

Court No. - 3

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION
U/S 438 CR.P.C. No. - 1340 of 2023

Applicant :- Maulana Syed Mohammad Shabibul Husaini

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil Secrett.
Lko.

Counsel for Applicant :- Dharendra Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Jyotindra Mishra Senior Advocate, assisted by Sri Dharendra Kumar Mishra Advocate, the learned Counsel for the applicant; Sri Prem Prakash Singh, the learned A.G.A.-I, assisted by Sri Shiv Prakash Singh, the learned State Counsel.
2. The aforesaid case has been registered on the basis of an F.I.R. lodged on 18.03.2023 by the informant Jitendra Narayan Singh, stating that in a statement given by the applicant on INN Channel on You Tube, the applicant stated that the informant's "**Katl Wajib Hai**" (it is desirable to kill). It has further been stated in the F.I.R. that the applicant has made a reference to the Fatwa issued against the author Salman Rushdie. It has further been stated in the F.I.R. that since the informant changed his religion and accepted Sanatan Dharm, he is repetitively getting threats to life and after the aforesaid video was uploaded on You Tube, he is being threatened. The informant has further stated that the statement of the applicant is spreading hatred in the Society at large.
3. In the affidavit filed in support of the bail-application the applicant

has stated that he is a scholar and spiritual person of Shia community of Muslims and he is engaged in imparting religious sermons and he has authored several books; that the applicant has never involved himself in any political activities and he is only concerned with academics; that the interview in question was taken when the applicant was returning after finishing some academic activities at New Delhi and he had replied to certain questions asked by a journalist regarding the informant, “*In light of the provisions / sermon of Holy Quran and Islamic jurisprudence*”. It has further been stated in the affidavit that the applicant had not issued a *fatwa* and he has no authority to do so and whatever he stated in the interview, was stated “*In the light of Shia school of thought, philosophy & jurisprudence*”. The affidavit further claims that the applicant has no criminal history.

4. A transcript of the applicant’s interview held on You Tube, typed in devnagri script, has been annexed with the affidavit filed in support of the anticipatory bail-application and the meaning and purport of his interview is that Islam has supremacy over all and Islam does not give supremacy to any person, caste or religion. **Islam is a religion, which does not tolerate, does not accept.** Islam strongly dislikes *Irtedad* (apostasy), since apostasy is in direct conflict with Islam. There are two ways to go to *Murtad* (Apostate), one is *Murtade Fitri* and the other is *Murtade Milli*. *Murtde Milli* is the one who was not a Muslim earlier, became a Muslim and then became a *Kafir* (non-believer). Such a person is called *Murtade Milli* and repentance of such a person is possible. Such apostates will be ordered to repent and if he does not repent, then he is *Wajibul Katl* (it would be justified to kill him). The other kind is *Murtade Fitri*, i.e. one who was a Muslim earlier and if he wants to come back to Islam again, then such a person is not accepted in Islam and this person is called *Murtade Fitri*. **The punishment for *Murtade Fitri* is only and only murder and no one has the right to forgive him. A *Murtade Fitri* who has rebelled**

against Islam, his parents were Muslims or he himself was a Muslim, he was a Muslim by birth and he has adopted the Kuffr, now it would just to commit his murder.

5. The applicant reinforced his stand with the fatwa issued by Imam Khomeini to kill the author Salman Rushdie by saying that when Salman Rushdie wrote some *aamez* (mixed up) things and expressed his anger through his pen, this was the reason why a person like Imam Khomeini, *Azim Aalime Deen* (the great scholar of Islam), did not say to Salman Rushdie that he should repent, because Salman Rushdie was a dead body. Imam Khomeini declared that his murder was justified and announced a reward. Wasim Rushdie, Wasim Rizvi, Wasim Tyagi or by whatever other name one may call the informant, since he was a Muslim and he adopted the Kuffr, his murder is justified. For *Murtade Fitri* the order of all sects of Islam is that his murder is justified. The informant says that the Muslim clerics and scholars were pressurizing him, but the Muslims and Scholars are not pressurizing, they are following the orders of Islam and they do not consider that the informant deserves an apology.

6. What is even more disturbing than the utterances made by the applicant in his interview is that in the affidavit filed in support of the application for anticipatory bail, the applicant has justified his statements and has stated on oath that ‘he had given the statement according to Islamic Jurisprudence (*Shia-Jafri*) based on many books, wherein it is written that according to Jafri or Imami school, the Male apostates must be executed, while female apostates must be held in solitary confinement until they repents and return to Islam. Apostasy from Islam is considered a crime. The “mere intention of unbelief” without expression qualifies as apostasy. Unlike the other schools, repentance will not save a defendant from execution, unless they are “national apostates” who were not born Muslims but converted to Islam before apostasizing, although it is disputed by some Muslim

scholars. “Innate” apostates, who grew up Muslims and remained Muslim after puberty and until converting to another religion, should be executed.”

7. The applicant has referred to the books – “Islam’s Trajectory Archived” by David F Forte (2011), “Citizenship in the Arab World” by Parolin, Gianluca P. (2009) and “Crime and Punishment in Islamic Law” by Peters, Rudolph (2005).
8. What *prima facie* from the aforesaid discussion is that the applicant claims himself to be an Islamic religious scholar and he has claimed that he had made the statements “*In light of the provisions / sermon of Holy Quran and Islamic jurisprudence*” and “*In the light of Shia school of thought, philosophy & jurisprudence*” but he has not referred to a single verse of the Holy Quran.
9. Article 25 of the Constitution of India confers the Fundamental Right to freedom of conscience and free profession, practice and propagation of religion by providing that all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion, but this right is subject to public order, morality and health and to the other provisions of Part III of the Constitution. The applicant does not have the right to propagate his religion in a manner which may result in an adverse effect to public order and he cannot propagate his religion in a manner which may be prejudicial to the health and well-being of the informant.
10. The applicant has stated in his interview that it is just to murder persons who were Muslims since birth and have changed their religion and he has the audacity to reiterate his stand on oath even before this Court. The aforesaid conduct of the applicant is prejudicial to public order and it certainly is extremely disturbing.
11. The applicant is charged with commission of offences of abetment of

murder, promoting enmity on the ground of religion and making assertions prejudicial to national integration, besides some other offences. The aforesaid offences are of a very serious nature. The material relied by the prosecution is the applicant's interview available on You Tube and the applicant has reiterated his stand even in his affidavit filed before this Court.

12. I am of the considered view that the aforesaid conduct of the applicant does not deserve exercise of discretion of this Court in his favour by granting him pre-arrest bail.
13. The anticipatory bail application is rejected.

(Subhash Vidyarthi J.)

Order Date :- 05.06.2023
A.Nigam