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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 17/03/2023

PRONOUNCED ON : 21/03/2023

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD). No.4717 of 2023

Prashant Umrao @ Prashant Kumar Umrao,
S/o.Khem Raj Umrao,
No.7/371, 2nd Floor, Jwala Nagar,
Shahdara,
North East Delhi,
Delhi.

... Petitioner/sole accused

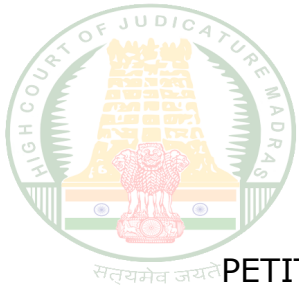
Vs

The Inspector of Police,
Thoothukudi Central Police Station,
Thoothukudi District.
Cr.No.35/2023.

... Respondent/Complainant

For Petitioner : Mr.R.Anand
for Mr.V.Ramasubbu

For Respondent : Mr.Hasam Mohammed Jinnah
Senior Counsel
State Public Prosecutor
Assisted by
Mr.R.M.Anbunidhi
Additional Public Prosecutor



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

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PRAYER :-

C-38AB. For Anticipatory Bail in Crime No. 35/2023 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner/sole accused, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 153, 153A, 504, 505(1)(b), 505 (1)(c) and 505(2) of I.P.C., in Crime No.35 of 2023 on the file of the respondent police, seeks anticipatory bail.

2.Heard Mr.R.Anand, learned counsel appearing for the petitioner and Mr.Hasam Mohammed Jinnah, learned State Public Prosecutor appearing for the respondent.

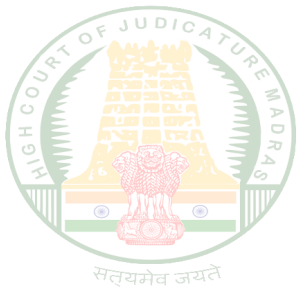
3.The case of the prosecution is that the petitioner has uploaded false content, on his Twitter page, depicting that in Tamil Nadu, 15 Biharis were hanged in a room because they were speaking in Hindi, out of which 12 died. This alarming tweet has been re-tweeted by about, 5641 Twitter users, fetched 14.3 lakh likes and 179 quote tweets and has been seen by more than 5 lakh



Crl.O.P(MD)No.4717 of 2023

viewers. He has uploaded this false content, intentionally to trigger linguistic chauvinism, instigating violence between Hindi-speaking Bihar people and other State people versus Tamil people, creating a tense and panic situation.

4.The learned counsel appearing for the petitioner would submit that the petitioner is a resident of Delhi and practising Advocate before the Courts in Delhi. He happened to be the spokesperson of the Bharatiya Janata Party and on account of political vendetta, the defacto complainant lodged the false complaint as against the petitioner. The petitioner is not the creator of such tweets, and even the alleged forward was not within his knowledge. Even assuming that he has forwarded the messages, he is not responsible for that and only the creator of the same is responsible for criminal liability. Though 5 lakh people had seen the messages, no untoward incidents or group clashes between the community of the two States. That apart, the alleged messages have no ingredients to attract the offence under Section 153(A) of I.P.C.



Crl.O.P(MD)No.4717 of 2023

5.The learned counsel appearing for the petitioner further submitted that the alleged tweets were originally exhibited in private news channels, namely bihar.punjabkesari.in, the newspot.in, knn24.in and muznews.net. Therefore, simply, he had re-tweeted the said messages. After knowing the fact that an opposite political ideology made it and as such, immediately he tweeted that "in the context of Tamil Nadu, my tweet was based on the news and videos of national newspapers. Then, I deleted the tweet when the news was not confirmed. I do not support any discrimination on the basis of religion, race, place of birth, or language. I was made a victim because of an opposite political ideology". Therefore, within a short period, he sent the above message through his tweet. In fact, the other persons, who were telecasted in the news channel and also on Twitter, have not been implicated as an accused in any of the cases under Section 153(A) of I.P.C.

6.In support of his contention, the learned counsel appearing for the petitioner relied on the Judgment of the Honourable Apex Court in **Patricia Mukhim Vs. State of Meghalaya and others** reported in **2021 SCC Online SC 258**, in which, the Honourable Supreme Court of India held that only where



Crl.O.P(MD)No.4717 of 2023

the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public tranquility, the law needs to step in to prevent such an activity. The intention to cause disorder or incite people to violence is the *sine qua non* of the offence under Section 153 A I.P.C and the prosecution has to prove the existence of *mens rea* in order to succeed. Further held that the gist of the offence under Section 153 A I.P.C is the intention to promote feelings of enmity or hatred between different classes of people. The intention has to be judged primarily by the language of the piece of writing and the circumstances in which it was written and published. The matter complained of within the ambit of Section 153A must be read as a whole.

7.The learned counsel appearing for the petitioner also relied upon the Judgment of the Division Bench of the Bombay Court in **Rajaram Shankar Patwardhan Vs. State of Maharashtra and another** reported in **2018 SCC Online Bom 21325**, wherein it has been held as follows:-

"13.In so far as attracting the provisions, Mr.Paranjape was absolutely justified in submitting that attracting Section 153-A was a serious error committed. It may not be out of place to refer to



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the observations of the Hon'ble Apex Court while dealing with this Section in the Judgment Balwant Singh Vs. State of Punjab, reported in (1995) 3 SCC 214 : AIR 1995 SC 1785. Hon'ble Apex Court observed thus:

“In so far as the findings under Section 153A of Penal Code, 1860 is concerned it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, language or regional groups or castes or communities. It is only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or affect public tranquility, that the law needs to step in, to prevent such an activity. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153A, I.P.C and the prosecution has to prove the existence of mens rea in order to succeed.”

14.As the matter relates to the epic of Mahabharata and as the article refers to its source, it will not be out of place to refer to the work under title “Sampoorna Mahabharata”, Pro. Bhalba Kelkar. It is



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Crl.O.P(MD)No.4717 of 2023

also referred to as Adiparv Adhyay 1st and then there is also reference to Adhyay 105th. Thus, what reveals is that this source material referred to by the article's writer is not his own creation. It is not the own creation of the writer if it is a reference to a source material, then Mr.Paranjape the learned counsel for the applicant was wholly justified in submitting that lodgment of the report and for an unsustainable material attracting criminal provisions and asking the applicant to face a criminal prosecution would nothing but an abuse of process of law. Considering all these facts, we are of the opinion that the counsel for the applicant had made out a case for grant of relief as prayed in the application."

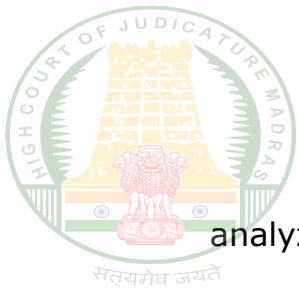
Therefore, the petitioner, only on the basis of the news channel, tweeted the said alleged messages, and he had no intention to create enmity between different classes of people. Hence, the custodial interrogation of the petitioner is not required in this case.

8.The respondent filed a counter-affidavit.



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9.Per contra, the learned State Public Prosecutor appearing for the respondent would submit that the petitioner intentionally tweeted a false message that 12 Bihari people were killed by the Tamil people. This tweet reached 5 lakh people, and it has national ramifications on politics, law and order and economic aspects between the various States affecting the peaceful co-existence of citizens of India. He has intentionally drafted each and every word in the tweet and posted it on his Twitter account. It is not a mere forwarding Twitter. The offending words are uttered by the petitioner, which clearly shows his *mens rea*. The intention of the petitioner was to incite passions based on place of birth and language, thereby invoking violence and promoting enmity, and this act is prejudicial to public order and tranquillity. There was absolutely no need for the respondent to register the case for political vendetta. The above Twitter created a panic situation among the Hindi-speaking people in Tamil Nadu and Tamil-speaking people in North India. He attempted to create enmity between the different groups on the ground of language and was thus likely to disturb public tranquillity and peace. Because of such false messages, there was a commotion in Bihar on 02.03.2023 and after which, a delegation of officers was deputed to Tamil Nadu to



Crl.O.P(MD)No.4717 of 2023

analyze the current situation. Further, a group of officers from Bihar, came down to Tamil Nadu on 05.03.2023 to check rumours about the attacks on migrant workers and thereafter only found that the information as relayed on social media was just rumours. In fact, the Director General of Police had formed a team of senior officers to coordinate with law enforcement agencies of other States to counter the rumours, propaganda and disinformation. The Chief Minister of Tamil Nadu visited a factory near Kavalkinaru on 07.03.2023 and interacted with the migrant labourers. On 09.03.2023, the Director General of Police himself met the migrant workers' camps at Coimbatore and Tirupur Districts. On 09.03.2023, the District Collector, Thoothukudi and the Deputy Inspector General of Police, Tirunelveli Range met the migrant labourers of NTPL and assured them of their safety. Therefore, for the collection of material evidence to investigate the petitioner's background and to verify the persons behind the conspiracy of spreading fake news, the custodial interrogation of the petitioner is very much necessary in this case. That apart, the petitioner is a resident of Uttar Pradesh and presently living in Delhi. They also received the report that a larger-scale conspiracy is involved, as evident from the series of tweets posted by him in the public domain. Therefore, the petitioner is likely to escape from the

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Crl.O.P(MD)No.4717 of 2023

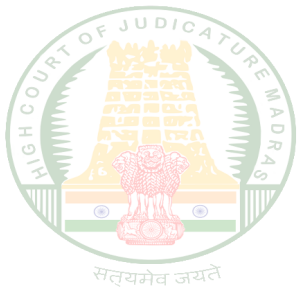
clutches of law and custodial interrogation of the petitioner is very much required in this case.

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10. Admittedly, the petitioner had tweeted in Hindi on his Twitter account and translated it into English as follows:-

"15 people of Bihar were hanged in a room in Tamil Nadu for speaking Hindi and 12 have sadly died. After that, Tejeswini yadav shamelessly celebrated a birthday party with Stalin in Tamil Nadu on 02.03.2023".

11. According to the petitioner, the said message was exhibiting in bihar.punjabkesari.in, the newspot.in, knn24.in and muznews.net. Subsequently, on 07.03.2023, the petitioner tweeted in his Twitter account that "in the context of Tamil Nadu, his tweet was based on the news and videos of national newspapers. Then, he deleted the tweet when the news was not confirmed. He does not support any discrimination on the basis of religion, race, place of birth, or language. He was made a victim because of the opposite political ideology".



Crl.O.P(MD)No.4717 of 2023

12.Pursuant to the first tweet, the defacto complainant lodged the complaint alleging that the petitioner has uploaded the false content intentionally to trigger linguistic chauvinism to instigate violence between Hindi-speaking Bihar people and other State people versus Tamil Nadu and thereby created a tense and panic situation. Though there was no untoward incident that happened after the alleged Tweet, the migrant labourers from other States started moving to their native States on the false propaganda, after seeing the Twitter. The above Twitter created a panic situation among the Hindi-speaking people in Tamil Nadu and Tamil-speaking people in North India. It is a sorry state of affairs that the petitioner is being an Advocate, and is actively involved in a national wide political party, he must have some responsibility over the Society. Before tweeting or forwarding the Twitter messages, he must think about the consequences of the said messages and the genuineness of the said messages.

13.Fortunately, no untoward incident or group clashes between the community of the two States happened due to the alleged Twitter forwarded by the petitioner as per the news published in the news channel. The petitioner is being an Advocate,

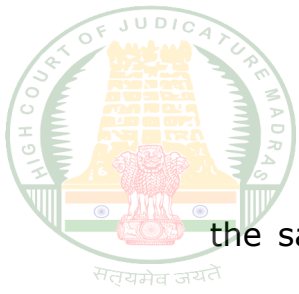


Crl.O.P(MD)No.4717 of 2023

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this Court hopes that he will cooperate for interrogation with the respondent. At the same time, he shall file an undertaking affidavit not to tweet or forward any such message to promote enmity between different groups on grounds of religion, race, place of birth, residence, language etc., before the concerned jurisdictional Magistrate and on such filing of affidavit, this court is inclined to grant anticipatory bail to the petitioner, with certain conditions.

14. Accordingly, the petitioner shall file an undertaking affidavit not to tweet or forward any such message to promote enmity between different groups on grounds of religion, race, place of birth, residence, language etc., and on filing such undertaking affidavit before the concerned Jurisdictional Magistrate, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy was made ready, before the learned Judicial Magistrate No.II, Thoothukudi, on condition that the petitioner shall execute **a bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) with two solvency sureties** each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to



Crl.O.P(MD)No.4717 of 2023

the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on the further condition that:

[a] the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity.

[b] the petitioner shall report before the respondent Police, daily at 10.30 a.m., and 05.30 p.m., for a period of 15 days and thereafter, as and when required for interrogation.

[c] If the petitioner violates any undertaking given in the affidavit, the anticipatory bail granted to the petitioner shall stand cancelled automatically without further reference to this Court and the respondent is at liberty to secure the petitioner and proceed in accordance with law.

[d] the petitioner shall not tamper with evidence or witness either during investigation or trial.



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[e] the petitioner shall not abscond either during investigation or trial.

[f] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]***.

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

(G K I J)
21.03.2023

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TO

1. The Inspector of Police,
Thoothukudi Central Police Station,
Thoothukudi District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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VERDICTUM.IN



Crl.O.P(MD)No.4717 of 2023

G.K.ILANTHIRAIYAN,J

PS

PRE-DELIVERY ORDER
IN
CRL OP(MD) No.4717 of 2023

Date : 21/03/2023