

Court No. - 51

Case :- CRIMINAL MISC. WRIT PETITION No. - 17315 of 2020

Petitioner :- Ashok Kumar Pandey

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Madan Kumar Tiwari

Counsel for Respondent :- G.A.

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Rajendra Kumar-IV,J.

Heard learned counsel for the petitioner and learned AGA for the State.

The present writ petition has been filed by the petitioner, praying for quashing of the First Information Report, registered as Case Crime No. 409 of 2020, under Sections 153-A, 153-B, 505(2) IPC, P.S. Civil Line, District Aligarh, with a further prayer to stay his arrest during pendency of investigation of the said case.

Learned AGA opposed the prayer for quashing of the First Information Report and stay of arrest and submitted that from the perusal of First Information Report, commission of a cognizable offence is clearly made out, therefore, the writ petition be dismissed.

We have perused the impugned FIR. The specific allegation in the FIR is that the petitioner who is national spokesperson of an organization, in his press conference, made utterances against Aligarh Muslim University and its Founder Sir Saiyed Ahmad Khan, in an attempt to promote religious disharmony and hatred between different religious communities. It had resulted in hurting the feelings of a particular community and spreading hatred. The allegations prima facie discloses commission of cognizable offence and therefore, the FIR requires proper investigation and cannot be quashed at this stage.

In respect of the second prayer made by learned counsel for the petitioner for stay of arrest of the petitioner till submission of the report under Section 173(2) of the Code of Criminal Procedure, 1973, we would like to take notice of the law laid down by Supreme Court in **State of Telengana v. Habib Abdullah Jellani; 2017 (2) SCC 779** wherein the Supreme Court has disapproved an order restraining the Investigating Agencies from arresting the accused where prayer for quashing the FIR has been declined. Relying on the said decision, the Supreme Court entertained **Special Leave to Appeal (Crl.) No. 4650 of 2020 (Samiksha Singh @ Nikki v. The State of U.P. & Others)** wherein similar direction issued by the High Court staying arrest until the submission of report under Section

173(2) Cr.P.C. was under challenge. The order is as follows: -

"1. Mr Sanchit Garga, learned counsel appearing on behalf of the petitioner, submits that while the High Court declined to quash the FIR, at the same time, it has granted an order protecting the accused from arrest until the submission of the report under Section 173(2) of the Code of Criminal Procedure 1973 which, it has been submitted, is impermissible in law. He relies on a decision of this Court in *State of Telengana v. Habib Abdullah Jeelani*.

2. Issue notice, returnable in three weeks.

3. Liberty to serve the Standing Counsel for the State of Uttar Pradesh, in addition."

Having regard to the law laid down by Supreme Court in **State of Telengana** (supra), we also decline to grant the second prayer.

Before parting, we would like to quote the observations made by the Supreme Court in **Jogender Kumar Vs. State of U.P., AIR 1994 SC 1349** in relation to personal liberty of a citizen and the manner in which police officer should exercise his power to arrest accused person, so that the same is duly complied with:-

"No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do."

The writ petition is accordingly dismissed with the above observations. This is without prejudice to the right of the petitioner to seek anticipatory bail/bail, as may be maintainable or advised. If any such recourse is taken, the bail application shall be disposed of expeditiously, without being influenced by any observation made in the instant order.

(Rajendra Kumar-IV, J.) (Manoj Kumar Gupta, J.)

Order Date :- 21.1.2021/Jaideep/-