

HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No.161 of 2022

Jitendra Narayan Tyagi @ Vasim RizviApplicant

Vs.

State of Uttarakhand Respondent

Present : Mr. Rakesh Thaplyal, Senior Advocate assisted by Mr. Lalit
Sharma, Advocate for the applicant.
Mr. Pratiroop Pandey, AGA for the State.
Mr. Pranav Singh, Advocate for the informant.

Hon'ble Ravindra Maithani, J.

Applicant Mr. Jitendra Narayan Tyagi @
Vasim Rizvi is in judicial custody, in Criminal Case
No.8 of 2022, under Sections 153A, 298 IPC, Police
Station Kotwali, Haridwar, District Haridwar. He has
sought his release on bail.

2. Heard learned counsel for the parties and
perused on record.

3. The FIR in the instant case has been lodged
by Nadim Ali, the informant. According to it, a *Dharm
Sansad* was organized in Haridwar between 17th and
19th December, 2021, in which, it was resolved to wage
war against a particular religion; objectionable words
were used with regard to the religion, Prophet and
religious books. Even thereafter, the chapter did not

close. The petitioner, thereafter, released a video message, in which, he again abused a particular religion, Prophet and made utterances so as to wage war against a particular religion.

4. Learned Senior Counsel appearing for the applicant would submit that the offences are punishable maximum for three years of imprisonment and triable by the Magistrate. One of the accused, relating to the *Dharm Sansad* has already been granted bail by the trial Court with certain conditions. It is argued that the applicant may also be enlarged on bail, subject to the conditions as may be imposed by this Court. Learned Senior Counsel has also raised the following points in his submissions;

- (i) After the *Dharm Sansad*, nothing had happened as was anticipated in the FIR No.849 of 2021, which was lodged on 23.12.2021 with regard to the statements made in the *Dharm Sansad*.
- (ii) The Constitution of India gives freedom of speech and expression. It cannot be restricted.

(iii) The applicant studied a particular religion. He had written a book also, which was launched by him on 5th November, 2021 in Gaziabad, U.P., and on 12th November, 2021 in Haridwar. Thereafter, an FIR No.810 of 2021 was lodged against the applicant with regard to the book. But, it is argued that the book has never been forfeited under Section 95 Cr.P.C. Had it been done, it is argued the applicant would have challenged such order in appeal.

5. In support of the contention, learned Senior Counsel has placed reliance on the principles of law as laid down in the case of Harnam Das vs State of Uttar Pradesh, AIR 1961 SC 1662, and Azizul Haq Kausar Naquvi and Anr. Vs. the State AIR 1980 All 149, 1980 Cri LJ 448. In both the cases, the order forfeiting a book was impugned (Section 95 of the Code of Criminal Procedure, 1973 (for short, "the Code") and Section 99A of the Code of Criminal Procedure, 1898).

6. On the other hand, learned counsel for the State would submit that the applicant provoked the masses in general to take up arms against a particular religion; the applicant attempted to promote enmity between different religions. The applicant has criminal history of 34 cases. Therefore, it is argued that it is not a case for bail.

7. Learned counsel appearing for the informant would submit that with regard to the launch of book and *Dharm Sansad*, the applicant was wanted. He was served a notice under Section 41 of the Code. Despite that again on 28th December, 2021, it is argued, the applicant released the video message promoting enmity between different religions, defaming, belittling a particular religion.

8. Needless to say, bail is a rule, jail an exception. There are various factors, which are taken into consideration, while considering the bail application. Essentially, the purpose is to secure the presence of an accused during trial, but related to it is seriousness of offence; position of the offender and the victim; impact after alleged offence on the society;

chances of tampering with the evidence etc. Bail balances individual liberty with societal interest. After all, right to life and liberty is one of the illuminated rights enshrined in our constitution.

9. In the case of Rajesh Ranjan Yadav @ Pappu Yadav vs. CBI, (2007) 1 SCC 7, these aspects have been discussed by the Hon'ble Supreme Court in paragraph 16 as hereunder:-

“We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time **a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them.** While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the Court has also to take into consideration other facts and circumstances, such as the interest of the society.” (emphasis supplied)

10. In terms of punishment, it is true that the offences are punishable for maximum three years of

imprisonment with or without fine. The evidence that is available is the statements of the witnesses as well as the video recorded. The transcript has been filed by the State Government with its counter affidavit.

11. This Court refrains to reproduce from the transcript as to what was allegedly stated by the applicant. But, undoubtedly, the transcript reveals that there are huge derogatory remarks against a particular religion; against Prophet. The Prophet has been abused; it intends to wound the religious feelings of persons belonging to a particular religion; it intends to wage war. It promotes enmity. It is a hate speech.

12. Right to freedom, as granted under the Constitution is not an absolute right. It has limitations. Right to freedom of speech and expression is subject to the restriction as given under Article 19(2) of the Constitution. When the Fundamental Rights were being discussed in the Constituent

Assembly (Constituent Assembly debates on 04.11.1948), Dr. B.R. Ambedkar has said;

“I am sorry to say that the whole of the criticism about fundamental rights is based upon a misconception. In the first place, the criticism in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by agreement between parties while fundamental rights are the gift of the law. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them.

In the second place, it is wrong to say that fundamental rights in America are absolute. The difference between the position under the American Constitution and the Draft Constitution is one of form and not of substance. In support of every exception to the fundamental rights set out in the Draft Constitution one can refer to at least one judgment of the United States Supreme Court. It would be sufficient to quote one such judgment of the Supreme Court in justification of the limitation on the right of free speech contained in Article 13 of the Draft Constitution. In *Gitlo vs. New York* in which the issue was the constitutionality of a New York “criminal anarchy” law which purported to punish utterances calculated to bring about violent change, the Supreme Court said:

“It is a fundamental principle, long established, that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom.”

It is therefore wrong to say that the fundamental rights in America are absolute, while those in the Draft Constitution are not.”

13. The law commission of India examined the issue of hate speech and in its 267 report recommended certain amendments in the penal laws. The far reaching effect of hate speech has been discussed by the Hon’ble Supreme Court in the case of *Pravasi Bhalu Sangathan Vs. Union of India and others*, MANU/SC/0197/2014, as hereunder:-

“7. Hate speech is an effort to marginalise individuals based on their membership in a group. Using expression that exposes the group to hatred, hate speech seeks to delegitimise group members in the eyes of the majority, reducing their social standing and acceptance within society. Hate speech, therefore, rises beyond causing distress to individual group members. It can have a societal impact. Hate speech lays the groundwork for later, broad attacks on vulnerable that can range from discrimination, to ostracism, segregation, deportation, violence and, in the most extreme cases, to genocide. Hate speech also impacts a protected group's ability to respond to the substantive ideas under debate, thereby placing

a serious barrier to their full participation in our democracy.”

14. Having considered the repeated nature of allegations; the kind of utterances which the applicant has allegedly made, published video message and its possible impact on the society, this Court is of the view that it is not a fit case for bail. Accordingly, the bail application is liable to be rejected.

15. The bail application is rejected.

(Ravindra Maithani, J.)
08.03.2022