

HIGH COURT OF MADHYA PRADESH: JABALPUR

Single Bench : Hon'ble Shri Justice Subodh Abhyankar

MCRC No. 18613 of 2018

Jaheeruddin

VS

The State of Madhya Pradesh

MCRC No. 22254 of 2018

Harshit Singh

VS

The State of Madhya Pradesh

MCRC No. 18619 of 2018

Jaheeruddin

VS

The State of Madhya Pradesh

MCRC No. 23136 of 2018

Mudassir Ahmed

VS

The State of Madhya Pradesh

Present :-

Shri Manish Tiwari, Advocate for the applicants in M.Cr.C. No.18613/2018 and 18619/2018.

Shri Manish Datt, Sr. Advocate with Shri Chetan Jaggi, Advocate for the applicants in M.Cr.C. No.22254/2018 and M.Cr.C. No.23136/2018.

Shri Brahmatt Singh, Government Advocate for the respondent/State.

Whether Approved for Reporting : Yes

Law Laid Down: Bail u/s. 438/439 of Cr.P.C. - Article 51-A of the Constitution of India - emphasis made on the compliance of fundamental duties.

Significant Paragraph No.10 & 11.

ORDER

(28.06.2018)

Except M.Cr.C. No.23136/2018 which is the second application u/s.439 of Cr.P.C., remaining are first applications under Section 438 of Cr.P.C. for grant of anticipatory bail.

2. M.Cr.C. No.18613/2018 has been filed by applicant **Jaheeruddin** apprehending his arrest in connection with **Crime No.100/2018** registered at Police Station Kotwali District Burhanpur for the offence punishable under Sections 147, 148, 149, 427, 336, 353, 332, 333, 153, 153-A, 440, 120-B, 188, 333 and 440 of IPC whereas M.Cr.C. No.18619/2018 has been filed by him apprehending his arrest in connection with **Crime No.93/2018** registered at Police Station Kotwali district Burhanpur for the offences punishable under Sections 147, 148, 149, 295, 427, 336, 153, 153-ka, (1)(ka), 153(A)(2) and (kha) and 188 of IPC.

3. M.Cr.C. No.22254/2018 has been filed by the applicant **Harshit Singh** apprehending his arrest in connection with **Crime No.100/2018** registered at Police Station Kotwali Burhanpur District Burhanpur for the offences punishable under Sections 147, 148, 149, 427, 336, 153-A, 353, 332, 333, 440 and 188 of IPC.

4. So far as M.Cr.C. No.23136/2018 is concerned, this is second application under Section 439 of Cr.P.C. for grant of bail on behalf of applicant **Mudassir Ahmed** who is in custody since 23.04.2018 in connection with Crime No.100/2018 registered at Police Station Kotwali, District – Burhanpur (M.P.) for the offences punishable under Sections 147, 148, 149, 427, 336, 153A, 353, 332, 333, 440 and 188 of IPC. The first application, being M.Cr.C. No.17789/2018 was dismissed by this Court on 10.05.2018 with liberty to renew the prayer after the investigation is over.

5. The allegation against the applicants and other accused persons is that a public procession/rally was staged by them in respect of an incident of rape of a minor girl which took place on 20.04.2018 at Kathua in the State of Jammu & Kashmir and in the said procession/rally the extensive damage to public property was caused and stone pelting was also done on the police resulting into injuries to six police personnel and a Sub Inspector has also suffered grievous hurt on account of fracture on shoulder. It is also alleged that in the said rally anti national slogans were also raised which led to severe law and order situation.

6. Learned counsel for the applicants submitted that the applicants are the residents of Burhanpur and the applicant -Jaheeruddin in the present case is an advocate and also the President and Coordinator of Indian Muslim League, Burhanpur Branch, applicant Harshit Singh on the other hand is a politician. The applicants had carried out a public procession in protest of the incident of rape which took place

on 20.04.2018 at Kathua, Jammu & Kashmir and to take out such procession/rally the applicants had also obtained due permission from the concerned authorities. It is further submitted that the said rally was peacefully completed but certain anti social elements taking advantage of the situation indulged in the aforesaid rioting activities for which the applicants cannot be held responsible. It is submitted by the counsel for the applicants that the entire incident as alleged has taken place after the rally/procession was over for which the evidence is also on record.

7. Counsel for the State on the other hand has opposed the prayer and has submitted that the applicants, despite taking permission to carry out the procession and despite giving an undertaking that they would be responsible for any untoward incident has allowed the protesters to spread violence in which stones were pelted at police personnel resulting into injuries to many and serious injuries to one Police Inspector. It is further submitted that anti national slogans were also raised in the rally under the banner of the applicants' forum/parties. It is further submitted that huge amount of wooden sticks/stones/other weapons were also accumulated by the rallying people to send the entire city of Burhanpur into chaos and affray.

8. Learned counsel for the State has further submitted that the permission was obtained for the other route, whereas the procession was carried out on some other route by raising anti-Indian and anti Hindu slogans thus, it is submitted that all efforts were made by the applicants to breach the

communal harmony only to gain their personal political advantage and the entire town of Burhanpur was terrorized and seized.

9. Heard learned counsel for the parties and perused the case diary.

10. In the considered opinion of this Court, in a democratic set up like ours, the Constitution has guaranteed that every person has a fundamental right to protest against any atrocity regardless of its place, caste or religion but the aforesaid rights are saddled with certain duties called Fundamental duties which are also enshrined under Article 51A of the Constitution of India which reads as under:-

"Article 51-A. Fundamental duties

51-A. Fundamental duties.—It shall be the duty of every citizen of India—

- (a) **to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;**
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) **to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;**
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

- (i) **to safeguard public property and to abjure violence;**
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.]
- (k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”

(emphasis supplied)

Thus, a duty is cast on every citizen to observe the fundamental duties and to protest in a peaceful manner without any disturbance, inconvenience and violence to public at large and especially to ensure that no damage is done either to public or private property but the aforesaid emphasized duties are rather freely taken ride for in public demonstrations/rallies without fear of consequences. It was indeed a right of the applicants to stage such rally but the allegations against them are also that in the aforesaid rally anti-national slogans were also raised and damage was also done to the public/private property and which has led to filing of as many as eight FIRs by various complainants. In the said rally, serious injuries have also been caused to one Rajendra Badgujar the Sub Inspector of Police whose shoulder has been fractured.

11. It is observed by this Court that now-a-days it has become a growing trend to stage large processions/rallies in total disregard to the Fundamental duties to which every citizen is required to abide by but on the contrary, in the garb

of the such public demonstrations extensive damage is caused to public and property apart from deliberately indulging in looting shops and assaulting any unsuspecting bystander. Such processions are carried out by persons claiming themselves responsible for civic rights but subsequently they conveniently shrug any responsibility of any violence which has taken place during their processions, in the considered opinion of this Court, such person cannot be allowed to let go without consequences and must be punished without any leniency, after a fair and expeditious trial.

12. After perusing the case diary, looking to the documents and the statements of witnesses which the State proposes to produce in evidence, it would be premature to comment upon the merits of the respective cases.

13. Considering the totality of facts and circumstances of the case, without commenting on the merits of the case, the applications for grant of anticipatory bail are **allowed** subject to depositing a sum of **Rs.50,000/- (Rupees Fifty Thousand) in case of applications u/s.438 of Cr.P.C. and Rs.25000/- (Rupees Twenty Five Thousand) in case of application u/s.439 of Cr.P.C.** by each applicant of his respective bail application in the Court of C.J.M. Burhanpur, the said amount shall be subject to the final decision of the competent court. It is directed that applicant **Jaheeruddin** (in M.Cr.C.No.18613/2018 & M.Cr.C. No.18619/2018); applicant **Harshit Singh** (in M.Cr.C. No.22254/2018) in the event of their arrest shall be released on bail on their

furnishing a personal bond in the sum of **Rs.50,000/- (Rupees Fifty Thousand)** with one solvent surety of the like amount each to the satisfaction of the Arresting Officer.

The applicants shall further abide by the conditions enumerated in sub-section 2 of Section 438 of the Cr.P.C. and shall cooperate with the Investigating Officer.

14. So far as M.Cr.C. No.23136/2018 filed by applicant – **Mudassir Ahmed** under Section 439 of Cr.P.C. is concerned, the same is also **allowed** subject to depositing a sum of **Rs.25,000/- (Twenty Five Thousand)** by him in the Court of C.J.M. Burhanpur and the said amount shall be subject to the final decision of the competent court. If the applicant **Mudassir Ahmed** deposits the aforesaid sum, then he shall be released on bail on his furnishing a personal bond in the sum of **Rs.50,000/- (Rupees Fifty Thousand)** with one solvent surety of the like amount to the satisfaction of the Trial Court.

15. Needless to say that the aforesaid deposit shall not be treated as an admission of guilt on the part of applicants and the Trial Court shall have total discretion to take decision in this behalf without being influenced by the order of this Court.

C.c. as per rules.

(Subodh Abhyankar)
Judge