாக, சமமான இந்தியாவாக, மூவாண் கொடியில் மூவாண்ங்களும் அப்படியே இருக்கும் இந்தியாவாக இருக்கவேண்டும் என்பதுதான் நல்ல இந்தியர்களின் ஆசை. நான் நல்ல இந்தியன் என்று மார்தட்டி சொல்வேன். எங்கள் குடும்பத்திலேயே பிணைந்த இஸ்லாமியர்கள் இருக்கிறார்கள். அவர்கள் மதம் அப்படியே இருக்கிறது. எனக்கு மனிதர்கள் மேல் இருக்கும் நம்பிக்கை அபாரமானது. "

11. The petitioner, before referring to Nathuram Godse, has insisted for communal harmony and reiterated terrorism in general from any religion cannot be accepted. But, the objection of the de facto complainant is the manner in which Nathuram Godse was referred and according to him, there is a vast difference between the phrase, சுதந்தர இந்தியாவின் முதல் தீவிரவாதி ஒரு இந்து. அவர் பெயர் நாதுராம் கோட்சே."

and

"சுதந்தர இந்தியாவின் முதல் தீவிரவாதி நாதுராம் கோட்சே. அவர் ஒரு இந்து தீவிரவாதி"

According to him, the phrase as stated in the FIR is taken in isolation, it would constitute an offence under Sections 153 A and 295 A IPC.

12. In fact, the learned Senior Counsel appearing for the petitioner, during his arguments, has pointed out that the petitioner has referred Nathuram Godse only as an Extremist (தீவிரவாதி) not as a Terrorist (பயங்கரவாதி). He distinguished the difference between a terrorist and an extremist that an extremist is one who is firm on his ideology and it is different from a terrorist. But the Tamil dictionary gives a similar meaning to an 'Extremist' and a 'Terrorist'. One who is firm on his ideology is called as Fundamentalist (அடிப்படைவாதி)

13. Whether it is a fundamentalist, terrorist or an extremist, let them not be defined by their religion race, place of birth, residence and language of a person. A person, becomes a criminal by his behaviour and not by his birth. Identifying a criminal with a religion, caste or race would definitely develop hatred among the people.

14. The great Tamil Saint Thiruvalluvar in his Kural No.712 stated as follows:

இடைதெரிந்து நன்குணர்ந்து சொல்லுக சொல்லின்

நடைதெரிந்த நன்மை யவர்.

The meaning let the good who know the uses of words speak with a clear knowledge after ascertaining the time and the audience.

In another Kural the same is reiterated by Tiruvalluvar as

சொல்லுக சொல்லிற் பயனுடைய சொல்லற்க

சொல்லிற் பயனிலாச் சொல்.

The meaning Speak what is useful and speak not useless words .

15. This Court, in the case of **K.G.Uthayakumar Vs. The State**, has stated as follows:

"20. For proper functioning of democracy, the role of top leaders is very essential and their good guidance should lead to healthy and decent politics. Parliamentary form of democracy like ours depends upon the political parties which get elected to Parliament or legislatures by the people through elections. Therefore, their actions and speeches should be above board and should be hall marks of democracy. The leaders of all political parties have to exhibit restraint, decorum, decency etc. in criticising other parties and leaders and their speeches and actions should be model for others including the cadres. Otherwise, this kind of petition cannot be avoided.

21. One should not forget the fact that many cadres die hard cadres. Unless, the leaders themselves decide to condemn the cadres for hate politics and encourage them to practice healthy politics, the present ugly trend cannot be put an end. The cadres should be taught about values of democracy and not to indulge in filing frivolous cases like the case on hand. Then only the onslaught on the democracy at least could be contained, if not prevented."

16. Even after the objections, the petitioner sticks on to his stand that what he has stated is a historical event. Even if it is a historical event, if it is not made in a proper context, then it is an offence. The Honourable Supreme Court in **Babu Rao Patel vs. State of Delhi [1980 SCC (2) 402]** has held as follows:

"Whether communalism is the weapon of an aggressive and militant minority as suggested by the accused or the "shield of a nervous and fearful minority", the problem of communalism is not solved by castigating the members of the minority community as intolerant and blood thirsty and a community with a tradition of rape, loot, violence and murder. Whether the Moghuls were rapists and murderers or not and whether the Delhi roads should be named after them or not it was wrong to present the Moghuls as the ancestors of today's Muslims and to villify the Muslims as the proud descendants of the "foul" Moghuls. We are convinced that both the articles do promote feelings of enmity, hatred and ill-will between the Hindu and Muslim communities on grounds of community and this cannot be done in the guise of political thesis or historical truth."

17. Recently, hate speech becomes a common affair. Even before this Court yet another application was filed for seeking Anticipatory Bail by a woman for having compared Lord Palani Murugan to a rapist. Few months back, there was a controversy as against a leader that he defined Lord Krishna as the first rapist. Yet another Leader instigated his followers to destroy the statue of Thanthai

Periyar. The Media is also giving more importance to these types of hate speeches and debates are made hours together. The learned senior counsel for the petitioner would submit that the petitioner made his statement for once, but the media is repeating it again and again and if the petitioner is liable to be prosecuted, equally the Media. Even in this public meeting held at Pallapatti, the petitioner made certain constructive suggestions to stop the sand mining and to promote certain native based industries. There is no discussion at all, whether it is feasible or not. The petitioner made his statement on 12.05.2019 but the discussions are not yet over.

18. A small spark can light a lamp as well as can destroy a forest. What is required for the audience, in the election meeting, is a constructive solution for uplifting the common man. Our country has already witnessed several incidents pursuant to public speech. Innocent people have suffered enough. As pointed out by the Honourable Supreme Court, safety of the State is the supreme law (*salus reipublicae suprema lex*). It is the duty of the State, not only to take stringent action, but also to prevent the same. The Honourable Supreme Court in the **State of Karnataka and another vs. Dr.Praveen Bhai Thogdia [(2004) 4 SCC 684]** has held as follows:

"It is, therefore, imperative that if any individual or group of persons, by their action or caustic and inflammatory speech are bent upon sowing seed of mutual hatred, and their proposed activities are likely to create disharmony and disturb equilibrium, sacrificing public peace and tranquility, strong action, and more so preventive actions are essentially and vitally needed to be taken. Any speech or action which would result in ostracization of communal harmony would destroy all those high values which the Constitution aims at. Welfare of the people is the ultimate goal of all laws, and State action and above all the Constitution. They have one common object, that is to promote well being and larger interest of the society as a whole and not of any individual or particular groups carrying any brand names. It is inconceivable that there can be social well being without communal harmony, love for each other and hatred for none.

19. In fine, considering the facts and circumstances of the case, viewing of the speech as a whole and considering the fact that the petitioner is a leader of a registered political party and the election process is still pending, this Court is inclined to grant anticipatory bail to the petitioner.

20. Accordingly, the petitioner is ordered to be released on bail in the event of his arrest or on his appearance, within a period of fifteen days from today, before the learned Judicial Magistrate No.II, Aravakuruchi, on condition that the petitioner shall execute a separate bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the

satisfaction of the respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that the petitioner shall comply with the conditions as stipulated under Section 438 CrPC.

sd/-
20/05/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE JUDICIAL MAGISTRATE NO.II,
ARAVAKURUCHI, KARUR DISTRICT
2. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KARUR DISTRICT.
3. THE INSPECTOR OF POLICE
ARAVAKURICHI POLICE STATION, ARAVAKURICHI,
KARUR DISTRICT,
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

- +1. CC to M/S.K.GURUVIAH, Advocate SR.No.8673
+1. CC to M/S.M.KARUNANITHI, Advocate SR.No.8677

ORDER
IN

CRL OP(MD) No.7257 of 2019
Date :20/05/2019

DSK/KRK

PK/PN/SAR-3/20.05.2019 : 8P/7C

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