

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 5962 of 2023**

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AFSALBHAI KASAMBHAI LAKHANI
Versus
STATE OF GUJARAT

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Appearance:

SAJID Y KARIYANIYA(9619) for the Applicant(s) No. 1

MR. MANAN MEHTA, ADDL. PUBLIC PROSECUTOR for the Respondent(s)
No. 1

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CORAM:HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Date : 06/06/2023**ORAL ORDER**

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, for regular bail in connection with FIR being C. R. No. 11202057220639 of 2022 registered with Sikka Police Station, District: Jamnagar for offences under Sections 120 (B), 153 (A), 283 (2) (A), 294 (B), 295 (A), 298, 469, 500, 501 and 505 (2) of Indian Penal Code and under section 67 of the Information Technology Act.
2. As per the FIR registered by one Devubhai Khaminandbhai Gadhavi on 31.12.2022. In the FIR, he has stated that on 31.12.2022 when he was surfing his Facebook page, he found Facebook page viz. Gujarat Trast Bhajpa Mast and found that there were certain posts relating to the Hon'ble Prime Minister of India and his mother. Those posts were not only offending,

objectionable and abusive, the posts were such that it may affect the commune harmony as well and may create an unrest in the society and thereby, try to create enmity between two communities and has insulted the Hon'ble Prime Minister of Country and his mother and he not only did this but also tried to edit the photographs of the Hon'ble Prime Minister and by insulting derogatory remarks into those photographs, he created the aforesaid page and therefore, the FIR was registered.

3. After filing of charge-sheet, this application is preferred and as per learned advocate Mr. Dipen Dave appearing for learned advocate Mr. Kariyaniya, the applicant is in jail since 01.01.2023. Learned advocate Mr. Dipen Dave made only two submissions, first is that the present applicant is regretting his act and he should not have done this and he shall not do such things in future and second is that even in case of conviction, looking to the sections under which the FIR is registered, the maximum punishment would be five years and therefore, considering the fact that the maximum punishment would be of five years, in case if the applicant is held guilty of offence, the present applicant should be enlarged on bail.
4. Learned APP Mr. Manan Mehta appearing for the respondent – State vehemently opposed this application and submitted that the present applicant is in habit of posting such kind of

photographs, articles and quotes on his Facebook page for which another FIR also was registered. Learned APP Mr. Manan Mehta has placed on record a compilation of print out of Facebook page and his post of Facebook and pointed out that the present applicant has not only posted on Facebook, the post which would insult the Hon'ble Prime Minister of the Country as also departed soul of his late mother. Learned APP Mr. Mehta also pointed out from the post that the Facebook post of the present applicant were anti-Indian and pro-pakistani and also pointed out that the nature of posts were such that it may create communal unrest among the society. Further it was pointed out by learned APP that even the obscene and pornographic material also was posted by the present applicant on Facebook pages which would ultimately malign the image of not just the Hon'ble Prime Minister of the Country but would also adversely affect and hurt the sentiments of particular community and may create communal tension in the society. Leaned APP Mr. Manan Mehta, upon instructions submitted that the present applicant had used a modus operandi whereby he has created 18 different Facebook pages through his two different mobile phones and also made international calls to Pakistan and other countries and also received phone calls from other neighboring countries. He submitted that the present applicant by using different fake Facebook accounts used to comment on the pages created by

himself only and thereby, has tried to increase tension between two communities.

5. Learned APP further submitted that looking to the overall conduct of the present applicant and considering the fact that he is trying to disturb the communal harmony as well as considering the fact that not only he is posting abusive pornographic and anti-indian material on the Facebook page by using a different name of Jigar Thakar but also the present applicant is making obscene and derogatory comments against the Hon'ble Prime Minister of the Country and his late mother and therefore, considering the fact that the present applicant who without any reason posting all this things on Facebook, just to ensure that communities and harmony is adversely affected anyhow. Considering the fact that the present applicant has not posted just one post but he has continuously posted such disturbing and objectionable post on social media which is followed world over by the followers and therefore, considering it larger impact, he should not be enlarged on bail.
6. I have heard learned advocates for the respective parties and perused the record.
7. On perusal of the record, I found that the present applicant has created a Facebook page in the name of Gujarat Trast Bhajpa

Mast and posted certain videos, quotes and other material. The material that the applicant has posted not only contains derogatory and insulting remarks against the Hon'ble the Prime Minister but also against the late mother of the Hon'ble Prime Minister. On perusing the material in the form of print out of Facebook pages submitted by learned APP, this Court has also found that the present applicant is posting even pornographic and obscene contents of the aforesaid page. This Court has found that the present applicant has posted certain posts which may disturb the communal harmony and may create unrest in the society. Further on perusal of the material, I have found that the present applicant has also made certain comments which may hurt the sentiments of a particular community and there are certain posts which are containing abusive language as well as some material which is of such kind that it may have a larger impact over the peace and brotherhood in the society.

8. One can understand that a person may have like or dislike against any person but it does not mean that he may start using derogatory and abusive language for the Hon'ble the Prime Minister of Country and his late mother. The language used in those post is so insulting and derogatory, that it is not possible for this Court to reproduce any of those post in this order and therefore, only general observations are made by this Court rather than reproducing the contents of any of the post. On

overall consideration of the material submitted by learned APP, this Court has found that the present applicant who is an Indian Citizen has made all the attempts to destabilize the peace in the society and prima facie, posted by the present applicant seems to be agenda driven post and therefore, even if the maximum punishment for the offence, if the present applicant is held guilty of offence is of five years, I do not see any reason to show any leniency upon the present applicant and to enlarge him on bail. Further I have been apprised about the fact by the learned APP that there is one more FIR also was registered against the present applicant of similar nature wherein he has already been enlarged on bail.

9. Be that as it may, looking to the totality of the facts and circumstances and the material available on record and considering the fact that the present applicant has posted all this post just to malign the impression and image of not just the leader of the country but to fulfill his own personal hidden agenda. If such person is granted bail, there are all the chances that he may commit such offence once again by using another name and by creating fake IDs as the technology has advanced by now and once if such person is permitted to roam freely in the society, they may do the damage by his post on social media and once the damage is done, there is no point in arresting that person and punish him because larger damage by the time, such person is identified would already be done in

form of disturbance of peace, harmony and brotherhood in the society, as social media is a very powerful tool to influence people.

10. In view of above discussion, I do not see any reason to enlarge present applicant on bail. This application is required to be dismissed and the same is dismissed accordingly.

11. However, considering the fact that maximum punishment is five years, the trial is expedited.

VARSHA DESAI

(NIRZAR S. DESAI,J)