

GAHC010174712021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Crl. Pet./607/2021

Md. Taher Ahmed Barbhuiya,
Lala Chandrapur, District:- Hailakandi

...PETITIONER

VERSUS

- 1. The State of Assam,**
Represented by its Public Prosecutor.
- 2. Md. Saleh Ahmed Laskar**
S/o Shri Ataur Rahman Laskar
Village- Uttar Narayanpur Part –IV
Panchgram, Hailakandi.

...RESPONDENTS

Advocate for the Petitioner :- Mr. S. Dey

Advocate for the Respondent No.1. :- Mr. P. S. Lahkar,
Addl. P.P., Assam

R.2. :- Mr. S.D. Purkayastha

:::BEFORE:::

HON'BLE MR. JUSTICE ROBIN PHUKAN

Date of hearing : 11.02.2022

Date of verdict : 21.03.2022

VERDICT (CAV)

This petition under Section 482 Cr.P.C., 1973, read with Article 226/227 of the Constitution of India is preferred by Md. Taher Ahmed Barbhuiya of Lala Chandrapur District Hailakandi for quashing of the FIR of Lala P.S. Case No. 490/2021, U/S 120 (B)/153(A)/505(1)(c)/ 505(2) IPC R/W Section 39 of the Unlawful Activities (Prevention) Act 1967 against the petitioner.

2. It is to be mentioned here in that the aforementioned FIR has been lodged by one Saleh Ahmed Laskar, S.I. of Police of Hailakandi Police Station on 26.08.2021, alleging inter-alia amongst others that on 21.08.2021, the petitioner has uploaded one incriminating post in his Facebook Account and the same was discovered by the Social Media Cell of Hailakandi Police Station of which the complainant is one of the member. The name of the Facebook profile user is Advocate Taher Ahmed Barbhuiya having URL <https://www.facebook.com/taherahmed.barbhuiya.9>. The petitioner has posted in the said post "**Ek Itihash Srishti Holo, Taliban Jindabad**" which means "**A history**

has been created, long live Taliban”. It is also alleged in the FIR that the post has praised and glorified ‘Tehreek-e-Taliban’ who was in fact are terrorists and have waged prolonged violent war against a democratically elected Govt. in Afghanistan. It is also stated that they have targeted Indian citizens through violent means; committed atrocities against women & girls and provided patronage to drug trafficking and have been promoting terrorism from Afghanistan and they have also forged alliance with groups, states and interests which are bent on creating chaos and committing terrorist attack in India in order to destabilize our country. It is further alleged that the petitioner in criminal conspiracy with other like-minded persons, through his communal social media posts, is promoting enmity and disharmony on the ground of religion and communities. It is also stated that the petitioner has circulated as such toxic statements with intent to incite a community to commit offence against other class or communities and the petitioner has circulated such statement containing rumors with intent to create and promote feelings of enmity, hatred and ill will between different religious groups and communities on the ground of religion. It is further alleged that ‘Tehreek-e-Taliban’ is mentioned in the List established and maintained pursuant to Security Council Resolution 1267/1989/2253 at QDe.132(d) and it attracts provisions under UAP Act vide Entry Number 33 of the First Schedule. It is also stated that the petitioner, with the intention to further the activity of a terrorist organization, has also invited support for the terrorist organization through his social media posts.

3. Upon the said FIR, the O/C Lala P.S. has registered a Case being Lala P.S. Case No. 490/2021, U/S 120(B)/153(A)/505(1)(c)/505(2) IPC

read with Section 39 of the Unlawful Activities (Prevention) Act, 1967 and endorsed DSP Headquarter Nabanita Das to investigate the same. While the investigation is in progress, the petitioner approached this Court by filing the present petition for quashing the aforementioned FIR on the following grounds:-

(i) That, he has not posted any incriminating message in his facebook account as alleged in the FIR, rather he has written a facebook post by criticizing the then situations in Afghanistan, where an Afghanistan national was seen handing over his infant to an American soldier over a high barbed wire fencing in an Airport for rescuing;

(ii) That, he criticized the Taliban and applauded the American soldier for the rescue mission;

(iii) That, he has been falsely entangled in the aforesaid police case;

(iv) That, the contents of the facebook posts as mentioned in the FIR is an edited version and manufactured and circulated in his name by some unknown persons;

(v) That, he has not deleted any of the post relating to situation in Aghanistan;

(vi) That, Section 39 of the Unlawful Activities (Prevention) Act 1967 is not attracted here in this case in view of the judgment of Hon'ble Supreme Court in Criminal Appeal Nos.

1199/2019 arising out of SLP (CrI) No. 461/2019 (**Union of India vs. Yasmeen Mohammad Zahid @ Yasmeen**);

(vii) That, he has not done any offence as alleged in the impugned FIR dated 26.08.2021 and that the allegation made in the FIR in respect of the alleged incriminating facebook post, even if taken at their face value, do not constitute any cognizable offence against the petitioner and therefore, in view of the ratio laid down by Hon'ble Supreme Court in the case of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others, in Criminal Appeal No. 330/2021**, the petitioner contended to quash and set aside the FIR of Lala P.S. Case No. 490/2021, U/S 120 (B)/153(A) 505(1)(c)/ 505(2) IPC, read with section 39 of the Unlawful Activities(Prevention) Act 1967;

4. The petitioner has also filed one additional affidavit referring following judgments of Hon'ble Supreme Court and contended to extend similar relief:-

(i) Criminal Appeal No. 141 of 2021, arising out of (SLP (Criminal) 103/2021 (Patricia Mukhim vs. State of Meghalaya and Others);

(ii) Criminal Appeal No. 1302 of 2021, arising out of (SLP(criminal) 2415/2021(Thwala Fasal vs. Union of India);

(iii) Writ Petition (Criminal) No. 407/2021 (Mukesh and Others vs. State of Tripura and Others)

5. I have heard Mr. H.R.A. Choudhury, learned Senior Counsel appearing on behalf of the petitioner and also heard Mr. S.D. Purakayastha, learned counsel for the respondent No. 2 and Mr. P.S. Lahkar, Id. Addl. Public Prosecutor for the State/respondent No. 1.

6. Mr. H.R.A. Choudhury, learned Senior Counsel appearing on behalf of the petitioner submits that the petitioner is an Advocate and that he did not commit any offence as alleged in the FIR of Lala P.S. Case No. 490/2021, U/S 120(B)/153(A)/505(1)9(c)/ 505(2) IPC, read with section 39 of the Unlawful Activities(Prevention) Act 1967, and that even if the contents of the FIR has taken at their face value and accepted as correct then also no offence U/S 120 (B)/153(A)/505(1)(c)/505(2) IPC, read with section 39 of the Unlawful Activities(Prevention) Act 1967, made out against the petitioner.

7. Mr. H.R.A. Choudhury also relied upon the decision of Hon'ble Supreme Court in the case of **State of Haryana and others Vs. Bhajan Lal and others, Union of India vs. Yasmeen Mohammad Zahid @ Yasmeen (supra)** and **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others (supra)** to contend that the registration of FIR against the petitioner is an abuse of the process of the Court, and therefore, Mr. Choudhury contended to quash the FIR.

8. On the other hand, Mr. S.D. Purkayastha, learned counsel for the respondent No. 2 submits that a bare perusal of the FIR discloses a prima facie case U/S 120(B)/153(A)/505(1)(c)/505(2) IPC, read with section 39 of the Unlawful Activities(Prevention) Act 1967, against the

petitioner and that the petitioner is an Advocate and he used to incite a communal disharmony by making some post in the facebook and thereby spread communal disharmony. Mr. Purkayastha also referred to the judgment of Hon'ble Supreme Court in the case of **M/s Neeharika Infrastructure (supra)** and in the case of **State of Haryana and others Vs. Bhajan Lal and others (supra)** and submits that since from the perusal of the FIR a cognizable offence has been made out against the petitioner, the FIR cannot be quashed at this stage.

9. On the other hand, Mr. P.S. Lahkar, producing one detailed report of the investigating Officer of Lala P.S. Case No. 490/2021, U/S 120(B)/153(A)/505(1)(c)/ 505(2) IPC read with section 39 of the Unlawful Activities(Prevention) Act 1967, before this Court submits that the I.O. has collected sufficient materials in support of the accusation made in the FIR and that a bare perusal of the FIR reveals a cognizable offence against the petitioner and as such the FIR cannot be quashed and that the case laws, referred by the learned counsel for the petitioner, are not at all applicable here in this case rather it has fortified the prosecution versions. Mr. Lahkar further submits that the petitioner has a dubious antecedent and on earlier occasions also he had made several posts inciting communal disharmony and four cases being:-

(i) Hailakandi Police Station Case No. 145/2019, u/s 143/447/ 448/294/ 323/354/325/431 of IPC;

(ii) Hailakandi Police Station Case No. 288/2020, u/s 120(B)/ 153(A)/295(A) Indian Penal Code read with section 67 IT Act, 2008;

(iii) Hailakandi Police Station Case No. 290/2020, u/s 153(A)/ 295(A)/34 IPC R/W/ Section 67 IT Act;

(iv) Lala Police Station Case No. 274/2014 u/s 448/353/294/379/506/34 Indian Penal Code;

-which are pending against him and his intention can be inferred from the past and present conduct. Mr. Lahkar, therefore, contended to dismiss the petition.

10. Having heard the submissions of learned Advocates of both the parties, I have clearly gone through the petition and the documents placed on record and also the case laws referred by the learned Advocates of both the parties and I find force in the submission so advanced by Mr. P.S. Lahkar, learned Addl. Public Prosecutor for the State/respondent No. 1 and also in the submission of Mr. S.D. Purkayastha, learned counsel for the respondent No. 2.

11. It is to be noted here that Hon'ble Supreme Court in **the State of Haryana and others Vs. Bhajan Lal and others**, while dealing with the circumstances, under which an FIR/Complaint can be quashed, in Para No. 102, held as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under

Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.**

- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order**

of a Magistrate within the purview of Section 155(2) of the Code.

- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.**
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.**
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.**
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of**

the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

12. It is to be mentioned here in that in the case of **Neeharika Infrastructure (supra)** Hon'ble Supreme Court has concluded as under-in respect of exercising the power under Section 482 Cr.P.C. or under Article 226 of the Constitution of India for quashing the FIR as under:-

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;**
- ii) Courts would not thwart any investigation into the cognizable offences;**
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first**

information report that the Court will not permit an investigation to go on;

- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the `rarest of rare cases (not to be confused with the formation in the context of death penalty).**
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;**
- vi) Criminal proceedings ought not to be scuttled at the initial stage;**
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;**
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;**
- ix) The functions of the judiciary and the police are complementary, not overlapping;**

- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;**
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;**
- xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;**

- xiii) The power under [Section 482 Cr.P.C.](#) is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;**
- xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;**
- xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under [Section 482 Cr.P.C.](#), only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;**
- xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an**

interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for

grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.

13. In the case of **Yasmeen Mohammad Zahid @ Yasmeen (Supra)**; Hon’ble Supreme Court has held that to attract Section 39 of the UAPA Act, support to a terrorist organization must be within the meaning of either of the three clauses viz clauses (a),(b) and(c) of sub Section (1).

14. In the case in hand, a careful perusal of the FIR dated 26.08.2021, reveals that 'Tehreek-e-Taliban' is in fact a terrorist organization and it had fought prolonged violent war against a democratically elected Government in Afghanistan. It also appears that the said organization had targeted Indian citizens through violent means; committed atrocities against women & girls and provided patronage to drug trafficking and have been promoting terrorism from Afghanistan. They have also forged alliance with groups, states and interests which are bent on creating chaos and committing terrorist attack in India in order to destabilize our country.

15. It is also to be mentioned here that 'Tehreek-e-Taliban' is mentioned in the List established and maintained pursuant to Security Council Resolution No. 1267/1989/2253 at QDe.132 (d) and the same attract unlawful activities attracts as act vide Entry Number 33 of the First Schedule.

16. It also appears from the FIR that the petitioner has uploaded one post in his facebook account as "*A history has been made, long live Taliban*". It also appears that by the said post the petitioner has praised and glorified 'Tehreek-e-Taliban'. It also appears that the petitioner, through his communal social media post, has promoting enmity and disharmony on the ground of religion and communities, in criminal conspiracy with other likeminded persons. It also appears from the detailed report produced by learned P.P. that the I.O. has examined

several witnesses and collected sufficient materials in support of the accusation so made in the FIR.

17. Further, it appears that the petitioner, in paragraph No. 8 of his petition has denied committing any offence under section U/S 120(B)/153(A)/505(1)(c)/ 505(2) IPC, read with section 39 of the Unlawful Activities(Prevention) Act 1967, disputed the assertions made in the FIR. Thus, the assertions made in the FIR are disputed and the same are also hazy. He had eulogized 'Tehreek-e-Taliban', a terrorist organization, by his social media post. No doubt the said organization has no foothold or presence in India. But, they have targeted Indian citizens through violent means; committed atrocities against women & girls and provided patronage to drug trafficking and have been promoting terrorism from Afghanistan and they have also forged alliance with groups, states and interests which are bent on creating chaos and committing terrorist attack in India in order to destabilize our country.

18. It is also appears from the FIR that the petitioner in criminal conspiracy with other like-minded persons, through his communal social media posts, is promoting enmity and disharmony on the ground of religion and communities. He has circulated as such toxic statements with intent to incite a community to commit offence against other class or communities and the petitioner has circulated such statement containing rumors with intent to create and promote feelings of enmity, hatred and ill will between different religious groups and communities on the ground of religion. And as contended by the learned Addl. P.P., the

intention of the petitioner can be gathered from his previous conduct and against him four cases of similar nature are pending in different Police Stations.

19. Though it is contended by Mr. H.R.A. Choudhury, learned senior counsel appearing for the petitioner that the allegations made in the FIR, even if taken at their face value, reveals no cognizable offence against the petitioner, yet, the same left this court unconvinced. Since this court is not entitled to embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint as held in point No. V of the guidelines laid down in the case of **Niharika Infrastructure (supra)**, it cannot be said that the assertions made in the FIR are unbelievable. In the given facts and circumstances on the record, and in view of the submissions made at the Bar, I am of the considered opinion that the assertions made in the FIR, in fact discloses commission of a cognizable offence by the petitioner. At this initial stage it cannot be said that the action incorporated in Clause (a), (b), and (c) of Sub-Section (1) of Section 39 of the Unlawful Activities (Prevention) Act is not done with the intention to further the activities of terrorist organization. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on as held in point No.(III) in the case of **Niharika Infrastructure (supra)**, and in point No.1 of the paragraph No.102 in the case of **Bhajanlal (supra)**.

20. Thus, the submission of Mr. H.R.A. Choudhury, the learned Senior

Counsel left this Court unimpressed. Rather it appears that the I.O. has collected sufficient materials in support of the accusation made in the FIR which discloses commission of a cognizable offence by the petitioner and as such the case laws referred by Mr. Choudhury, learned counsel for the petitioner, i.e. **(1) State of Haryana and others Vs. Bhajan Lal and others (supra), and (2) M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others (supra)** to the considered opinion of this Court would not come into his aid. As the facts and circumstances of the case in hand is different from the case laws referred by the petitioner in his additional affidavit i.e. **(i) Criminal Appeal No. 141 of 2021**, arising out of (SLP (Criminal) 103/2021 (Patricia Mukhim vs. State of Meghalaya and Others); **(ii) Criminal Appeal No. 1302 of 2021**, arising out of (SLP(Criminal) 2415/2021(Thwala Fasal vs. Union of India); **(iii) Writ Petition (Criminal) No. 407/2021** (Mukesh and Others vs. State of Tripura and Others), I am of the view that the ratios laid down therein are not applicable in all force to the present case.

21. In the result, I find no merit in this petition and accordingly, the same stands dismissed. The parties have to bear their own cost. Stay, if granted earlier, stands vacated.

JUDGE