

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

ON THE 23rd OF AUGUST, 2023

MISC. CRIMINAL CASE No. 30656 of 2023

BETWEEN:-

ASFA SHEIKH, W/O SHRI SHEIKH IQBAL, AGED ABOUT
44 YEARS, OCCUPATION: PRINCIPAL OF GANGA
JAMUNA HIGHER SECONDARY SCHOOL, RESIDENT OF
DHARAMPURA WARD NO. 39 DAMOH, DISTRICT
DAMOH (MADHYA PRADESH)

.....APPLICANT

(BY SHRI MANISH DATT - SENIOR ADVOCATE WITH SHRI MAYANK
SHARMA - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH THROUGH POLICE
STATION KOTWALI DISTRICT DAMOH (MADHYA
PRADESH)

.....RESPONDENT

(BY SHRI PRADEEP GUPTA - GOVERNMENT ADVOCATE)

MISC. CRIMINAL CASE No. 28005 of 2023

BETWEEN:-

1. ANAS ATHAR, S/O SHRI ATEEK ATHAR, AGED
ABOUT 27 YEARS, OCCUPATION: PRIVATE JOB,
R/O FUTERA WARD NO 4 DISTRICT DAMOH
(MADHYA PRADESH)
2. RUSTOM ALI, S/O SHRI ISUF ALI, AGED ABOUT 36
YEARS, OCCUPATION: PEON R/O MALYANA
FUTERA, WARD NO. 5, DAMOH, DISTRICT
DAMOH (MADHYA PRADESH)

.....APPLICANTS

(BY SHRI QASIM ALI - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH THROUGH POLICE
STATION DAMOH KOTWALI DISTRICT DAMOH
(MADHYA PRADESH)

.....RESPONDENT

(BY SHRI PRADEEP GUPTA - GOVERNMENT ADVOCATE)

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*These applications coming on for admission this day, the court passed
the following:*

ORDER

These are first bail applications filed by the applicants under Section 439 of the Code of Criminal Procedure for grant of regular bail relating to FIR No.498/2023, dated 07.06.2023 registered at P.S.- Kotwali Damoh, District Damoh (M.P.) for the offences punishable under Sections 295A, 506 and 120B of the IPC, Section 75 and 87 of Juvenile Justice Act (Care and Protection of Children) Act, 2015 and Section 3/5(1) of the Madhya Pradesh Freedom of Religion Act, 2021. Applicants are in detention since 11.06.2023.

2. As per the prosecution story, a complaint was received alleging that students not belonging to Muslim faith and who are studying in Ganga Jamuna Higher Secondary School, Futera Ward, Damoh right from class Nursery upto class XII are being compelled to wear salwar kurti, head scarf (Hijaab) and dupatta (scarf). It was also alleged that in school, for all girls students wearing of head scarf (Hijaab) is essential with the dress and when they do not wear head scarf (Hijaab), they are being compelled for the same by teachers and principal. All girls students are required to wear head scarf (Hijaab). Urdu is being taught as compulsory subject and prayers belonging to muslim faith are being recited and taught in school. It was alleged that students belonging to Hindu and Jain religion cannot put *tilak* on the forehead and cannot tie sacred thread (kalawa) on their wrist and if someone wears the sacred thread (kalawa)

or put *tilak*, he is being forcibly prevented, by the teachers. After receiving the complaint, matter was inquired into and investigated. In the course of investigation, the statements of some girl students were recorded and head scarf (Hijaab) which is compulsory to wear in the Ganga Jamuna Higher Secondary School was seized. On the basis of material collected, a case was registered against the Principal Asfa Sheikh, teacher Anas Athar and Peon Rustom Ali and management of the school for commission of the aforesaid offences.

3. Learned counsel for the applicants have submitted that applicants have not committed any offence. They are innocent. They have been falsely implicated. Learned counsel for the applicants by producing a copy of the resolution passed by the school management submitted that it was the Managing Director Mohd. Idrish and members of the School Management who have prescribed the dress code and made it compulsory to all girls students to wear head scarf (Hijaab) with dress. It is further submitted that photos of the girls students wearing head scarf (Hijaab) shows that head scarf has been made mandatory by the school management and not by the present applicants. School is a minority religious institute. Present applicants are the principal and teachers. They only follow the instructions issued by the School Management. It is submitted that after investigation, charge sheet has been filed against the present applicants. Therefore, it is prayed that applicants may be released on bail.

4. On the other hand, learned counsel for the State has opposed the grant of bail to the applicants. Learned counsel by reading out the statements of the girl students and others, has submitted that the girl students are being compelled to wear head scarf (Hijaab), whereas minority institutions cannot compel the students belonging to other religion to wear head scarf (Hijaab) and

it also cannot prevent students of other religion from wearing sacred thread (kalawa) and putting *tilak* on the forehead. It also cannot compel them to read Urdu language necessarily and to recite the prayers belonging to Islam faith. As students are being compelled by the principal and teachers, they be not released on bail.

5. Countering the submissions made by learned counsel for the State, learned counsel for the applicants has submitted that no offence under Section 3/5(1) of the Madhya Pradesh Freedom of Religion Act is made out as there are no allegations against them that they are involved in forced conversion of the students of the said school. It is further submitted that as per the documents filed by the applicants, management is liable for such offence. Therefore, they have prayed for grant of bail.

6. In this case, after investigation, charge sheet has been filed against the applicants who are principal, teachers and peon. The main allegations are against management of the school. Trial of the case will take considerable time. Therefore, without expressing any opinion on the merits of the case, but having taken into consideration all the facts and circumstances of the case, I am of the view that it is a case in which applicants may be released on bail. Consequently, these bail applications under Section 439 of the Code of Criminal Procedure for grant of bail filed on behalf of applicants, stands **allowed**, subject to following conditions to be strictly followed by the applicants:

(i) Applicants shall not repeat commission of offence in which they are being released on bail.

(ii) They shall not prevent students of other religion from wearing the essentials of their own religion as such wearing a sacred

thread (kalawa) and putting tilak on the forehead.

(iii) They shall not compel the students of other religion to read/study any material or language which has not been prescribed or approved by the Madhya Pradesh Education Board.

(iv) They shall not provide any religious education or material belonging to Islam faith to the students of other religion and shall impart only modern education as contained in Section 53(1)(iii) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

(v) Girl students of other religion i.e. Hindu and Jain etc. shall not be compelled to wear head scarf (Hijaab) anywhere in the school premises or in the class rooms.

7. It is directed that **applicants - Asfa Sheikh, Anas Athar and Rustom Ali** be released on bail on their furnishing a personal bond incorporating the aforesaid conditions, in the sum of **Rs.50,000/- (Rupees Fifty Thousand only) each** with one solvent surety **each** in the like amount to the satisfaction of the trial Court, for their regular appearance before the trial Court during trial with a condition that they shall appear before the concerned Court on all the dates fixed by it during trial. They shall also abide by all the conditions enumerated under Section 437(3) of Cr.P.C.

8. This order shall be effective till the end of the trial. However, in case of bail jump and breach of any of the conditions of bail, it shall become ineffective.

Certified copy as per rules.

(DINESH KUMAR PALIWAL)
JUDGE

Jasleen

