

**Court No. - 30**

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**Case :-** BAIL No. - 11561 of 2021

**Applicant :-** Mohd. Afaaq Kuraisi

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Vijay Pathak, Rakesh Pathak

**Counsel for Opposite Party :-** G.A.

**Hon'ble Mohd. Faiz Alam Khan, J.**

Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

It has been informed by learned A.G.A. that he has procured complete instructions in the matter.

This bail application has been moved on behalf of the applicant/**Mohd. Afaaq Kuraisi** for grant of bail, in Case Crime No.105 of 2021, under Sections 295-A, 505(2) I.P.C. & Sec. 66 of Information and Technology (Amendment Act), 2008, Police Station-Aminabad, District-Lucknow, during pendency of trial.

Learned counsel for accused-applicant while pressing the bail application submits that the accused-applicant has been falsely implicated in the instant case and he has not committed any offence as claimed by the prosecution and it appears that the mobile phone of the applicant, who is aged about 60 years, has been misused by some miscreants in order to get him implicated falsely.

It is further submitted that had the applicant intentionally committed such an illegal act, there was no logic for him to post the objectionable photograph in the Whatsapp Group which was created by none other than the Station House Officer of the concerned local police station and it has been categorically stated by the applicant that he is a law abiding citizen and he is himself ashamed by the illegal act which has been performed by using his mobile phone by some person having enmity with him. It is further submitted that applicant from the core of his heart respects all Constitutional Authorities of this nation including the Hon'ble Prime Minister and therefore, he could not even imagine to have made any objectionable post or photograph and rather it was impossible for him to have morphed any photograph having regard to his qualification and thus, the applicant is a victim of circumstances however, he has also apologized for the illegal act being committed by his mobile phone.

It is further submitted that the applicant is in jail in this matter since 18.09.2021 and he undertakes to cooperate in the investigation and will remain present before the Investigating Officer as and when required for the purpose of fair investigation and also before the trial Court for early disposal of the case. There is no apprehension that, if the facility of bail is granted to the applicant, he may flee from the course of law or or may otherwise misuse the liberty and he is not having any criminal antecedent.

Learned counsel representing the State vehemently opposed the prayer for bail on the ground that the applicant has insulted the Hon'ble Prime Minister of this country by making an objectionable photograph of him and having regard the gravity of the matter, he is not entitled to be released on bail. However, he could not confront the fact that applicant has not any criminal antecedent.

Having heard learned counsel for the parties and having perused the record, at the outset, it is to be known to one and all that the Prime Minister of this country or any Constitutional dignitary could not be confined to a particular class or religion as he is representing each and every citizen of this country and it is the bounden duty of every citizen of this country to respect all the Constitutional dignitaries including the Hon'ble President and Prime Minister of this great nation. There cannot not be any doubt that the digital revolution had also brought with it technology which is used for useful purpose as well as misused by the miscreants. The applicant in its application for bail has categorically stated that **he is ashamed of the illegal act** because the objectionable photograph has been posted from his mobile phone by some miscreant and he was not at all instrumental in either preparing the photograph or in circulating the same in any Whatsapp Group which has been created by none other than the Station House Officer of the concerned local police station and it itself shows that the mobile phone of the applicant has been misused by some other person. It has also vehemently submitted that even if the case of the prosecution is taken on its face under Section 295-A, 505(2) I.P.C. could not be invoked. Learned counsel for the applicant has categorically submitted that applicant has tendered unconditional apology.

The applicant is in jail since 18.09.2021 and he is not having any criminal history and it has been submitted with force that applicant shall abide by any direction which may be imposed by this Court as well as by the subordinate Court and he will cooperate in the investigation and trial.

Having regard to the overall facts and circumstances of the case and keeping in view the unconditional apology tendered by applicant, I find substance in the submissions made by learned counsel for the applicant for the purpose of releasing the applicant on bail. The bail application of applicant is, thus, allowed.

Let the applicant/**Mohd. Afaaq Kuraisi** involved in the aforesaid case be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, 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.

(iv) The applicant shall file an undertaking before the trial Court that he, in future, shall not post any illegal content or photograph by any of the medium of social media, including Whats app.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

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

**Order Date :-** 25.10.2021

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