

THE HONOURABLE SRI JUSTICE D.RAMESH

CRIMINAL PETITION No.5980 of 2021

ORDER:

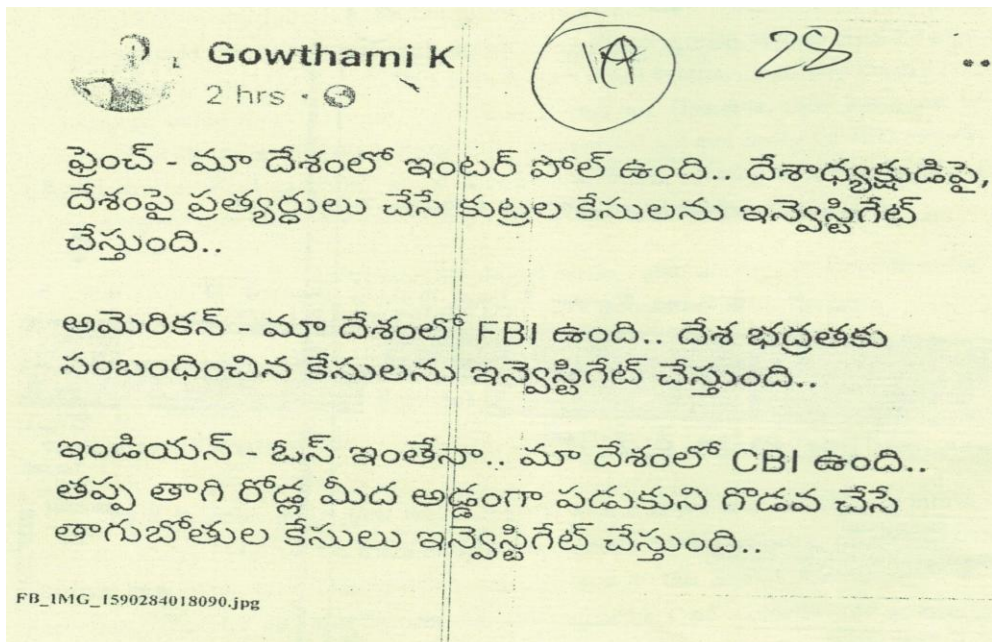
This criminal petition is filed by the petitioner/A16 under section 437 and 439 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C") seeking to release the petitioner/A16 on bail in RC 15(S)/2020 (RC03262020S0015)/CBI/ACB/Visakhapatnam) on the file of the CBI, ACB, Visakhapatnam. The offences against the petitioner are under Section 153-A, 504, 505(2), 506 of the Indian Penal Code, (for short IPC) and Sec.67 of Information Technology Act, 2000.

2. As per the averments in the petition, the then Registrar General of the High Court of Andhra Pradesh has lodged a complaint dated 24.5.2020 against the petitioner and certain others alleging about posting of certain comments against the Hon'ble Judges of High Court thereby trying to scandalize and lower the image of the High Court and Hon'ble Judges. Initially F.I.R.No.12/2020 was registered against this petitioner on the file of Crime Investigation Department police station where under the petitioner was charged with offences under Sections 505(2) and 153-A of IPC. Through order dated 12.10.2021 in Writ Petition No.9166 of 2020, the High Court has directed transfer of the above said F.I.R to Central Bureau of Investigation for investigation. Thus RC 15(S)/2020 (RC03262020S0015)/CBI/ACB/Visakhapatnam) has been registered against the petitioner.

3. Pursuant to the registration of F.I.R.No.12/2020, the petitioner appeared before the CID police on 16.7.2020. As per the remand report the postings in the facebook were retrieved. The petitioner was examined by the Central Bureau of Investigation (for short C.B.I.) at its

camp office at Vijayawada before the independent witnesses. The petitioner was arrested on 21.10.2021. Hence the bail application.

4. On the other hand the C.B.I filed counter in CrI.P.No.5905 of 2021 in which it has submitted that pursuant to the orders of this court in W.P.No.9166 of 2020 dated 12.10.2020 this case was registered on 11.11.2020 under Section 153A, 504, 505(2), 506 IPC and Section 67 of Information Technology Act, 2000 in CBI, ACB, Visakhapatnam against this accused and other 15 persons. The role of the accused is that he has commented through his facebook account expressing his anger against the judgments given by the Hon'ble Judges of the High Court of Andhra Pradesh. The presence of the accused was obtained and on questioning, the accused revealed his details and further stated that he has facebook account and admitted that he himself posted the postings against the Hon'ble Judges of High Court of Andhra Pradesh. Again on 27.11.2020, the presence of the accused was secured and during the proceedings he stated that since AP High Court gave judgments against the decisions of Government of AP, as he wanted to post postings against the said judgments, he posted various posts in his facebook account.



5. It is further submitted that the investigation of this case is under process and the petitioner was arrested on 21.10.2021 and produced before the Court below and now he is in judicial custody. C.B.I has also filed police custody petition in the Court below and it is pending for orders. The petitioner is an influential person and if he is enlarged on bail, there is every possibility of influencing the witnesses. Hence prayed to dismiss the petition.

6. Heard both sides.

7. Learned Senior Counsel Sri C.V.Mohan Reddy, appearing on behalf of the petitioner has mainly contended that the investigation is completed in this case and in the remand report, the petitioner has revealed about having a facebook account in his name and he also accepted the postings and sharing of the articles about social, health and political activities. He also admitted his guilt that he posted the said postings in his facebook account. Now he has confessed that the said postings are deleted from his facebook account and he is a responsible person and having a permanent address, he will cooperate with the investigation and he abide by the conditions imposed by this Court.

8. Further learned Senior Counsel contended that as per the ratio decided by the Hon'ble Apex in ***Bilal Ahmed Kaloo vs. State of Andhra Pradesh***¹ that whether the acts of the petitioner would attract the penal consequences envisaged in Section 153-A or Section 505(2) of IPC and the relevant paragraphs which reads as follows:

The common ingredient in both the offences is promoting feeling of enmity, hatred or ill-will between different religious or racial or linguistic or regional groups or castes or communities. [Section 153A](#) covers a case where a person by "words, either spoken or written, or by signs or by visible representations" promotes or attempts to promote such feeling. Under [Section 505\(2\)](#), promotion of such feeling should

¹ AIR 1997 SC 3483

have been done by making and publishing or circulating any statement or report containing rumour or alarming news.

The common feature in both sections being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or language or regional groups or castes and communities it is necessary that atleast two such groups or communities should be involved. Merely inciting the felling of one community or group without any reference to any other community or group cannot attract either of the two sections.

In view of the above said observations of the Hon'ble Supreme Court, the contents of the complaint would not attract section 153-A or sec.505(2) of IPC. In view of the same, the petitioner is entitled for bail.

9. Learned Counsel appearing on behalf of the respondents has submitted that after filing the counter, they have also moved an application before the Court below for police custody and he further submitted that the investigation is not yet concluded and there are some other accused yet to be arrested. In view of the same, requested to dismiss the bail application.

10. Instead of going into the merits of the case, though the Registrar (General), High Court of Andhra Pradesh has made a complaint on 24.5.2020 against several persons, for investigation into the matter, trace the culprits and to punish them as per law, but for the reasons best known, the State police authorities failed to investigate the crime. This Court in W.P.No.9166 of 2020 has directed to transfer the F.I.R.No.12/2020 and also other F.I.Rs to C.B.I for investigation by its order dated 12.10.2021. Though the matter was transferred to C.B.I way back in October 2020, even the C.B.I has also took approximately one year time to arrest these persons. That itself shows that how puissant is the petitioner. It is not out of place that it is required to take the observations made by the Hon'ble Apex Court in **Arundhati Roy vs. Unknown**² which reads as follows:

² (2002) 3 SCC 343

'Rule of Law' is the basic rule of governance of any civilized democratic policy. Our Constitutional scheme is based upon the concept of Rule of Law, which we have adopted and given to ourselves. Everyone, whether individually or collectively is unquestionably under the supremacy of law. Whoever the person may be, however high he or she is, no-one is above the law notwithstanding how powerful and how rich he or she may be. For achieving the establishment of the rule of law, the Constitution has assigned the special task to the judiciary in the country. It is only through the courts that the rule of law unfolds its contents and establishes its concept. For the judiciary to perform its duties and functions effectively and true to the spirit with which it is sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs. After more than half a century of independence, the judiciary in the country is under a constant threat and being endangered from within and without. The need of the time is of restoring confidence amongst the people for the independence of judiciary. Its impartiality and the glory of law has to be maintained, protected and strengthened. The confidence in the courts of justice, which the people possess, cannot, in any way, be allowed to be tarnished, diminished or wiped out by contumacious behavior of any person. The only weapon of protecting itself from the onslaught to the institution is the long hand of contempt of court left in the armoury of judicial repository which, when needed, can reach any neck howsoever high or far away it may be. In *Re: Vinay Chandra Mishra* (the alleged contemnor) this Court reiterated the position of law relating to the powers of contempt and opined that the judiciary is not only the guardian of the rule of law and third pillar but in fact the central pillar of a democratic State. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise the very corner-stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. It is for this purpose that the courts are entrusted with extraordinary powers of punishing those who indulge in acts, whether inside or outside the courts, which tend to undermine the authority of law and bring it in disrepute and disrespect by scandalizing it. When the court exercise this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.

No person can flout the mandate of law of respecting the courts for establishment of rule of law under the cloak of freedoms of speech and expression guaranteed by the Constitution. Such a freedom is subject to reasonable restrictions imposed by any law. Where a provision, in the law, relating to contempt imposes reasonable restrictions, no citizen can take the liberty of scandalizing the authority of the institution of judiciary. Freedom of speech and expression, so far as they do not contravene the statutory limits as contained in the [Contempt of Courts Act](#), are to prevail without any hindrance. However, it must be remembered that the maintenance of dignity of courts is one of the cardinal principles of rule of law in a democratic set up and any criticism of the judicial institution couched in language that apparently appears to be mere criticism but ultimately results in undermining the dignity of the courts cannot be permitted when found crossed the limits and has to be punished. This Court in *In Re: Harijai Singh and Anr.* has pointed out that a free and healthy Press is indispensable to the function of a true democracy but, at the same time, cautioned that the freedom of

Press is not absolute, unlimited and unfettered at all times and in all circumstances. Lord Denning in his Book "Road to Justice" observed that Press is the watchdog to see that every trial is conducted fairly, openly and above board but the watchdog may sometimes break loose and has to be punished for misbehavior. Frankfurter, J. in Pennekamp v. Florida [(1946) 90 Led 1295 at p. 1313] observed:

"If men, including Judges and journalists were angels, there would be no problems of contempt of Court. Angelic Judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding Judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to Judges. The power to punish for contempt of court is a safeguard not for Judges as persons but for the function which they exercise."

"The position therefore is that a defamatory attack on a judge may be a libel so far as the judge is concerned and it would be open to him to proceed against the libeler in a proper action if he so chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt. One is a wrong done to the judge personally while the other is a wrong done to the public. It will be injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties. It is well established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement; it is enough if it is likely, or tends in any way, to interfere with the proper administration of law."

"We may now sum up. Judges and Courts have diverse duties. But functionally, historically and jurisprudentially, the value which is dear to the community and the function which deserves to be cordoned off from public molestation, is judicial. Vicious criticism of personal and administrative act of Judges may indirectly mar their image and weaken the confidence of the public in the judiciary but the countervailing good, not merely of free speech but also of greater faith generated by exposure to the actinic light of bona fide, even if marginally over-zealous, criticism cannot be overlooked. Justices is so cloistered virtue."

Dealing with the meaning of the word "scandalizing", this Court in D.C. Saxena's case (supra) held that it is an expression of scurrilous attack on the majesty of justice which is calculated to undermine the authority of the courts and public confidence in the administration of justice. The malicious or slanderous publication inculcates in the mind of the people a general disaffection and dissatisfaction on the judicial determination and indisposes in their mind to obey them. If the people's allegiance to the law is so fundamentally shaken it is the most vital and most dangerous obstruction of justice calling for urgent action. Dealing with [Section 2\(c\)](#) of the Act and defining the limits of scandalizing the court, it was held:

"scandalizing the court, therefore, would mean hostile criticism of judges as judges or judiciary. Any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the judge as a judge brings the court or judges into contempt, a serious impediment to justice

and an inroad on the majesty of justice Any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It would, therefore, be scandalizing the judge as a judge, in other words, imputing partiality, corruption, bias improper motives to a judge is canalization of the court and would be contempt of the court. Even imputation of lack of impartiality or fairness to a judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. When the contemnor challenges the authority of the court, he interferes with the performance of duties of judge's office or judicial process or administration of justice or generation or production of tendency bringing the judge or judiciary into contempt. [Section 2\(c\)](#) of the Act, therefore, defines criminal contempt in wider articulation that any publication, whether by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority or any court; or prejudices, or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner, is a criminal contempt. Therefore, a tendency to scandalise the court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the court is a criminal contempt. Any conduct of the contemnor which has the tendency or produces a tendency to bring the judge or court into contempt or tends to lower the authority of the court would also be contempt of the court."

"attacks upon the judges excite in the minds of the people a general dissatisfaction with all judicial determinations... and whenever man's allegiance to the laws is so fundamentally shaken it is the most fatal and dangerous obstruction of justice and in my opinion claim out for a more rapid and immediate redress than any judges as private individuals but because they are the channels by which the Kings's justice is conveyed to the people."

As already held, fair criticism of the conduct of a judge, the institution of the judiciary and its functioning may not amount to contempt if it is made in good faith and in public interest. To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. All citizens cannot be permitted to comment upon the conduct of the courts in the name of fair criticism, which, if not checked, would destroy the institution itself. Litigant losing in the Court would be the first to impute motives to the judges and the institution in the name of fair criticism which cannot be allowed for preserving the public faith in an important pillar of democratic set up, i.e., judiciary. In Dr. D.C. Saxena's case (supra) this Court dealt with the case of P. Shiv Shankar by observing:

11. On perusal of the postings made by all the persons against some of the Judges of the High Court as well as Apex Court can be construed as a conspiracy against an institution. Large number of persons have made postings in social media and continued to put postings from April

2020, even till today. That shows that these persons are putting postings in social media not against the individual judges. It should be construed as an attack on the institution. The allegations made against the judges come within the purview of scandalizing the Courts. As contended by the Senior Counsel though the petitioner has permanent abode and innocent, but the fact remains that even after complaint made by the Registrar (General) on 25.4.2020 and the order of this Court in W.P.No.9166 of 2020 dated 12.10.2021 transferring it to the C.B.I, but the petitioner was secured and arrested only on 21.10.2021. That itself shows may be the petitioner is small but there might be big persons behind this conspiracy.

12. While considering an application for grant of bail, Court has to consider the nature of offence, the role of the person and facts of the case. It is bounden duty of the Court to apply its mind to examine the entire material on record for the purpose of satisfying itself.

13. Having considered the contentions of the parties and severity of the allegations and considering the fact that some of the accused are yet to arrest and the entire investigation is not yet completed, this Court is not satisfied for the purpose of grant of bail to the petitioner.

14. Accordingly, the criminal petition is dismissed.

As a sequel, the miscellaneous applications pending, if any, shall stand closed.

JUSTICE D.RAMESH

Date: 30.11.2021
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