

Court No. - 16

Case :- BAIL No. - 10832 of 2020

Applicant :- Mohammad Naeem

Opposite Party :- State of U.P.

Counsel for Applicant :- Virendra Kumar Tripathi, Shamsher Ali

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. The present bail application has been filed under Section 439 Cr.P.C. by the applicant in FIR No.548 of 2020 under sections 109, 153-A, 505(1) (b), 505(2) IPC and 67 of I.T. Act, Police Station Sarojini Nagar, District-Lucknow.
3. It is alleged that the accused-applicant forwarded the objectionable message regarding the President of France and asked the people to display black flags as a mark of protest at their houses, shops and other establishments.
4. Learned counsel for the accused-applicant submits that the accused-applicant did not inscribe the message, only he forwarded. He further submits that the accused-applicant tenders his unconditional apology for forwarding this message and undertakes that he will not indulge in any such activity in future.
5. This Court vide order dated 04.02.2021 directed the learned counsel for the applicant to file an affidavit of the accused-applicant from jail regarding his unconditional apology stating that he has firm belief in communal harmony and peace in the society and in Indian Constitution and rule of Law. The accused-applicant has filed the affidavit from jail on 09.02.2021 which has been placed on record to supplementary affidavit.
6. The relevant averments in the affidavit of the accused-applicant filed from jail which are in Hindi are reproduced hereunder:

"2. यह कि शपथी मु0अ0सं0-548/2020, अं0धा0-109, 153-ए, 505(1)(ब), 505(2) आई0पी0सी0 एवं 67 आई0टी0 एक्ट, थाना सरोजनी नगर, लखनऊ में दिनांक 07.11.2020 से जिला कारागार, लखनऊ में निरुद्ध है।

3. यह कि शपथी भारत के संविधान के प्रति निष्ठा रखने वाला एक शांतिप्रिय व्यक्ति है तथा शपथी यह बयान करता है कि वह हमेशा भारत के संविधान व रूल ऑफ लॉ के प्रति निष्ठा व विश्वास रखेगा।
4. यह कि शपथी यह बयान करता है कि वह भविष्य में किसी भी प्रकार के ऐसे मैसेज जिससे सामाजिक सौहार्द, शान्ति व कानून व्यवस्था बिगडने की संभावना हो, को फारवर्ड या जारी नहीं करेगा।
5. यह कि शपथी से भूलवश अनजाने में उक्त मैसेज फारवर्ड हो गया था तथा उक्त कृत्य के लिए वह दुःखी है तथा बिना शर्त क्षमा चाहता है।"

7. Considering the facts and circumstances of the case, the accused-applicant has tendered apology and he has expressed regret for forwarding the message, inasmuch as the accused-applicant has no criminal history and has been in jail since 07.11.2020 and the arguments advanced by the learned counsel for the parties and, without expressing any opinion on the merit of the case, I find it to be a fit case for granting bail.

8. Let applicant **Mohammad Naeem** be released on bail in the aforesaid case on his furnishing a personal bond and two sureties of the like amount to the satisfaction of the Magistrate/Court concerned, subject to following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the

trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

Order Date :- 18.2.2021

SK/-