
Mohammed Zubair Vs State Of Nct Of Delhi & Ors

Writ Petition (Criminal) No. 279 Of 2022

Court: Supreme Court Of India

Date of Decision: July 20, 2022

Acts Referred:

Constitution Of India, 1950 " Article 19(1)(a), 19(2), 32, 226#Companies Act, 2013 " Section 8#Indian Penal Code, 1860 " Section 34, 120B, 147, 149, 153, 153A, 188, 192, 201, 295A, 298, 353, 504, 505, 505(1), 505(2), 506#Foreign Contribution (Regulation) Act, 2010 " Section 35#Information Technology Act, 2000 " Section 67#Criminal Law (Amendment) Act, 1932 " Section 7#Code Of Criminal Procedure, 1973 " Section 41, 41A, 41(1)(b)(ii), 91, 173, 437, 437(3)(b), 437(3)(c), 438, 438(2), 482#Foreign Contribution (Regulation) Act, 2010 " Section 35

Citation: (2022) 8 JT 99 : (2022) 12 Scale 194

Hon'ble Judges: Dr. Dhananjaya Y. Chandrachud, J; Surya Kant, J; A S Bopanna, J

Bench: Full Bench

Advocate: Vrinda Grover, Soutik Banerjee, Devika Tulsiani, Mannat Tipnis, Aakarsh Kamra, Garima Prashad, Adarsh Upadhyay, Harsh Mishra, Aman Pathak

Final Decision: Allowed

Judgement

Dr. Dhananjaya Y. Chandrachud, J

1 The petitioner is the co-founder of ALT News, a fact checking portal which conducts its activities under the auspices of Pravda Media Foundation.

ALT News was launched in February 2017. Pravda Media Foundation is a company registered under Section 8 of the Companies Act 2013.

2 On 20 June 2022, FIR 172 of 2022 was registered at the Special Cell of the Delhi Police for alleged offences punishable under Sections 153-A, 295-

A, 201 and 120-B of the Indian Penal Code 1860 [IPC]. The offence under Section 35 of the Foreign Contribution (Regulation) Act 2010

[FCRA] was added during the course of investigation. The petitioner was arrested on 27 June 2022 and was remanded to police custody for a

day by the order of the Duty Magistrate. The custodial order was extended for a further period of four days by the Chief Metropolitan Magistrate,

Patiala House Courts, Delhi. On 30 June 2022, a search took place at the residential premises of the petitioner in Bangalore. The legality of the order

of police remand has been challenged before the High Court of Delhi in which notice has been issued on 1 July 2022. On 2 July 2022, the petitioner

was remanded to fourteen days of judicial custody and his application for bail was rejected by the Chief Metropolitan Magistrate at Patiala House

Courts, Delhi. On 15 July 2022, he was granted regular bail by the Additional Sessions Judge.

3 The Delhi Police have submitted a status report on the course of the investigation, which has been carried out in pursuance of FIR No 172 of 2022,

before the Additional Sessions Judge. The status report notes the course of the investigation which spans into tweets alleged to have been put out by

the petitioner. According to the status report, "for the purpose of recovery of the laptop and mobile phone used in committing this crime and

for the purpose of interrogation of the accused to find out other tweets/posts and larger part of the conspiracy, if any, Mohd Zuber was

arrested in this case on 27.06.22. He disclosed that he is co-founder of ALT News and in order to gain popularity he posts such

contents/post that triggers religious sentiment and he remain trending in news/ social media and he can get recovered the laptop and mobile

phone used in committing this crime.

4 The status report has also adverted to seven tweets put out by the petitioner on the basis of which the Police at the Special Cell is continuing its

investigation. The extract from the status report submitted by the Delhi Police in regard to the above tweets reads as follows:

"

(i) Tweet 1:-against Mahant Bajrang Muni Ji of Rashtriya Hindu Sher Sena, Khairabad, Sitapur, Uttar Pradesh.

(ii) Tweet 2:- Sanjay Showing facebook live video of Kurukshetra war of Mahabharat to Dhritrashtra: Biplab Deb.

(iii) Tweet 3:- 'Bajrang Bali' ki aarti kama shuru karo, 'hanuman chalisa' ka path karo, bandar kabhi nuksaan nahin pahuchayega.

(iv) Tweet 4:- Ancient laptops had no processors & RAM. It was later copied by Missionary Mathematician Charles Babage. Sanskrit learning was

essential for computer literacy those days. Only Virat Hindus could operate computer as lower castes were never allowed to learn Sanskrit.

(v) Tweet 5:- Equality to all is Real Ram Rajya. Be it Donkey.

(vi) Tweet 6:- We Vishnu A Merry Krishna ""POSTCARD NEWS"" Christianity is Krishna Neeti and Vatican City was called as Vatika!!!!Subhash

Chandra Bose's assistant. The said tweet is present on the twitter account of Mohammed Zubair and posted on 25 Dec, 2017 at 1:20PM (1 PP)

(vii) Tweet 7 :- A tweet was posted by him on 30 Oct, 2021 at 3:03 PM in which two photos one of Vatican City and one of Shiva Lingam were

shown and comparison between them are made. And he wrote This reminds me of @shanknaad post on Vatika-Vatican City. The said tweet is

present on the twitter account of Mohammed Zubair.

5 Apart from the above FIR which has been registered at the Special Cell in Delhi, a series of FIRs have been registered against the petitioner, both

before and after the FIR before the Special Cell. These FIRs are:

(i) FIR No 502/2021 dated 15 June 2021 registered at PS Loni Border, District Ghaziabad for offences punishable under Sections 153, 153-A, 295-A,

505, 120-B and 34 of IPC;

(ii) FIR No 199/2021 dated 24 July 2021 registered at PS Charthawal, Muzaffarnagar for offences punishable under Sections 192, 504 and 506 of

IPC;

(iii) FIR No 193/2021 dated 27 August 2021 registered at PS Chandauli for offences punishable under Section 67 of the Information Technology Act

2000 [IT Act];

(iv) FIR No 511/2021, dated 18 September 2021 registered at PS Mohamadi District Lakhimpur for offences punishable under Sections 153-A,

153B/505(1)B and 505(2) of IPC;

(v) FIR No 226/2022 dated 1 June 2022 registered at PS Khairabad, District Sitapur for offences punishable under Section 295-A of IPC and Section

67 of the IT Act;

(vi) FIR No 286/2022 dated 10 June 2022 registered at PS Sikandrara, Hathras for offences punishable under Sections 147, 149, 153A, 353, 188,

120-B of IPC and under Section 7 of the Criminal Law Amendment Act 1932 [CLA]; and

(vii) FIR No 237/2022 dated 4 July 2022 registered at PS Hathras Kotwali for offences punishable under Sections 153-A, 295-A, 298 of IPC and

section 67 of the IT Act.

6 The status of the FIRs is indicated below:

(i) In FIR No 199/2021 registered at Police Station Charthawal, the petitioner was granted bail on 30 July 2021 by the Judicial Magistrate;

(ii) In FIR No 511/2021 registered at Police Station Mohamadi, the petitioner was remanded on 11 July 2022 to fourteen days of judicial custody. An

application seeking police custody was listed for submissions on 20 July 2022;

(iii) In FIR No 226/2022 at Police Station Khairabad, the petitioner was remanded to judicial custody for 14 days by the JMFC-I, Sitapur on 4 July

2022 and to police custody between the period from 8 July 2022 until 14 July 2022. By an order of this Court dated 8 July 2022, the petitioner was

granted interim bail in Special Leave Petition (Crl) No 6138 of 2022. The order of interim bail was extended on 12 July 2022 pending further orders;

and

(iv) In FIR No 237/2022 registered at Police Station Hathras Kotwali, the petitioner has been remanded to fourteen days of judicial custody on 13 July

2022. On 15 July 2022, an application seeking fourteen days of police custody was filed.

7 In the meantime, arising out of the FIRs which have been registered at diverse Police Stations in the State of Uttar Pradesh, the petitioner as well as

the Director of ALT News / Pravda Media Foundation (and the company) were served with notices under Section 41A of the Code of Criminal

Procedure 1973 [CrPc] or, as the case may be, under Section 91 of CrPC for the production of documents such as: (i) the balance sheet of the

last three years; (ii) the income tax returns of the Director and co-founders; (iii) details with regard to the payment of corporate tax by ALT News /

Pravda Media Foundation; (iv) PAN cards of ALT News / Pravda Media Foundation; (v) bank statements of ALT News / Pravda Media Foundation

for the last three years; (vi) details of donations received since the inception of the ALT News website; and (vii) an undertaking in regard to the

source of funds.

8 These proceedings invoke the jurisdiction under Article 32 of the Constitution of India. The relief which has been sought primarily is for the quashing

of the following FIRs, namely:

a) F.I.R no. 502/2021, dt. 15.06.2021, PS Loni Border, district Ghaziabad u/s 153, 153-A, 295-A, 505, 120-B and 34 of the Indian Penal Code,

1860.

b) Case Crime No. 199/2021, dt. 24.07.2021, PS Charthawal, Muzaffarnagar u/Sec 192, 504, 506 IPC.

c) FIR no. 511/2021, dt. 18.09.2021, PS Mohamadi district Lakhimpur, u/Sec 153-A, 153B/505(1)8 and 505(2) IPC.

d) FIR no. 237/2022, dt. 04.07.2022, PS Hathras Kotwali on a complaint dt. 14.06.2022 u/Sec 153-A, 295-A, 298 IPC and section 67 of the IT Act.

e) Case Crime no. 286/2022 dt. 10.06.2022, Hathras, PS Sikandrarao, u/s 147, 149, 153A, 353, 188, 120-B of the Indian Penal Code, 1860 and u/s 7 of

the CLA Act, 1980.

In the alternative, the petitioner seeks a direction that the above FIRs along with FIR No. 226/2022, PS Khairabad, Sitapur should be clubbed with FIR

No 172/2022 which is under investigation by the Special Cell of Delhi Police.

9 Office Memorandum No. DG-8-94-(30) of 2022 [OM] has been issued on 10 July 2022, in terms of which a Special Investigation Team

[SIT] has been constituted by the Director General of Police, Uttar Pradesh for investigating the six FIRs which have been registered against

the petitioner in Uttar Pradesh.

10 Apart from the prayer for quashing the FIRs or, in the alternative, for clubbing the investigation of the six FIRs mentioned in the OM with the FIR

which is pending investigation before the Special Cell in Delhi, the petitioner seeks interim release on bail in all the FIRs, which are set out above, and

a protective order of this Court directing that no coercive steps be taken with respect to FIR 193 of 2021, PS Chandauli.

11 The petition was mentioned before this Court for urgent orders on 18 July 2022 with the permission of the Hon'ble Chief Justice of India.

While entertaining the petition on 18 July 2022, this Court directed that no precipitate steps shall be taken against the petitioner on the basis of the five

FIRs which form the subject matter of these proceedings. Notice was issued by this Court on 18 July 2022.

12 We have heard Ms Vrinda Grover, senior counsel appearing on behalf of the petitioner and Ms Garima Prashad, senior counsel and Additional

Advocate General appearing on behalf of the State of Uttar Pradesh.

13 Appearing on behalf of the petitioner, Ms Vrinda Grover submitted that:

(i) The tweets which have been put out by the petitioner are the subject matter of the FIRs which have been registered in Delhi and in Police Stations

within different districts in the State of Uttar Pradesh;

(ii) All the FIRs, broadly speaking, implicate alleged offences punishable under the same provisions, namely, Sections 153A, 295A, 298 and 505 of IPC

and Section 67 of the IT Act;

(iii) In the FIR which has been registered at the Special Cell in Delhi, the petitioner was subjected to an order of remand, following which eventually

he has been granted regular bail by the Additional Sessions Judge at the Patiala House Courts. The status report which has been submitted by the

Delhi Police before the Additional Sessions Judge would indicate that the scope of the investigation has been widened so as to also include the

provisions of the FCRA; and

(iv) Broadly speaking, the tweets which have been adverted to in the status report submitted by the Delhi Police before the Additional Sessions Judge

also form the subject matter of the FIRs which have been registered in the diverse Police Stations in the State of Uttar Pradesh.

14 On the above premises, counsel submitted that:

(i) In none of the tweets has the petitioner even remotely used any language which is improper or which would amount to an offence with reference

to which the provisions of the criminal law could be invoked;

(ii) On the contrary, in several of the tweets, the petitioner had tagged the Uttar Pradesh Police and had invited action by the law enforcement

machinery consequent on speeches made by other persons which were found to be objectionable;

(iii) The gravamen of all the FIRs which have been registered against the petitioner essentially remains the same, arising out of the tweets by the

petitioner;

(iv) The instrument of criminal law has been used to harass and silence the voice of the petitioner which would be apparent from the manner in which

the petitioner has been made to face successive proceedings arising out of the FIRs which have been lodged in the State of Uttar Pradesh; and

(v) The petitioner has a real and genuine apprehension in regard to the safety and security of his life following the publication of several tweets which

have administered threats and placed a bounty on his safety.

15 Hence, it has been submitted that in the exercise of its jurisdiction under Article 32 of the Constitution, the Court should quash the FIRs since none

of the tweets on the basis of which FIRs have been registered provokes hatred towards any community or is derogatory to any religion or a religious

denomination.

16 Opposing these submissions, Ms Garima Prashad submitted that:

(i) There is a genuine apprehension that the tweets which have been put out by the petitioner have spread hate;

(ii) The tweets which have been put out by the petitioner have a real potential to create a communal divide;

(iii) The SIT was formed by the State of Uttar Pradesh considering the gravity of the situation, in order to maintain peace and harmony; and

(iv) The conduct of the petitioner in engaging in repeated acts of tweeting would justify the invocation of criminal law.

17 The narration of facts in the prefatory part of the judgement would indicate that FIR No 172/2022 which has been registered on 20 June 2022 at

the Special Cell of the Delhi Police invokes offences punishable under Sections 153-A, 295-A, 201 and 120-B of IPC, to which the investigating

authority has added the provisions of Section 35 of FCRA. The Delhi Police have submitted a comprehensive status report before the Additional

Sessions Judge at the Patiala House Courts bearing on the course of investigation, the tweets which form the subject matter of the investigation, and

the search and seizure which has been carried out at the premises of the petitioner. In other words, it is evident from the record that the investigation

which has been conducted by the Special Cell of the Delhi Police is comprehensive in nature and extends across the gamut of tweets put out by the

petitioner. The petitioner was granted regular bail in the proceedings arising out of FIR No 172/2022 by an order dated 15 July 2022 of the Additional

Sessions Judge at the Patiala House Courts.

18 In the proceedings which reached this Court arising out of FIR No 226/2022 registered at PS Khairabad in the District of Sitapur, the petitioner

was granted interim bail on 8 July 2022. The order granting interim bail has been extended pending further orders on 12 July 2022.

19 The grant of bail, first by this Court on 12 July 2022 and next by the Patiala House Courts on 15 July 2022, however, has not been sufficient to

secure the personal liberty of the petitioner. The petitioner is still embroiled in successive FIRs which have been registered in diverse Police Stations in

the State of Uttar Pradesh where he is in judicial custody and applications for the grant of bail are pending. The prosecution seeks orders for police

remand.

20 Essentially, the allegations against the petitioner pertain to the tweets which have been put out by him. The three notices issued by Police Stations

at Hathras Kotwali, Sikandra Rao, and Khairabad under Section 91 CrPC are verbatim the same. Having found from the record that the petitioner has

been subjected to a sustained investigation by the Delhi Police, we find no reason or justification for the deprivation of the liberty of the petitioner to

persist any further. Consequently, we are of the view that the petitioner must be released on interim bail in each of the FIRs which forms the subject

matter of these proceedings, under Article 32 of the Constitution. The existence of the power of arrest must be distinguished from the exercise of the

power of arrest. The exercise of the power of arrest must be pursued sparingly. In the present case, there is absolutely no justification to keep the

petitioner in continued custody any further and to subject him to an endless round of proceedings before diverse courts when the gravamen of the

allegations in each of the said FIRs arises out of the tweets which have been put out by the petitioner, and which also form the subject matter of the

investigation being conducted by the Delhi Police in FIR 172/2022.

21 In *Arnab Ranjan Goswami v. Union of India* (2020) 14 SCC 12, while dealing with the issue of a multiplicity of proceedings and harassment to the

accused, a two judge bench of which one of us (Dr DY Chandrachud) was a part, held:

“32. Article 32 of the Constitution constitutes a recognition of the constitutional duty entrusted to this Court to protect the fundamental rights of

citizens. The exercise of journalistic freedom lies at the core of speech and expression protected by Article 19(1)(a). The petitioner is a media

journalist. The airing of views on television shows which he hosts is in the exercise of his fundamental right to speech and expression under Article

19(1)(a). India’s freedoms will rest safe as long as journalists can speak truth to power without being chilled by a threat of reprisal.

The exercise of that fundamental right is not absolute and is answerable to the legal regime enacted with reference to the provisions of Article 19(2).

But to allow a journalist to be subjected to multiple complaints and to the pursuit of remedies traversing multiple states and

jurisdictions when faced with successive FIRs and complaints bearing the same foundation has a stifling effect on the exercise of that

freedom. This will effectively destroy the freedom of the citizen to know of the affairs of governance in the nation and the right of the journalist to

ensure an informed society. Our decisions hold that the right of a journalist under Article 19(1)(a) is no higher than the right of the citizen to speak and

express. But we must as a society never forget that one cannot exist without the other. Free citizens cannot exist when the news media is chained to

adhere to one position.”

(emphasis supplied)

Further, this Court reiterated the role of courts in protecting personal liberty and ensuring that investigations are not used as a tool of harassment:

“60. [...] Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed.

The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum – the district judiciary, the High Courts and the

Supreme Court – to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to

both ends of the spectrum – the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other,

of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty

survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet,

much too often, liberty is a casualty when one of these components is found wanting.

61. [...] The doors of this Court cannot be closed to a citizen who is able to establish prima facie that the instrumentality of the State is being

weaponized for using the force of criminal law. Our courts must ensure that they continue to remain the first line of defense against the

deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many. We must always be mindful of the

deeper systemic implications of our decisions.

(emphasis supplied)

22 As regards the prayer for quashing of the FIRs, an essential aspect of the matter which must be noticed at this stage is that the investigation by the

Special Cell of the Delhi Police in FIR No 172/2022 pertains to offences of a cognate nature to those which have been invoked in the FIRs which

have been lodged before the Police Stations in Uttar Pradesh. Before this court can embark on an enquiry as to whether the FIRs should be quashed,

it is appropriate that the petitioner pursues his remedies in accordance with the provisions of Article 226 of the Constitution and/or section 482 of the

CrPC. However, a fair investigative process would require that the entirety of the investigation in all the FIRs should be consolidated and entrusted to

one investigating authority. The overlap in the FIRs, emanating as they do from the tweets of the petitioner, only goes to emphasize the need for a

consolidated, as opposed to piece-meal investigation by a diverse set of law enforcement agencies.

23 We are accordingly of the view that the alternate prayer which has been adduced on behalf of the petitioner should be accepted, as a consequence

of which all the FIRs which have been registered against the petitioner including the FIRs which have been noted above arising out of the

Petitioner's tweets should be transferred for investigation to the Special Cell of the Delhi Police. As a consequence of the above direction, the SIT

which has been constituted by the Uttar Pradesh Police shall be rendered redundant and shall be disbanded. While we have not proceeded to quash

the FIRs as sought in prayer (a), we expressly clarify that we have granted liberty to the petitioner to move the High Court of Delhi in proceedings

under Section 482 CrPC, in the event that he is advised to seek the quashing of the FIRs before the High Court of Delhi. All proceedings in

connection with the FIRs shall lie before the High Court of Delhi for such remedies as are available in law. The direction for the transfer of the

investigation of the FIRs which have been registered in Uttar Pradesh to the Special Cell of the Delhi Police shall apply to all the existing FIRs

forming the subject matter of the tweets which have been put out by the petitioner and to any future FIRs which may be registered against him on the

same subject matter.

24 We also order and direct that the petitioner shall be entitled to the protective order of interim bail which has been granted by this Court not only in

respect of the FIRs which have already been registered, but also in respect of the FIRs which will hereafter be registered on the same subject matter

in regard to the tweets which have been put out by him.

25 As evident from the facts narrated above, the machinery of criminal justice has been relentlessly employed against the petitioner. Despite the fact

that the same tweets allegedly gave rise to similar offences in the diverse FIRs mentioned above, the petitioner was subjected to multiple investigations

across the country. Consequently, he would be required to hire multiple advocates across districts, file multiple applications for bail, travel to multiple

districts spanning two states for the purposes of investigation, and defend himself before multiple courts, all with respect to substantially the same

alleged cause of action. Resultantly, he is trapped in a vicious cycle of the criminal process where the process has itself become the punishment. It

also appears that certain dormant FIRs from 2021 were activated as certain new FIRs were registered, thereby compounding the difficulties faced by

the petitioner.

26 Police officers are vested with the power to arrest individuals at various stages of the criminal justice process, including during the course of

investigation. However, this power is not unbridled. In terms of Section 41(1)(b)(ii) of the CrPC, the police officer in question must be satisfied that

such arrest is necessary to prevent the person sought to be arrested from committing any further offence, for proper investigation of the offence, to

prevent the arrestee from tampering with or destroying evidence, to prevent them from influencing or intimidating potential witnesses, or when it is not

possible to ensure their presence in court without arresting them.

27 Police officers have a duty to apply their mind to the case before them and ensure that the condition(s) in Section 41 are met before they conduct

an arrest.

This Court has time and again, reiterated the importance of doing so, including in *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273, where the Court

observed:

“6. [...] The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the

police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an

offence made against a person

28 We once again have occasion to reiterate that the guidelines laid down in *Arnesh Kumar* (supra) must be followed, without exception. The reason

d'ÃfÃtre of the powers of arrest in relation to cognizable offences is laid down in Section 41. Arrest is not meant to be and must not be used as a

punitive tool because it results in one of the gravest possible consequences emanating from criminal law: the loss of personal liberty. Individuals must

not be punished solely on the basis of allegations, and without a fair trial. When the power to arrest is exercised without application of mind and

without due regard to the law, it amounts to an abuse of power. The criminal law and its processes ought not to be instrumentalized as a tool of

harassment. Section 41 of the CrPC as well as the safeguards in criminal law exist in recognition of the reality that any criminal proceeding almost

inevitably involves the might of the state, with unlimited resources at its disposal, against a lone individual.

29 The counsel for the State of Uttar Pradesh attempted to persuade this Court that the petitioner must be barred from tweeting when he is on bail.

Section 438(2) stipulates that the High Court or the Court of Sessions can direct a person to be released on conditional bail. The provision provides

that the Court shall impose conditions in the context of the facts of a particular case. The list of illustrative bail conditions stipulated in Sections 437

and 438 relate to the need to ensure a proper investigation and fair trial [Sections 438(2) and 437 (3)(c) of CrPC] or to prevent the accused from

committing an offence similar to the one he is suspected of [Section 437(3)(b) of CrPC], or in the interest of justice [Section 437 of CrPC]. The

phrase Ã¢â¬Ïinterest of justiceÃ¢â¬Ï has been interpreted in prior judgments of this Court where it has been held that the discretion of the Court in

imposing conditions on bail must be exercised judiciously and to advance a fair trial. [Kunal Kumar Tiwari v. The State of Bihar, (2018) 16 SCC 74;

Dataram Singh v. State of Uttar Pradesh, (2013) 15 SCC 570; Sumit Singh v. State (NCT of Delhi), (2013) 15 SCC 570.] The bail conditions imposed

by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The

courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would

result in the deprivation of rights and liberties must be eschewed. In the decision in Parvez Noordin Lokhandwalla v. State of Maharashtra (2020) 10

SCC 77, a two-Judge Bench of this Court, of which one of us (Dr DY Chandrachud) was a part, it was observed that bail conditions must not be

disproportionate to the purpose of imposing them:

Ã¢â¬Ï21. [...] The conditions which a court imposes for the grant of bail - in this case temporary bail - have to balance the public interest in the

enforcement of criminal justice with the rights of the accused. The human right to dignity and the protection of constitutional safeguards should not

become illusory by the imposition of conditions which are disproportionate to the need to secure the presence of the accused, the proper course of

investigation and eventually to ensure a fair trial. The conditions which are imposed by the court must bear a proportional relationship to the purpose of

imposing conditions. The nature of the risk which is posed by the grant of permission as sought in this case must be carefully evaluated in each

case.

30 Merely because the complaints filed against the petitioner arise from posts that were made by him on a social media platform, a blanket

anticipatory order preventing him from tweeting cannot be made. A blanket order directing the petitioner to not express his opinion - an opinion that he

is rightfully entitled to hold as an active participating citizen - would be disproportionate to the purpose of imposing conditions on bail. The imposition of

such a condition would tantamount to a gag order against the petitioner. Gag orders have a chilling effect on the freedom of speech. According to the

petitioner, he is a journalist who is the co-founder of a fact checking website and he uses Twitter as a medium of communication to dispel false news

and misinformation in this age of morphed images, clickbait, and tailored videos. Passing an order restricting him from posting on social media would

amount to an unjustified violation of the freedom of speech and expression, and the freedom to practice his profession.

31 For the above reasons, we allow the petition in part in terms of the following directions:

(i) The petitioner shall stand enlarged on interim bail, subject to his filing a personal release bond in the amount of Rs 20,000 in connection with the

following FIRs:

a) FIR No. 502/2021, dated 15.06.2021, PS Loni Border, district Ghaziabad u/s 153, 153-A, 295-A, 505, 120-B and 34 IPC.

b) FIR No. 193/2021 dated 27.08.2021 registered at PS Chandauli for offences punishable under Section 67 of IT Act.

c) FIR No. 511/2021, dated 18.09.2021, PS Mohamadi district Lakhimpur, u/s 153-A, 153B/505(1)8 and 505(2) IPC.

d) FIR No. 226/2022 dated 01.06.2022, PS Khairabad, district Sitapur, u/Sec 295-A(2) IPC and Section 67 of IT Act.

e) FIR No. 286/2022 dated 10.06.2022, PS Sikandrarao, Hathras, u/s 147, 149, 153A, 353, 188, 120-B of IPC and u/s 7 of the CLA Act; and

f) FIR No. 237/2022, dated 04.07.2022, PS Hathras Kotwali on a complaint dated 14.06.2022 u/Sec 153-A, 295-A, 298 IPC and section 67 of the IT

Act;

(ii) As regards Crime No 199 of 2021 dated 24 July 2021 registered at PS Charthawal, Muzaffarnagar, the charge-sheet under Section 173 of CrPC

has been filed. The proceedings in respect of the said Case Crime shall stand transferred to the Chief Judicial Magistrate, Patiala House Courts and

shall be taken up from the stage that has been reached before the earlier Court. The petitioner has been enlarged on bail. The order enlarging the

petitioner on bail shall continue to remain in force;

(iii) The investigation into the FIRs set out in paragraph (i) above shall stand transferred from the Uttar Pradesh Police to the Special Cell of the Delhi

Police. As a consequence, the SIT which was constituted by the Director General of Police, Uttar Pradesh on 10 July 2022, shall stand disbanded;

(iv) The directions contained in (i) and (iii) above shall stand extended to any other FIR which may be registered against the petitioner hereafter in

respect of the same subject matter as the above FIRs in which event (a) the investigation of the FIR shall stand transferred to the Special Cell of the

Delhi Police; (b) the petitioner shall be entitled to the order of interim bail, as set out above.

(v) The petitioner would be at liberty to pursue his rights and remedies in proceedings under Article 226 of the Constitution / Section 482 of CrPC

before the High Court of Delhi in respect of the FIRs which have been or which may be registered against him, and in that event, nothing contained in

this judgment shall amount to an expression of opinion on the merits of such proceedings; and

(vi) The bail bonds in compliance with the above direction shall be presented before the Chief Judicial Magistrate at the Patiala House Courts, Delhi.

Immediately upon the presentation of the bail bonds, the Superintendent at the Tihar Jail shall take necessary steps to ensure that the petitioner is

released from judicial custody no later than by 6 pm today.

32 Pending application, if any, stands disposed of.