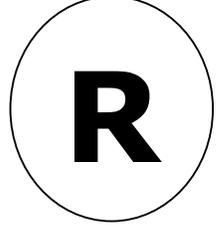


IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF OCTOBER, 2019

BEFORE

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR



CRIMINAL PETITION No.4306 OF 2019

BETWEEN:

SRI. JAIKANTH S
S/O SEKAR K
AGED ABOUT 30 YEARS
R/AT NO.576, 8TH CROSS
SIR MV NAGAR
KALKERE MAIN ROAD
RAMMURTHY NAGAR
BENGALURU-560 016

... PETITIONER

(BY SHRI. ARUNA SHYAM M, ADVOCATE)

AND :

THE STATE OF KARNATAKA
THROUGH SRIRAMPUR P.S
REP. BY PUBLIC PROSECUTOR OF STATE
HIGH COURT BUILDING
BENGALURU-560 001

... RESPONDENT

(BY SHRI. UDAYA HOLLA, ADVOCATE GENERAL A/W
SMT. B.G. NAMITHA MAHESH, HCGP)

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR AND COMPLAINT IN CR.NO.99/2019 ON THE FILE OF RESPONDENT POLICE FOR THE ALLEGED OFFENCES P/U/S 153A, 295A, 504, 298 AND 354-D OF IPC.

THIS CRIMINAL PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11.07.2019, COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THIS COURT PRONOUNCED THE FOLLOWING:-

ORDER

This is yet another classic case of abuse of authority and power.

2. Petitioner, Jaykanth S. has presented this Criminal petition filed under Section 482 of Code of Criminal Procedure, 1973 with a prayer to quash FIR No.99/2019 registered in Sriramapura Police Station, Bangalore City and all further proceedings thereon.

3. Briefly stated the facts of the case are, on 26.05.2019 one Pradeep Kumar S.P., General Secretary of State JDS Legal Cell lodged a complaint alleging that Jayakanth had uploaded defamatory posts about former Prime Minister Shri.H.D.Devegowda, Chief Minister Shri. H.D.Kumaraswamy and Shri.Nikhil Kumaraswamy in 'facebook' and 'instagram' pages captioned as 'Troll Maga'. Accordingly, FIR No.91/2019

was registered on 26.05.2019 at 21.15 hours in Srirampura Police Station.

4. Jayakanth approached the City Civil Court, Bengaluru seeking anticipatory bail. By order dated 10th June 2019 the learned LXXXI Additional City Civil and Sessions Judge, Bengaluru granted anticipatory bail in Criminal Miscellaneous No.4823/2019 with a direction to surrender before the Police within one week therefrom.

5. It is averred that Jayakanth went to the Police Station on 17th June 2019 along with his Advocate and a surety. He was asked to come on the following day to comply with the bail order. Police refused to even acknowledge his visit to the Police Station on that day. Petitioner went to the Police Station on next day with his Advocate and surety. Police not only refused to accept the surety, but on the other hand, issued a notice to the petitioner stating that he had violated bail condition.

Petitioner again approached the learned Sessions Judge in Crl. Misc. No.5472/2019 seeking modification of the earlier order by filing an affidavit containing details of his visit to the Police Station. The learned Sessions Judge summoned the Investigating Officer to the Court. The Investigating Officer filed a Memo on 24th June 2019 stating that though petitioner visited the Police Station on 17th June 2019, he had not brought the surety; that he was on special duty and instructed the petitioner to comply with the Court order, but the petitioner did not comply. On the following day i.e., 18th June 2019, petitioner appeared before him and he had issued a notice to the petitioner informing violation of bail condition. It is also stated in the Memo that the Investigating Officer had no intention to disrespect the orders of the Court.

6. It is further averred in the petition that Police again picked up petitioner from his residence in

connection with second FIR bearing No.99/2019 registered on 23rd June 2019. Feeling aggrieved, petitioner has presented this petition.

7. Shri.Aruna Shyam, learned Advocate for petitioner urged following grounds in support of this petition:

- that the petitioner has not committed any offence;
- that FIRs have been registered at the behest of ruling party workers;
- that police have acted in high-handed manner and taken the petitioner into custody by registering second FIR to defeat the bail order granted by the learned Sessions Judge;
- that the petitioner is an Engineer by profession and hails from a respectable family; and
- that police have not followed the directions contained in ***Arneshkumar Vs. State of Bihar and another¹***.

8. With above submissions, Shri. Aruna Shyam prayed for quashing the FIR.

¹ (2014)8 SCC 273

9. On 24th June 2019, Shri. Aruna Shyam moved the matter along with an application seeking stay of further proceedings. In view of the urgency pleaded by the learned Advocate, the case was taken up on the same day. The learned State Public Prosecutor(SPP) appeared and submitted that petitioner was produced before the learned Magistrate in a different case. The petitioner had not annexed the certified copy of the FIR and sought dispensation of production of copies of the complaint and FIR No.99/2019. Hence, the details of the case in which petitioner was arrested and produced before the Magistrate were not available for perusal of this Court. As requested by learned SPP the case was adjourned to next day.

10. On 25th June 2019, learned Advocate for petitioner produced the copies of the complaint and FIR No.99/2019. It was submitted by the learned SPP that the learned Magistrate had remanded petitioner to police

custody on the previous day in the said case. Again time was sought to produce records and to argue the case. Accordingly, the case was adjourned by one more day.

11. On 26th June 2019, Shri.Udaya Holla, the learned Advocate General appeared for the State and submitted that petitioner was arrested in Crime No.99/2019 which was distinct from Crime No.91/2019. However, having taken note of the gravity of situation, he fairly submitted that pending consideration of this petition, petitioner shall be released forthwith. Accordingly an order was recorded and petitioner was released.

12. During the course of final hearing on 11th July 2019, Shri. Udaya Holla urged following grounds in support of petitioner's detention:

- that petitioner was arrested in a separate case namely Crime No.99/2019 which is registered for distinct offences; and

- that petitioner has violated the bail condition imposed by the learned Sessions Judge not to indulge in similar activities. Amplifying this contention, he submitted that having obtained bail on 10th June 2019, petitioner has again posted defamatory posts on 13th June 2019 in violation of bail conditions. The first FIR bearing No.91/2019 was registered for offences punishable under Sections 504, 507 and 153A of IPC, whereas the second FIR bearing No.99/2019 has been registered for offences punishable under Sections 153A, 295A, 504, 506, 354(D) and 298 of IPC. Thus, the second FIR is based on different offences. With these submissions he sought to justify petitioner's arrest.

13. In reply Shri.Aruna Shyam contended that the second complaint on 23rd June 2019 has been given by one B.Raviraj of JDS, IT Cell. Both FIR No.91/2019 and

FIR No.99/2019 are with regard to posts in 'facebook' and 'instagram' pages called 'Troll Maga'.

14. In substance, it was urged by Shri.Aruna Shyam that second complaint has been filed to defeat the benefit of bail granted by the learned Sessions Judge.

15. I have carefully considered rival contentions and perused the records.

16. Complaint dated 26th May 2019 was filed by General Secretary of State JDS Legal Cell. It is stated in the complaint that a page called 'Troll Maga' containing defamatory posts had become viral in social media.

17. Complaint dated 23rd June 2019 was filed by the IT Cell of JDS party. It is stated in the complaint that petitioner had opened a page called 'Troll maga' in facebook. The posts in the said page had caused enmity and conflict between political parties.

18. Learned Sessions Judge granted bail on 10th June 2019. It was urged by Shri. Aruna Shyam that petitioner went to the Police Station on 17th June 2019, but he was asked to again come on the following day. It is petitioner's case that police deliberately did not permit the petitioner to execute the bond. It is not in dispute that petitioner approached the learned Session Judge with a second petition seeking modification of the order passed on the first petition. The investigating officer was summoned by the learned Sessions Judge and he has filed a Memo. The contents of the Memo filed by the Investigating Officer are relevant. The Memo is extracted 'as it is' and it reads as follows:

"MEMO

Herewith I humble submission to Hon'ble Court on issue of compliance of anticipatory bail order criminal miscellaneous No.4823/19 issued a bail on 10 of June 2019. The subject comply a bail, complainant entered police station on 17th June at the time of comply from the complainant at 19:30 p.m. without surety. I was on special duty outside at J.P. Bhavan. I received message through phone from A.S.I. Sri Somanna after that I

suggested to complaint fulfil the court orders and go, but he went for Xerox and he did not came to police station.

This is the fact of reality in this case. It's my knowledge and declaration to the respected honourable court.

Next day i.e., on 18/06/19 the petitioner appeared before me along with Hon'ble court orders and a representation which I acknowledged duly and issued a notice to surrender his mobile phone which is necessary for investigation. He insisted me to do the arrest formality which I didn't do as I thought was not necessary as I was in the process of collecting more evidence from face book legal department.

The petitioner made allegation against me are false. I have no intension to disrespect the orders of honourable court.

Hence I promise to honourable court and as the same respect to court and their orders." (Sic.)

*24/6/19
Bangalore*

*Deponent
(Sd/-)
(Ravi Patil)*

19. Though the Memo is not happily worded, suffice to note that the Investigating Officer has admitted in the

Memo that petitioner had gone to the Police Station on 17th June 2019. Admittedly, the Memo is dated 24th June 2019. The second FIR has been registered at 4.30 p.m. on 23rd June 2019. It is significant to note that the Investigating Officer has not brought to the notice of learned Sessions Judge about registration of second FIR on the previous day and suppressed a vital material fact.

20. In substance, the allegations in both complaints are more or less identical. They pertain to posting defamatory posts in the social media. The first complaint is by the General Secretary of a Political party and the second complaint is by the IT Cell of the same political party.

21. Admittedly, the learned Sessions Judge granted anticipatory bail in FIR No.91/2019. Though a feeble attempt was made by the learned Advocate General to defend the arrest, the conspectus of facts leading to registration of second FIR, the contents of the Memo filed

by the Investigating Officer suppressing a vital material fact about registration of second FIR on the previous day and petitioner's arrest during the course of investigation of second FIR, lead to an irresistible inference that a deliberate attempt was made by the police to ensure that petitioner was 'somehow' detained.

22. Liberty of citizen in a civilized society is sacrosanct. Nearly 70 years back Rt. Hon. Lord Justice Denning recalled the long tradition followed by King's Judges to put all matters aside and to hear an application which concerns liberty of a citizen forthwith. It is apt to recount following sentences of his speech in London University in November 1949:

"Let me start with an instance of how the courts approach the subject. Whenever one of the King's judges takes his seat, there is one application which by long tradition has priority over all others. Counsel has but to say 'My Lord, I have an application which concerns the liberty of the subject' and forthwith the judge will put all other matters aside and hear it. It may be an application for a writ of habeas corpus, or an

application for bail, but, whatever form it takes, it is heard first. This is of course only a matter of Freedom under the Law procedure, but the English law respecting the freedom of the individual has been built up from the procedure of the courts : and this simple instance of priority in point of time contains within it the fundamental principle that, where there is any conflict between the freedom of the individual and any other rights or interests, then no matter how great or powerful those others may be, the freedom of the humblest citizen shall prevail over it. These are fine sentiments which you will find expressed in the laws of other countries too ; but rights are no good unless you can enforce them ; and it is in their enforcement that English law has shown its peculiar genius. The task is one of getting the right balance. The freedom of the individual, which is so dear to us, has to be balanced with his duty; for, to be sure every one owes a duty to the society of which he forms part."

(Emphasis Supplied)

23. After quoting a passage from Police Powers and Accountability by John M.Lambert on Royal Commission on Criminal Procedure and the suggestions of Third Report of National Police Commission, the Hon'ble

Supreme Court of India in **Joginder Kumar Vs. State of**

U.P. and others² has held as follows:

"20.No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do."

24. Thus it is clear that FIR No.99/2019 has been registered only to ensure that petitioner was some how

² (1994) 4 SCC 260

arrested and detained in custody. Therefore, it is just and appropriate to quash the said FIR.

25. This is a case of blatant violation of fundamental right by the Police. Having come to such conclusion, mere quashing the FIR shall not mitigate the agony which the petitioner was compelled to undergo. In ***D.K.Basu Vs. State of West Bengal***³ it is held that a Court of Law cannot close its consciousness and aliveness to stark realities by recording thus:

"45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim — civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family."

³ (1997)1 SCC 416

26. There is yet another important aspect which requires consideration namely, the order passed by the learned Magistrate granting police custody. To a specific query made by this Court during the course of hearing to the learned advocate for petitioner, whether registration of FIR No.91/2019 and the grant of anticipatory bail by the learned Sessions Judge was brought to the notice of learned Magistrate, it was asserted by Shri.Aruna Shyam, that the same was brought to the notice of learned Magistrate. This submission was not disputed by the prosecution. In *Arnesh Kumar's case*, Hon'ble Supreme Court of India has issued directions to ensure that the Police Officers do not arrest the accused unnecessarily and Magistrates do not authorize detention casually and mechanically. The said directions read as follows:

"11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorize detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the

parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clause under section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court."

(Emphasis Supplied)

27. It was incumbent upon the learned Magistrate to carefully scrutinize the papers and bestow his attention to the submissions of the learned Advocate for

the petitioner before granting police custody. A special care was required in the instant case because petitioner was granted anticipatory bail by the learned Sessions Judge, who is superior to him in hierarchy. It is unfortunate that despite binding directions by the Apex Court in various judgments including *Arnesh Kumar*, the learned Magistrate has granted police custody. By this act of the learned Magistrate, petitioner remained in police custody in spite of an anticipatory bail order in his favour. This is a serious matter and requires correction. Further, the directions contained in paragraph No.11.8 of *Arnesh Kumar* require initiation of departmental enquiry.

28. In the light of the above discussion, the following:

Order

- (a) Petition is **allowed**.
- (b) FIR No.99/2019 registered in Srirampura Police Station and all further proceedings thereon are quashed.

- (c) State shall pay cost of Rs.1,00,000/- (Rupees One Lakh) to the petitioner within one month from today.
- (d) The Director General & IG shall initiate departmental enquiry into the matter and submit the report to the Registrar General within three months from today.
- (e) State shall recover the cost from the salary of officers found guilty in the Departmental Enquiry.
- (f) State shall file separate compliance reports of directions in paragraphs (c) and (e) of the order.
- (g) The Registrar General shall place compliance report of direction in paragraphs (c) and (e) before the Court.
- (h) The Registrar General shall take necessary action for initiation of Departmental Enquiry against the Magistrate as per directions in

para 11.8 of *Arneshkumar Vs. State of Bihar and another* (supra).

29. Before parting with the case, this Court places its appreciation on record the valuable assistance and the statesmanly stand taken by Shri. Udaya Holla, the learned Advocate General during the hearing on 26th June 2019 offering to release the petitioner forthwith.

30. In view of disposal of this petition, I.A. No.4/2019 does not survive for consideration and the same is disposed of.

Sd/-
JUDGE

SPS