

Bail Application no. 363/2021

State v. Devilal Burdak

FIR No. 37/2021

PS Special Cell

U/s 124A/505/468/471 IPC

15.02.2021

Present: Sh. Surendra Chaudhary, Ld. counsel for
applicant/accused Devilal Burdak.

Arguments heard.

By way of the instant order I propose to dispose of a bail application moved on behalf of Devi Lal Burdak.

An application has been moved on behalf of applicant/accused seeking grant of bail. It is submitted that applicant/accused has been falsely implicated in the present case. It is submitted that material alleged against the applicant/accused is innocuous in nature and it is infact an expression of emotions uttered in disagreement with government policies. It is further submitted that no offence of sedition or forgery is made out in the instant case and at best a case u/s 505 IPC is made out against the applicant/accused, which isailable in nature. It is further submitted that investigation qua the applicant/accused is complete in the sense that police is no longer seeking the custodial interrogation of the applicant/accused. It is submitted that applicant/accused is ready and willing to extend all possible cooperation in the on going investigations and the applicant/accused shall comply with all the directions imposed by this court if the applicant/accused is granted bail.

It is further submitted by Ld. defence counsel that co-accused Om Prakash has been granted bail by this court.

On the contrary, Ld. Addl. PP has forcefully submitted that very serious allegations have been levelled against applicant/accused. It is submitted that he has not only made a sensational Facebook Post with an intent to spread disaffection against the State but has also committed

forgery. It is argued that the applicant accused has committed the offences punishable U/s 124A/505/468/471 IPC. It is further argued that considering the seriousness of allegations against the applicant/accused, he does not deserve the indulgence of the court.

I have heard the rival submissions made by Ld. counsel for applicant/accused and Ld. Addl. PP for State.

As per the claim of the prosecution, the role attributable to the applicant/accused is that:

“...The accused has posted a fake video on his facebook page with the tagline **Delhi Police mae bagawat 200 policekarmiyon ne diya samuhik istifa. (There is a rebellion in Delhi Police and around 200 police officials have given mass resignation)** However the posted video was related to an incident wherein some persons in Khaki (Home Guard personnel) was agitating in respect of their grievances with Jharkhand Government....”

It is argued that he has thereby committed the offence of (i) Forgery, (ii) Spreading Rumours and (iii) Sedition I shall deal with the respective charges in seriatim,

FORGERY

I fail to understand as to how come the offence of forgery is attracted in the instant case unless there is some false document, as statutorily defined u/s 464 IPC, is created by anyone.

Upon specific query, Ld. Addl. PP has forcefully argued that since the applicant/accused has made a Facebook page with a fake message, a false document as provided under Section 464 clause First (b) is made out in the instant case.

It would be pertinent to reproduce herein Section 464 IPC for ready reference.

464. Making a false document.--A person is said to make a false documents or false electronic record –

First-- Who dishonestly or fraudulently--

- (a) makes, signs, seals or executes a document on part of a document;
- (b) makes or transmits any electronic record or part of any electronic record;
- (c) affixes any electronic signature on any electronic record;
- (d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed;

Secondly— who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly— who dishonestly or fraudulently causes any person, sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

The ingredients of Section 464 IPC shows that the definition of false documents falls into the abovesaid three categories. Ld. Addl. PP has argued that the fake Facebook Page created by the applicant/accused falls within the first category. In my considered opinion, it is only when a person dishonestly or fraudulently makes or executes a document with intention of causing it to be believed that such document was made or executed **by some other person or by the authority of some other person by whom or by whose authority he knows that it was not made**

or executed that he is guilty of creating a '**False Document**'. In the case at hand, the prosecution has failed to point out any representation or endeavor on the part of the applicant/accused to cast an impression that the Facebook Page was made, executed or created under the authority of some other person with whose authority it was not made or executed.

The making of a false document is the sine qua non for the offence of Forgery. Consequently, since the prosecution has failed to point out the creation of any false document in the instant case, I fail to understand as to how come the offence u/s 468/471 IPC can be invoked in the instant case. Reliance is placed upon **Devendra vs State (2009) 7 SCC 495**.

Spreading Rumours

The allegations against the applicant accused for commission of the offence punishable under Section 505 IPC seems to bear force but that is bailable offence.

Sedition.

Now I come to the third allegation against the applicant/accused regarding the commission of offence u/s 124A IPC.

It would be pertinent to reproduce Section 124A IPC for ready reference.

124A. Sedition.—Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]

Dealing with the interpretation of the word 'Sedition', as prescribed u/s 124 A of the Indian Penal Code, Hon'ble Apex Court has dealt with the acts which are proscribed and have a tendency to cause 'disaffection against India' and has observed herein as under in the matter of **Kedar Nath v. State of Bihar AIR 1962 SC 955**:

“The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal **only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence**. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress [vide (1) *Bengal Immunity Company Limited v. State of Bihar* and (2) *R.M.D. Chamarbaugwala v. Union of India*. Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence”.

The law of sedition is a powerful tool in the hands of the state to maintain peace and order in the society. However, it cannot be invoked to quieten the disquiet under the pretence of muzzling the miscreants. Evidently, law proscribes any act which has a tendency to create disorder or disturbance of public peace by resort to violence. In the absence of any exhortation, call, incitement or instigation to create disorder or disturbance of public peace by resort to violence or any allusion or oblique remark or even any hint towards this objective, attributable to the applicant accused, I suspect that Section 124 A IPC can be validly invoked against the applicant. In my considered opinion, on a plain reading of the tagline attributed to the applicant/accused, invocation of Section 124 A IPC is a seriously debatable issue.

Be that as it may, applicant/accused Devilal Burdak is in judicial custody since 04.02.2021. His custodial interrogation is no longer sought by the police. Considering the nature of allegations against the applicant/accused, grounds of parity and period of incarceration, the applicant/accused Devilal Burdak is admitted to bail on his furnishing bail bond in the sum of Rs.50,000/- with two sureties in the like amount to the satisfaction of the Ld. CMM/ Ld. MM/Link MM/Duty MM and subject to the conditions that he shall join the further investigation as and when called upon by the IO; he shall scrupulously appear at each and every stage of the proceedings before concerned Court so as not to cause any obstruction or delay to its progress and that he shall not commit an offence similar to the offence of which he is accused of.

Needless to say that nothing observed herein shall have any bearing upon the merit of the case.

Application is disposed off accordingly.

Copy of the order be given dasti.

(Dharmender Rana)

ASJ-02, NDD/PHC/New Delhi

15.02.2021

