

High Court Of Punjab And Haryana

Anupinder Singh Grewal, J

**Deep Kaur @ Kulvir Kaur v. State Of Punjab**

Criminal Miscellaneous Petition (M) No. 41771 Of 2021

21.12.2021

**CrPC S. 438 - Bail - Posting on facebook account - The allegations against the petitioner are that she had posted about 'referendum-2020' on her facebook account and there is stated to be an audio recording of the petitioner being in conversation with co-accused. Its authenticity and evidentiary value would be determined at the trial. There is no reference to any act of violence (overt) which was actually committed by any of the accused in the instant case or that any individual had been harmed in the instant case. The petitioner is a lady with three minor children, one of whom is about one year and nine months old and is lodged with her in jail. The petitioner is in custody for over two years and three months. Challan has been filed but there is no likelihood of the trial being concluded soon. Article 21 of the Constitution of India provides right to speedy trial and long period of incarceration would be a good ground to grant bail to an under-trial for an offence punishable under the UAPA (Unlawful Activities (Prevention) Act, 1967 ) - Information Technology Act, 2000, Section 66F**

Advocate : Simranjit Singh, Arnav Sood, Amarjit Kaur Khurana

Judgement

**Anupinder Singh Grewal, J**

The petitioner is seeking regular bail in FIR No.46 dated 31.05.2018 under Sections 307, 438, 427, 148, 149 IPC (Sections 121, 121-A, 122, 124-A, 115, 120-B IPC, Sections 11, 12, 13, 17, 18 of the Unlawful Activities (Prevention) Act, 1967 (for short, 'the UAPA'), Sections 25/54/59 of the Arms Act and Section 66-F of the Information Technology Act, 2000 added later on), registered at Police Station Rangar Nangal, District Batala.

Learned counsel for the petitioner contends that the petitioner is not named in the FIR wherein it is alleged that a wine shop had been set on fire. The petitioner has been arraigned as an accused on the statement of co-accused Dharminder Singh @ Fauji. In the course of investigation and in the statement of co-accused Dharminder Singh @ Fauji, it transpires that the petitioner on her Facebook account had posted about 'Sikhs for Justice 2020 Referendum'. Besides this post on social media, there is no allegation that the petitioner had taken part in any unlawful activity. He also contends that 'Sikhs for Justice Organisation' had been banned by the Government of India in July, 2019 and the petitioner had posted on her facebook account on 31.05.2018 when the organisation was not yet banned. He further contends that even assuming the petitioner was a member of a banned

organization she had not done any overt act of violence or anything to incite violence that would be covered under unlawful activities. In support of his contentions, he has relied upon the judgment of the Supreme Court in the case of Sri Indra Das versus State of Assam, 2011(3) SCC 380. The petitioner is a lady with three minor children, one of whom was born while she was in custody in the instant case. The infant is now one year and nine months old and is lodged with the petitioner in jail. Two other minor children are being looked after by her husband and other family members. Prior to the involvement of the petitioner in the instant FIR, she was not involved in any other case. She is in custody for over two years and three months since her arrest on 14.08.2019. The trial in the instant case has come to a standstill as a Coordinate Bench of this Court in CRR No.1798 of 2019 preferred by co-accused Dharminder Singh @ Fauji against framing of charges, has stayed further proceedings and there is no likelihood that the trial will be concluded soon. Co-accused Harnam Singh and Nirmal Singh have been granted bail by the Additional Sessions Judge, Gurdaspur on 20.07.2018. He also contends that the petitioner would be entitled to the concession of regular bail in view of Article 21 of the Constitution of India which guarantees right to speedy trial. He has cited the judgement of the Supreme Court in the case of **Union of India v. K.A. Najeeb, 2021 Scej 1345, 2021 PLRonline 15603, 2021(3) SCC 713** wherein the Supreme Court had directed the release of the petitioner merely on account of long custody even though the allegations were serious.

Learned State counsel, upon instructions from DSP Jitender Pal Singh, contends that the petitioner had actively indulged in unlawful activities and she was a part of a group which was carrying out activities related to referendum-2020. She also contends that the petitioner had circulated the video recording of the incident after the wine shop had been set on fire. The petitioner was maintaining three facebook IDs in the name of various persons. The recovery of six mobile phones and five pen drives have been effected from the petitioner. There is also an audio recording with regard to the petitioner being in conversation with co-accused wherein she was stating that they should get a newspaper registered and carry out assassinations. The petitioner was also demanding money for this and therefore, she is not entitled to the concession of regular bail. In support of her submissions, she has relied upon the judgement of the Supreme Court in the case of **National Investigation Agency v. Zahoor Ahmad Shah Watali, 2019 AIR (SC)1734** and contends that only where a prima facie case under the UAPA is not made out, the Court can grant regular bail.

Heard.

The allegations against the petitioner are that she had posted about 'referendum-2020' on her facebook account and there is stated to be an audio recording of the petitioner being in conversation with co-accused. Its authenticity and evidentiary value would be determined at the trial. There is no reference to any act of violence (overt) which was actually committed by any of the accused in the instant case or that any individual had been harmed in the instant case. The petitioner is a lady with three minor children, one of whom is about one year and nine months old and is lodged with her in jail. The petitioner is in custody for over two years and three months. Challan has been filed but there is no likelihood of the trial being concluded soon.

In the case of **Union of India versus K.A. Najeer** (supra), the Supreme Court has held that long custody would be an essential factor while granting bail under the UAPA. Article 21 of the Constitution of India provides right to speedy trial and long period of incarceration would be a good ground to grant bail to an under-trial for an offence punishable under the UAPA. It has also been held that the embargo under Section 43-D of the UAPA would not negate the powers of the Court to give effect to Article 21 of the Constitution of India. The relevant extract of the judgement is reproduced hereunder:-

*“It is thus clear to us that the presence of statutory restrictions like Section 43D (5) of UAPA per se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Whereas at commencement of proceedings, the Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.*

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*Instead, Section 43-D (5) of UAPA merely provides another possible ground for the competent Court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion etc.”*

In view of the above, the petition is allowed and the petitioner is ordered to be released on regular bail on her furnishing requisite bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

At the time of release of the petitioner, the SHO, Women Police Station, Jalandhar shall be informed. The petitioner shall furnish her mobile number to the SHO concerned and shall also keep the location of her phone on till the conclusion of the trial. The petitioner shall also not indulge in any illegal activity and shall appear before the SHO Women Police Station, Jalandhar on the first Monday of every month till the conclusion of the trial.

However, it is clarified that the observations made hereinabove would not have any bearing on the merits of the case.