

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 21016 of 2024

Petitioner :- Mohammed Zubair

Respondent :- State Of Uttar Pradesh And 3 Others

Counsel for Petitioner :- Devaang Savla, Rajrshi Gupta, Tanmay Sadh

Counsel for Respondent :- Kapil Tyagi, G.A.

Hon'ble Siddhartha Varma, J.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard Sri Dileep Kumar, learned Senior Advocate assisted by Sri Tanmay Sadh, learned counsel for the petitioner; Sri Manish Goyal, learned Additional Advocate General assisted by Sri Pankaj Saxena, Sri A.K. Sand learned, Government Advocate, Sri Kapil Tyagi, learned counsel for the informant as also Sri Aditya Srinivasan who appeared through Video Conference.

2. Short counter affidavit has been filed by the State. It may be kept on record.

3. Learned counsel for the petitioner has submitted that initially the FIR was got lodged under sections 196, 228, 299, 356(3) and 351(2) of the Bharatiya Nyaya Sanhita, 2023. However, subsequently during investigation, the police had started off also with the investigation under section 152 BNS and section 66 of the Information Technology Act. Learned counsel for the petitioner has submitted that if the FIR is perused, it appears that the first informant was aggrieved by four tweets which the petitioner had made. They were as follows :-

(i) dated October 3, 2024 at 9.30 PM;

(ii) dated October 4, 2024;

(iii) dated October 5, 2024 at 11 hours and 8 minutes; and

(iv) dated October 5, 2024 at 12.38 PM.

4. It has thereafter been submitted, relying upon the FIR, that because of the tweet dated 4.10.2024, in the night, at Dasna Devi Temple, thousands of fundamentalists had attacked the temple. In the FIR thereafter it has been stated that certain small clips were also again thereafter tweeted. The FIR further states that on 4.10.2024, the Priest Yati Narsinghanand was present in the temple and he had a narrow escape when the crowd had attacked the temple.

5. Learned counsel for the petitioner has submitted that if the tweets are seen, it becomes clear that they were only tweets which have stated that despite there being FIRs against the priest Yati Narsinghanand, the police had not taken any action. The material which had resulted in the lodging of the FIRs against the priest were also uploaded in the tweets. Learned counsel for the petitioner states that in fact there was no attempt to excite secession or armed rebellion or subversive activities. He submits that there was also no effort to encourage feelings of separatist activities or to endanger sovereignty or unity and integrity of India. He submits that there was in fact also no such attempt. Learned counsel for the petitioner only stated that as per the explanation of section 152 of BNS there were comments in his tweets of disapprobation of the administration in not taking action against the Priest despite FIRs against him. Learned counsel for the petitioner thereafter has drawn the attention of the Court to the supplementary affidavit which has been filed and it has been stated that for the speeches which were delivered by the Priest on 29.9.2024, the U.P. Police had filed FIRs and as per the FIRs

lodged, the case was clear that because of the speech given by the Priest on 29.9.2024, the crowd had collected at the temple on 4.10.2024. Learned counsel for the petitioner states that only to create a counter case, the impugned FIR had been lodged. Learned counsel for the petitioner states that in fact when because of earlier tweets made by the petitioner, certain FIRs were lodged and the Supreme Court had granted bail to the petitioner, then during the hearing of the bail applications in **Writ Petition (Criminal) No.279 of 2022 (Mohammed Zubair vs. State of NCT of Delhi & Ors.) dated 20.7.2022**, when the State of Uttar Pradesh had argued before the Supreme Court that conditions be imposed against the petitioner from tweeting any further, then the Supreme Court had held that a blanket order directing the petitioner to not express his opinion - an opinion that he is rightfully entitled to hold as an active participating citizen - would be disproportionate to the purpose of imposing conditions on bail. Since learned counsel for the petitioner heavily relied upon paragraph 30 of the said judgment, the same is being reproduced here as under :-

"30. Merely because the complaints filed against the petitioner arise from posts that were made by him on a social media platform, a blanket anticipatory order preventing him from tweeting cannot be made. A blanket order directing the petitioner to not express his opinion - an opinion that he is rightfully entitled to hold as an active participating citizen - would be disproportionate to the purpose of imposing conditions on bail. The imposition of such a condition would tantamount to a gag order against the petitioner. Gag orders have a chilling effect on the freedom of speech. According to the petitioner, he is a journalist who is the co-founder of a fact checking website and he uses Twitter as a medium of communication to dispel false news and misinformation in this age of morphed images, clickbait, and tailored videos. Passing an order restricting him from posting on social media would amount to an unjustified violation of the freedom of speech and expression, and the freedom to practice his profession."

6. Learned counsel for the petitioner has also submitted that definitely the tweets of the petitioner did not amount to secession, armed rebellion or any subversive activity. He also submits that the

tweets also did not endanger sovereignty or unity and integrity of the country. He submits that one might while explaining the words "*encourages feelings of separatist activities*" try to conclude that the tweets were bringing in separation between the two religions but he submits that as per the Webster's Dictionary, a "*separatist*" is *someone who is in favour of separation or a member of political or religious minority favouring secession*. He has also taken recourse to another dictionary which has defined "*separatist*" as follows :

"a person who supports the separation of a particular group of people from a larger body on the basis of ethnicity, religion or gender."

7. He submits that at the most the averments in the FIR might lead one to infer that an offence under section 196 BNS was made out.

8. Learned Additional Advocate General Sri Manish Goyal, however, has submitted that in the writ petition in paragraph nos.11 and 12, the petitioner had claimed to be an organization which claims itself to be a world renowned fact checking/finding body. In paragraph nos.12, 17, and 24, learned Additional Advocate General states, the petitioner himself had stated that the Priest had been implicated in any number of cases and that he had also been arrested and bailed out. Learned Additional Advocate General has, therefore, stated that the impact of a "lie" which comes from a person who claims to be a world renowned fact checker results in the excitement of people to the extent that they start getting into separatist activities and in the result the sovereignty, unity and integrity of the country gets endangered. Learned Additional Advocate General has, therefore, submitted that when the thread of tweets was seen by lakhs of people and they were also forwarding those tweets, then it was promoting

enmity between different groups of religion and, therefore, everything was becoming prejudicial to the maintenance of harmony. Learned Additional Advocate General further states that since the posts were selective, they even more led to the disharmony amongst two religious groups and, therefore, submits that this was the reason because of which any number of unruly people on 4.10.2024 attacked on the Dasna Devi Temple where the Priest Yati Narsinghanand had a narrow escape.

9. From the arguments which have been made, we are tentatively of the view that even though from the reading of the FIR one could make out that the offence under section 196 BNS, upto a large extent was being made out. Whether, however, from the allegations made in the FIR, any offence under section 152 BNS was being made out wherein the acts of the petitioner would excite people to commit offences of secession, armed rebellion, subversive activities or get encouraged to get feelings of separatist activities is to be seen.

10. Matter thus requires consideration.

11. However, since the affidavits between the parties have yet not been exchanged, and the learned Additional Advocate General has yet to make submissions with regard to what would be "separatist activity", we consider it appropriate to grant the State three weeks' time to file a detailed counter affidavit. Learned counsel for the informant may also file counter affidavit within the aforesaid period.

12. We post this case for 06.01.2025 at 10.00 AM.

13. However, looking into the criminal antecedents of the

petitioner and after looking into the order which has been passed by the Supreme Court in Writ Petition (Criminal) No.279 of 2022 (Mohammed Zubair vs. State of NCT of Delhi & Ors.) on 20.7.2022 by which the petitioner therein had been granted bail in many of the criminal cases against him, we consider that the petitioner, till the next date of listing be not arrested. However, he will cooperate in the investigation and since the learned counsel for the petitioner has given his undertaking that he would not go out of the country, we also provide that the petitioner shall not go out of the country. He may surrender his passport with the Commissioner of Police at Ghaziabad.

Order Date :- 20.12.2024
GS

(Nalin Kumar Srivastava, J.) (Siddhartha Varma, J.)