



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous Bail Application No. 13841/2022

Syed Gohar Husain Chisti Son Of Syed Safadar Chisti, R/o Shakoor Building Chhota Chowk, Khadim Mohalla, Police Station Dargah, Ajmer At Present House No. 18/158, Diggi Bazar Sodagar Mohalla, Police Station Kotwali, Ajmer (At Present Confined At Central Jail Ajmer)

----Applicant

Versus

State Of Rajasthan, Through P.p.

----Respondent

For Applicant(s) : Mr. S.S. Hasan, Senior Adv. with Mr. Fahad Hasan
For Respondent(s) : Mr. Ghan Shyam Singh Rathore, GA-cum-AAG with Mr. S.S. Mehla, PP and Mr. Santosh Singh Shekhawat

HON'BLE MR. JUSTICE SAMEER JAIN

Order

30/09/2022

1. The instant bail application has been filed under Section 439 Cr.P.C. on behalf of accused-applicant. The accused-applicant was arrested in connection with FIR No.162/2022 registered at Police Station Dargah District Ajmer for the offence(s) under Sections 506, 504, 188, 149, 143, 117 and 302/115 of IPC.

2. Learned counsel for the applicant has submitted that the applicant is a *Khadim* in Ajmer who was rendering his religious and pious duties before the *Garib Nawaz*. In the case at hand, the applicant was arrested on 15.07.2022. The charge-sheet has been filed. He has submitted that a peaceful procession was carried out, in protest of the inflammatory statements made by BJP



spokesperson Nupur Sharma, with due permission and the protest took place only after lawful permission was granted by the State as well as the police authorities. Learned counsel further submitted that FIR was filed at a belated stage, after a delay of seven days and it was originally registered for bailable offences only. It is contended that only on account of pressure by the media, the State made improvements to the FIR by adding provisions of Section 302/115 IPC, which are non-bailable in nature. It is also contended that these provisions were added without any evidence whatsoever. Learned counsel further submitted that it is in this background, that the applicant was arrested along with other co-accused and that the co-accused, on a similar set of facts & circumstances, have been enlarged on bail. Learned counsel submitted that the statement of Nupur Sharma affected the public at large and hurt the religious sentiments of the community and in protest of the same, a peaceful procession was carried out with due and lawful permission. He further submitted that the applicant has been falsely implicated in the matter and has been in custody for over two months. Learned counsel also submitted that the statement of applicant was recorded after a delay of two months. Learned counsel further submitted that the applicant should be released on humanitarian grounds as his wife is 8 months pregnant, his father is old & ailing and he is the sole bread earner of his family.

3. Learned counsel further submitted that the applicant has no role to play in the Udaipur and Amravati murder cases, nor is he a party in the said cases. The allegations qua him are limited to raising slogans, for which provisions of Section 302/115 cannot be attracted. In support of his claim, he has relied upon Hon'ble



Apex Court judgment of **Balwant Singh and Ors. vs. State of Punjab** reported in **AIR 1995 SC 1785** wherein the Apex Court has held that raising slogans by lonesome persons would not tantamount to abetment of the alleged crime.

4. *Per contra*, learned Additional Advocate General submitted that the case of the present accused-applicant is highly distinguishable from the co-accused who have been enlarged on bail. He contended that the applicant is a habitual offender and his case is on a different footing from the case of the co-accused who have been enlarged on bail as neither were the co-accused named in the FIR nor were any specific prohibitory orders issued against them in the past. He submitted that the permission was granted by the State only for a "peaceful procession". The permission order dated 16.06.2022 itself contained the terms and conditions which were to be followed and the relevant aspects are reproduced as under:-

कार्यालय अतिरिक्त जिला कलक्टर एवं अतिरिक्त जिला मजिस्ट्रेट (शहर)

अजमेर

4. आयोजन/कार्यक्रम के दौरान कानून, शांति, सुरक्षा, सौहार्द एवं यातायात व्यवस्था बनाये रखने में प्रशासन का पूर्ण सहयोग किया जावे।

कार्यालय जिला पुलिस अधीक्षक, अजमेर

5. जुलूस में कोई उत्तेजनात्मक या किसी भी धर्म/समुदाय को ठेस पहुँचानी नारेबाजी नहीं की जावे।

Learned AAG submitted that vide order dated 20.06.2022, a complaint was presented to the accused-applicant under Section 108 read with Section 116(3) for raising slogans "गुस्ताखी नबी



की एक सजा, सिर तन से जुदा, सिर तन से जुदा” Learned AAG has submitted that the FIR was registered on account of the fact that the conditions of permission were flouted and provocative and religiously charged slogans were raised before a crowd of approximately 3000 persons. He further submitted that video clips of such slogans were widely circulated online which in effect led to the unfortunate incidents at Udaipur and Amravati, wherein the victims were beheaded on account of religious hatred promulgated by such slogans and therefore, provisions of Section 115 read with Section 302 were also added in the FIR. Learned AAG also submitted that the applicant has criminal antecedents and two cases are presently pending against him. It is further submitted that the accused-applicant is a habitual offender and every year, as a precautionary measure, prohibitory orders are issued against him to maintain peace and communal harmony. He further submitted that the applicant was arrested from Hyderabad and his tickets were sponsored by third-parties. Further, several mobile phones and CD’s were recovered from possession of the accused-applicant. Learned AAG contends that the offence is heinous in nature and if the accused-applicant is enlarged on bail, there is a high possibility that there will be a persistent threat of communal disharmony and violent protests, which will have wide spread effects and ramifications.

5. Heard the arguments advanced by both the sides, scanned the record and considered the judgment(s) cited at Bar.

6. On the analysis of permission order given by the administration and police authorities dated 16.06.2022, it is observed that the permission was granted to raise protest by way of a “peaceful procession” on the specific condition that the law



and order will be maintained and that no provocative religious slogans would be raised. In spite of the same, the applicant arranged for mics and loudspeakers and raised religiously charged slogans before a crowd of 3000 people that were provocative, vindictive and motivated in hate speech. Moreover, the applicant is alleged to have been actively involved in the incident as the mastermind. In contravention of the categorical directions of the police authorities, the law and order was put in jeopardy and communal discomfort was caused through out the country, including certain unfortunate incidents at Amravati and Udaipur.

The alleged recovery of multiple mobile phones and the fact of active arrest of the applicant made from another State further reflects the alleged active participation of the applicant. The prohibition orders passed in the case of the applicant, on a yearly basis under Section 107 of Cr.P.C., also distinguishes the case of the applicant from the co-accused who have been enlarged on bail and further reflects his criminal antecedents. The Hon'ble Apex Court judgment of **Balwant Singh (supra)**, relied upon by the applicant is on a completely different footing. The slogans raised in the said case were of a different nature and they were not provocative, motivated, vindictive and lonesome towards the abetment of crime as per the slogan raised. Learned AAG had also submitted that on account of the said slogans, certain victims were beheaded at Udaipur and Amravati. Considering the above, it cannot be ruled out that if the applicant is released on bail, he can pose a threat to the society at large and affect the law and order situation in the State.

8. Therefore, considering the arguments advanced by both sides, looking to the overall facts and circumstances of the case



but without commenting upon merits/demerits of the case, and for the above-stated reasons, this court is not inclined to allow the present bail application at this stage.

9. Accordingly, the criminal misc. bail application is dismissed.

(SAMEER JAIN),J



RAJASTHAN HIGH COURT



सत्यमेव जयते