

21.05.2022

Present: Sh. Atul Kumar Srivastava, Ld. Additional PP and Sh. Salil Maheshwari, Ld. APP for the State.
Sh. Amit Srivastava, Sh. Aditya Kumar Chaudhary, Dr. Satya Prakash, Sh. Sanjay K. Chhadha, Sh. N. D. Pancholi, Sh. Rahul, Sh. Mukesh, Sh. Deepak Jakhar, Sh. Harish Kumar Mehra, Ld. Counsels for the accused.
Accused produced after fresh arrest.

Medical seen.

IO has moved an application seeking JC of the accused.

Bail application on behalf of the accused has been filed.

Before starting the arguments, it is observed that a large number of persons are present in the court room. Few are advocates representing the parties concerned and a large number who cannot be ascertained to be anyway related to the present proceedings.

Accordingly, only the Advocates for the accused, Ld. PPs for State, the accused and the police officials escorting the accused are to remain in the court and remaining persons have been asked to vacate the court. They may join the proceedings through VC as the Link for the same is currently active.

Arguments heard.

Record perused.

The present accused has been arrested under Section 153 A/295A IPC for posting alleged defamatory / inciting material on Face Book to disturb the religious harmony. The post relates to a controversy relating to Gyanvyapi Mosque and the alleged findings as being circulated on social media which have no authentication as the matter itself is pending before court and no material is available in public domain to be considered a conclusive finding of the court.

It is argued that the accused is a professor of History at Delhi University and he is an authority on the subject. It is submitted by Id. Counsel for the accused that the accused had no intention to hurt the religious feeling of any person or group and he has simply made a light hearted comment on a matter which is still pending before various courts in the country.

It is further argued that the accused is a person of repute who is himself a follower of Hindu Religion and does not seek to create any animosity between religious groups.

Ld. APP for the State has argued that the Face Book post of the accused is clearly meant to incite hatred between religious groups and the accused has given various interviews after the post, to explain the post where he has again made the same derogatory remarks.

Admittedly, the accused has made a post on Face Book wherein he has made a remark on a structure which is claimed by different groups as different religious symbols, including a claim regarding discovery of a 'Shivling' and the matter is still pending before the concerned courts. Further, the photographs used in the post are themselves not verified to be belonging to any specific proceedings as the controversy relates to a report which is still not in public domain.

Therefore, it is clear that the post of the accused is speculative in nature with regard to a structure / symbol which as of now is not accessible in public domain.

When considered in the aforesaid context, the post of the accused may appear to be a failed attempt at satire regarding a controversial subject which has backfired, resulting in the present FIR.

It is observed that Indian Civilization is one of the oldest in the world and known to be tolerant and accepting to all religions. The presence

or absence of intention to create animosity / hatred by words is subjective in nature as is the perception of the recipient who reads / hears a statement.

India is a country of more than 130 crores people and any subject can have 130 crores different views and perceptions.

The feeling of hurt felt by an individual cannot represent the entire group or community and any such complaint regarding hurt feelings has to be seen in its context considering the entire spectrum of facts / circumstances.

The undersigned, in personal life, is a proud follower of Hindu Religion and would call the post to be a distasteful and unnecessary comment made on a controversial topic. For another person, the same post can appear to be shameful but may not incite the feeling of hatred towards another community. Similarly, different persons may consider the post differently without being enraged and may in fact feel sorry for the accused to have made an unwanted comment without considering the repercussions.

It is true that the accused did an act which was avoidable considering the sensibilities of persons around the accused and the public at large. However, the post, though reprehensible, does not indicate an attempt to promote hatred between communities.

The anxiety of police can be understood as the police is tasked to maintain peace and order and at the slightest hint of unrest would come into action to prevent the situation from going out of hand.

However, the court has to employ higher standards while considering the need to send a person to custody.

The present accused is a person of good repute with no criminal antecedent and there is no likelihood of the accused fleeing the

course of law.

In view of the aforesaid, the court sees no need to send the accused to judicial custody.

Accused is admitted to bail in a sum of Rs.50,000/- with one surety of like amount. The accused is directed to cooperate with investigation as and when required by the IO. It is specifically directed that the accused shall strictly refrain from posting any social media posts or interviews regarding the controversy which resulted in the present FIR.

Bail bonds furnished and accepted.

Intimation be sent to the IO to release the accused forthwith.

**(Siddhartha Malik)
CMM(Central)/THC/Delhi
21.05.2022**