

State Vs. Rambhagat Gopal Sharma.
FIR No. 265 dated 11.07.2021
Under Sections 153A & 295A of IPC
PS Pataudi, Gurugram

Present: Sh. S.P. Gothwal, APP for the State, assisted by IO SI Ramniwas-195/GGN, PS Pataudi.
Sh. Avinash Mishra, Sh. Kulbhushan Bhardwaj and Sh. Lokesh Vashisht,
Advocates for accused/applicant Rambhagat Gopal Sharma.

Reply to bail application alongwith Pen drive filed by State. Arguments on bail application heard.

2. Learned counsels for the applicant submitted in the bail application that the applicant is innocent and have been falsely implicated in the present case. The case is false and concocted and applicant has not committed any offence. He has no connection whatsoever with the alleged offence and has been falsely roped in this case. It was further submitted in the bail application that whole story of the prosecution is cooked up and false one and there is no truth in the FIR and the video recording is false and fabricated one and the applicant-accused has no concern with the video. It was further submitted in it that the trial will take long time to conclude and also that the accused is of young age and custody of applicant is not required.

Thereafter, one of the Ld counsel for the accused namely Sh, Kulbhushan Bhardwaj initiated the arguments on behalf of the accused. First, he argued that his client has been made scapegoat in this case. He stated at the bar that he also attended that Mahapanchayat where this video clip has been recorded. He was present there from the very beginning. He asked the court to seek answer from the police present whether any permission was given for the organization of this Mahapanchayat and thereafter he himself answered his question in negative. He argued that it was not his client/ accused who organised this event rather it was organised by some other persons. He further stated that even before his client/accused spoke, there were several other orators who used very offensive languages and hate speech but only his client/applicant has been made accused and was got arrested as he is outsider and has no political connection in

the state. He continued to argue that there were other orators who are powerful persons and they gave inflammatory speeches but no action has been taken against them. He argued that this shows bias attitude of Haryana Police against his client/applicant. He argued that the police has given only a video clip whereas he has the whole recording in his mobile and submitted that he will give the whole recording before the court to show the bias attitude of Haryana Police towards the present accused only. He sought some time to give the whole recording in the shape of pendrive. He further argued that due to early inflammatory speeches of other persons and charged atmosphere, the accused got carried away and that keeping in view of his young age and innocent mind, he be released on bail. He also argued that as per the authority of Hon'ble Supreme court in the case of *Arnesh Kumar vs State of Bihar & Anr, Criminal appeal no1277 of 2014*, the police has got no right to arrest the accused and was bound to release him on bail as the offences mentioned in the FIR are punishable for less than 7 years of imprisonment. However, later on he came again and denied to provide any such Video-Graphy in the shape of pendrive.

Thereafter, another Ld. Counsel Sh. Avinash Mishra started his arguments for the accused and submitted that as per the settled laws decided by the Hon'ble Supreme Court regarding bail matters, accused has to be treated innocent till he is convicted. He argued that personal liberty of the accused has to be given importance as enshrined in Article 21 of the Constitution Of India. He argued that bail is the rule and jail is exception. He further submitted that offences under section 153A and 295 A of IPC are punishable with imprisonment of 3 years maximum and as per the authority of *Arnesh Kumar (supra)* he should be granted bail . He further contended that the accused is permanent resident of Jewar, district Gautam Buddh Nagar, U.P and his parents have land and property there and therefore he has no chance to flee from the trial. He also argued that there are no chance for the accused to temper with the evidence. He also submitted that the video recording may be creation of editing and fake and its a matter of

trial. Lastly he argued that his client/ accused is ready to abide by all the conditions put by the court and furnish security to the satisfaction of the court. He relied upon the judgements titles as *Sidharth Vashisth @ Manu Sharma vs State of Delhi 2003 VIIIAD Delhi 176*, *State of Rajasthan, Jaipur vs Balchand@ Baliay 1977 AIR 2447*.

Thereafter, finally another Id. Counsel Sh. Lokesh Vashistha submitted that accused is of young age and keeping in view of the same application of bail be allowed.

3. On the other hand, learned APP for the State assisted by I.O, submitted that the accused has been booked under serious offences u/s 153-A,295-A IPC. He voluntarily participated in that event and gave hate speeches targeting a particular religious community and used inflammatory language to instigate the mob to abduct girls of particular religious community and to kill persons of that community. He further argued that the video clip shown in the court (as mentioned in the FIR) is original and accused can be seen clearly instigating the mob in the name of religion to do illegal acts. He also raised slogans against the particular religious Community. He also tried to disturb the harmony of the different communities, living peacefully. His object was very clear to spread hatred between two religious community. He wanted to insult the religion of one particular class. He tried to promote enmity between the two groups on the ground of religion and doing acts prejudicial to maintenance of harmony between different religious group. It was further submitted that the accused can be clearly located in the videography available with the police. Learned APP for the State further submitted that due to these acts of the accused and others, a situation of law and order has been arisen and if his bail application is allowed, the same can be disturbed. It was further argued that these types of act are condemnable in any civilized society and such types of act cannot be allowed to be done without fear of any Law and Constitution to promote deliberately enmity between two religious groups. It was submitted that he can be seen in the videography, inciting the crowd and the feelings of religious discrimination in the crowd. It was further submitted that these activities were

deliberately done to disturb the harmony of different groups of society and for political advantage in the name of religion or caste, which cannot be allowed in any civilized society as the same can cause law and order problem and communal violence. He further submitted that the accused can interfere in free and fair investigation and can threaten and make pressure upon the complainant and other witnesses and also that he can flee from the trial if he is allowed bail. It was also contended by the Ld APP for the state that the antecedent of the accused show that he is a habitual offender as there has been one FIR no 25 under sections 307, 336 IPC and 25,27 Arms Act dated 30/01/2020, P.S. New Friends Colony Delhi. He stated that seeing his antecedents coupled with present heinous crime, this application be dismissed.

When the IO of the case was questioned regarding the alleged video recording as suggested by the ld. counsel Sh. Kulbhushan Bhardwaj during his arguments then IO of the case present in the court submitted that the police received complaint only against the present accused and later if the link evidences found during the investigation then other persons, if any, would also be arrested as per law.

4. I have heard the arguments on behalf of both the parties and perused the case file and video recordings submitted by the I.O, SI Ram Niwas of the incident along with reply to bail application.

Liberty of a citizen is undoubtedly important but this is to be balanced with the security of the community as held by the Hon'ble Apex Court in the case titled as *Lt. Col. Prasad Shrikant Purohit v. State of Maharashtra, (SC) : 2017 (4) R.C.R (Criminal) 851* regarding the principles of Bail of accused that **Liberty of a citizen is undoubtedly important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigational rights of the agency.** It must result in minimum interference with the personal liberty of the accused and the right of the agency to investigate the case. The law in regard to grant or refusal of bail is very well settled. The court granting

bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima-facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider, among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- (c) Prima-facie satisfaction of the court in support of the charge.

In another famous case titles as **Siddharam Satingappa Mhetre v. State of Maharashtra (SC) : 2011 (1) SCC 694 Hon'ble Supreme Court** said that *Just as the Liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. Both are equally important.* While elaborating the value of one; liberty, it was also held that at the same time "liberty" without restraints would mean liberty won by one and lost by another. So "liberty" means doing of anything one desires but subject to the desire of others.

Again in the case of **Mansab Ali vs Irsan AIR 2003 SC 707 , hon'ble Supreme court** emphasized the need of *balancing the right of liberty of an individual and the interest of society in general* at the time of deciding the bail application of an accused in case of a nonailable offence.

5. Now lets discuss the factual matrix of the case presented before this court for deciding the bail application of the accused in the light of above-mentioned guidelines of the Hon'ble Apex Court of India.

The Video recording presented by the IO of the case was seen in the open Court. The I.O SI Ram Niwas indicated and located the accused person in the video recordings and upon asking, Learned counsels for the accused admitted he is the accused who has filed the present bail application. The Ld. Counsels for the accused, at the time of argument and in the bail application, vehemently argued that the applicant has no concern with the alleged incident and he was falsely implicated in the case. However, he himself has admitted that the person who is giving inflammatory speech in the Video recording at the time of occurrence is the present accused namely Rambhakt Gopal Sharma. Therefore, it is clear that the defence tried to mislead the Court in this regard. After going through the contents of the FIR and the video recording available, it is clear that a gathering was present where the accused gave hate speeches and used inflammatory language. raised slogans in the name of religion to kill persons of particular religious community.

6. The arguments of one of the Ld. Counsel for the accused that the video clip may be edited does not hold any force at this stage particularly when his own fellow Ld. counsel has admitted during the course of arguments that he was present in the event from beginning and asserted that before the speech of the accused there were other orators also who used such inflammatory speeches. So, at this stage of bail application prime-facie reliability of the video clip produced before the court cannot be questioned. The Conscience of the Court is utterly shocked while seeing the actual incidents which took place at that time, in video recording. It seems that now a normal parent would tell stories to their children that there used to be a time when talks of hatred or the religious intolerance in our society used to be seen as a sign of diminishing social values. The video produced by the police in this case is raising very vital question “ Do our society need to tackle the in-discriminative force of pandemic of Covid-19 first or these kind of persons, who are filled with so hatred that if given chance they would organize a mass murderer mob to kill innocents lives based on their own religious hatred”. The accused

before the court is not a simple innocent young boy knowing nothing rather he is showing that what he has done in past, has now become capable to execute his hatred without any fear and also that he can move the mass to involve in his hatred. As per the information given by the IO and admitted by the Ld counsels of the accused this is the same person whom this nation has witnessed brandishing illegal weapon and opening fire towards the students of one Central university of Delhi. A FIR bearing no. 25 dated 30/01/2020 under sections 307, 336 IPC and 25,27 of Arms Act, P.S New Friends Colony Delhi has been registered against him. As per the ld. Counsels for the accused, he was allegedly minor at that time. The concession given by the courts of law due to his minority has not been taken in good sense by this accused. Rather it seems that he has taken the concession in wrong perspective that he can do anything even to destroy the very fundamental feature of the constitution which we called “secularism” by his hate speech and also that there is no force to stop him as if he is protected by some indefeasible forces and the Rule of Law does not exist in our country. He has posed a real threat by his act that he will do whatever he wishes, what will the forces responsible for maintaining law, order and peace would do? He also posed a question to the state and to the courts of law whether it has power to uphold the Rule of Law?

7. Given and posed by these disturbing questions, this court of law has to act within its jurisdictions as per the established law and to ensure to the citizens of this country that only Rule of Law will prevail in our country and not arbitrariness.

Needless to say that Freedom of speech has to be an integral part of any democratic country as in ours. However, this freedom has its own limitations and reasonable restrictions. None can be allowed to ignite fire to religious riots only because he has freedom of speech and he can blow hatred towards a particular group or religious community. Our constitution makers were well aware of this fact that if the right of freedom of speech is allowed unfettered then it may disturb the social structure of the nation. Therefore there had been some limitations from the very beginning of the

working of the constitution and later on with the passage of time and keeping in view the law and public order more limitations were added. If this right is allowed to be used to spread hatred amongst the people based on religion, caste etc then the very basic nature of the constitution and Indian Society i.e Secular spirit will be shattered and the country will lose its true spirit and soul.

8. Every citizen has a right to express his thoughts but not in this manner to target a particular community and promoting enmity. Accused Gopal Sharma while addressing the mob can be seen instigating the mob for doing unlawful acts. He can be seen instigating abduction of girls of a particular community and their forceful conversion. He seems to be very proud of his antecedents. He even instigated to kill persons of a particular community and chanted slogans in this regard. Slogans and languages used by him, are clearly offensive and aimed to outrage the religious feelings of one particular group and promoting enmity between different groups/ religious community. From the whole incident, it is clear that he was just promoting enmity, disharmony, hatred and ill-will between different groups on the ground of religion. His acts are pre-judicial to the maintenance of harmony between different religious communities and to disturb the public tranquility. Such activities cannot be tolerated in any civilized society. Hate speech based on religion or caste has become fashion nowadays. The police also seems to be helpless of dealing with such incidents. These kinds of activities are actually disturbing the secular fabric of our Country and killing the spirit of the Constitution of India. It creates tensions and sense of insecurity in the minds of common public which is not a good sign for healthy Democratic Society. Peace is the essence and sine qua non for development and civilized society. Peace has been and is the aim of our constitution and penal laws. Anyone who is threat to the peace of the society and particularly to the religious harmony, cannot be allowed to roam freely.

9. The Constitution of India is based upon the Secular Character of a State and provides that it is the fundamental duty of every citizen to respect the religious faith

of other community and to promote harmony and spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to develop scientific temper and humanism and to abjure violence. Such kind of people are actually disturbing the Secular Character of our Nation and are the biggest impediment in the Nation Building nowadays. These kinds of incidents have become very common now-a-days and the common man is under constant threat of violence in the name of religion, caste etc. This incident cannot be seen only with respect of a young man's religious intolerance rather it is far more serious and having dangerous hidden consequences. If such kind of persons are allowed to move freely and to indulge in such kind of activities, the very existence of communal harmony may be disturbed and that will give a wrong message that this type of acts are acceptable in the society. The faith of common man has to be restored that the State is having the Secular character and not in support of such kind of persons, promoting hatred and enmity in the name of religion, caste etc. It is the time to give a strong message to such anti-social elements who distribute hatred based on religion etc by way of Hate speech that the Rule of Law still prevails.

Hon'ble Supreme Court of India in *Pravasi Bhalai Sangathan v. Union of India* (SC) :2014 (11) SCC 477 has held that "Hate speech" is an effort to marginalise individuals based on their membership in a group. Using expression that exposes the group to hatred, hate speech seeks to delegitimise group members in the eyes of the majority, reducing their social standing and acceptance within society. Hate speech, therefore, rises beyond causing distress to individual group members. It can have a societal impact. Hate speech lays the groundwork for later, broad attacks on vulnerable that can range from discrimination, to ostracism, segregation, deportation, violence and, in the most extreme cases, to genocide. Hate speech also impacts a protected group's ability to respond to the substantive ideas under debate, thereby placing a serious barrier to their full participation in our democracy.

10. Enlarging the accused on bail despite his heinous crime which amounts to divide of the peaceful society on the basis of religion or caste would give wrong message to the divisive forces. However, restraining the accused behind the bars will send strong message against the divisive forces by saying that India is an inclusive society where people of all faiths flourish with mutual respect and the Courts of Law will ensure that the Rule of law reigns supreme. Our Constitution even gives protection to non citizens of India then its the duty of the state as well as the Judiciary to ensure that Citizens of India of any religion or faith or caste should not feel unprotected and that such hate mongers cannot walk freely without any fear.

11. The act of the accused i.e. hate speech qua instigating abduction and killing of girls and persons of a particular religious community is itself a form of violence and such people and their inflammatory speeches are obstacle to the growth of a true democratic spirit. It leads to destruction of our society as people will fight based on religion. Religious tolerance is the need of the time and not the Intolerance. It is necessary for individual within the society to get along, especially when a variety of cultures and the people with different religious beliefs live in one community or nation. When our country which is facing the second deadly wave of Covid Pandemic and a large population are hardly meeting with two times bread , such kind of people who are trying to create disharmony and imparting hatred amongst the common people are actually harming this country more than the pandemic as the pandemic will take life of any person without seeing the religion or caste and only upon the negligence but if any communal violence takes place following such hate speeches then lots of innocent lives will be lost only on the basis of religion and without any negligence on the part of such innocent people.

12. Hence, the alleged offenses committed by the accused person are very serious and severe in nature. The consequences of these kinds of activities may be far more dangerous and it may translate into communal violence. Therefore, this Court do

not find any reasons to enlarge the accused person on bail as there is every possibility that a law and order situation may arise and that the accused person may again indulged in such unconstitutional and illegal activities and actually disturb the communal harmony and peace of the society. If he is allowed to be out of jail then there is strong possibility that he can affect the investigation and threaten the complainant and other witnesses and it may cause prejudice to the free fair and full investigation. At this juncture, rights of the accused of his personal liberty cannot be preferred against the right of the society in peaceful communal harmony and balance lies in favour of the later.

So, in view of above discussion, the bail application of the accused Rambhagat Gopal Sharma is devoid of any merit and is hereby dismissed.

Now to come up on 26.07.2021, the date already fixed for presence of accused through VC.

Pronounced in open Court

Date of Order: 15.07.2021
Krishan Steno-III

(Mohd. Sageer),
Judicial Magistrate Ist Class,
Pataudi/15.07.2021UID No. HR0381