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# Justifying the Justice V. R. Krishna Iyer's Doctrine of Bail Being a Rule and Jail an Exception: Case Comment on Mohammed Zubair v. State of NCT of Delhi & Ors.

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## ABSTRACT

*Mohammad Zubair, is the co-founder of ALT news, a fact checking portal. Multiple proceedings were initiated against him in multiple districts of the State of Uttar Pradesh and at the special cell of Delhi Police. The petitioner has on social networking site twitter, posted on Hindu religious topics through multiple tweets over a period of time on the basis of which these FIRs were registered against him for hurting religious sentiments and other similar offences. The petitioner was continuously under incarceration as a large number of cases were registered against him, he remained arrested in some or the other case, if released in any. Holding that multiplicity of proceedings is detrimental to personal liberty right to defend himself of the accused, apex court granted the petitioner relief by clubbing all the FIRs and transferring them to the Delhi Police special cell and enlarging the petitioner on interim bail.*

*This judgement of the supreme court is a frontrunning precedent when it comes to upholding the principles enshrined in Article 21 for protecting the life and personal liberty of citizens. The supreme court not only granted relief in the existing proceedings but went on to direct that the same directions will apply to any future proceedings initiated against the petitioner in respect to the same subject matter as in the previous FIRs i.e., the subsequent FIR (if any) registered, shall stand transferred to Delhi Police special cell and the Petitioner will be enlarged on interim bail in those FIRs as well. This judgement is a proactive step when it comes to protecting the accused from being embroiled in such a criminal proceeding which itself amounts to a punishment. Various nuances of this judgement relating to how courts can be innovative to protect citizens from abuse of state machinery will be discussed in this case note.*

**Keywords:** *bail, clubbing FIRs, personal liberty.*

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**I. FACTS OF THE CASE**

1. Mohammed Zubair is the co-founder of a fact-checking news portal 'ALT News' which is registered under section 8 of the Companies Act, 2013. On June 20, 2022, FIR 172/2022 was registered with the special cell of Delhi police Sections 153-A, 295-A, 201 and 120-B of the Penal Code, 1860. The offence under Section 35 of the Foreign Contribution (Regulation) Act 20102 was added during the course of the investigation.
2. Petitioner was arrested on 27 June 2022 and since then he was initially in police custody and under judicial custody. The offences he was charged with related to criminal conspiracy to create religious enmity and hatred based on the following tweets-
  - i. Tweet 1: against Mahant Bajrang Muni Ji of Rashtriya Hindu Sher Sena, Khairabad, Sitapur, Uttar Pradesh.
  - ii. Tweet 2: Sanjay Showing Facebook video of Kurukshetra war of Mahabharat to Dhritrastra: 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."
3. These tweets led to a chain reaction with FIRs being registered incessantly, apart from the above-mentioned Delhi police special cell FIR a number of FIRs were registered in the state of UP-

- 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 20003;
- 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 Sikandrarao, 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 19324; 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.

4. The status of the above-mentioned FIRs was-

- 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.
5. The petitioner was under continuous incarceration as even if he was released on bail in one case, he was required to in some or the other one. Under article 32 of the constitution of India, the primary relief sought was for quashing the FIRs in the state of UP, alternate remedy sought was to club all the FIRs and transfer them to the Delhi police special cell.

## **II. ISSUES AND CONTENTIONS**

1. Arguments were made at the bar by the petitioner that the tweets made by him did not use any foul language or derogatory words. In some cases, he tagged the law enforcement agencies to bring to their notice actual instances where objectionable things were said.
2. The petitioner had real and grave apprehension of a threat to his life. The process of criminal law was being misused as multiple proceedings led to his continued incarceration and the contents of all the FIRs were the same
3. The state opposed any relief to be granted to the petitioner as he is a threat to the peace and harmony of the society and is repeatedly engaging in this act of tweeting to create a communal divide.

## **III. JUDGEMENT**

1. The supreme court placed heavy reliance on *Arnab Ranjan Goswami v State of Maharashtra* and granted interim bail to the petitioner in all the FIRs mentioned above.
2. FIR in which chargesheet has been filed, the same chargesheet stands transferred to the chief metropolitan magistrate Patiala house court. The petitioner had been on bail in this case and he will continue to be on bail.
3. All the other FIRs in the state of UP will stand clubbed with the Delhi police special cell FIR.
4. The landmark feature of this judgement was that the relief granted by the court to the petitioner was extended to the future FIRs to be registered (if any), the petitioner will be enlarged on bail in that FIR as well and the new FIR on the same issue will automatically stand clubbed with the other FIRs at Delhi police special cell FIR.

## **IV. CRITICAL ANALYSIS**

1. Lord Hewart, the lord chief justice of England said ‘justice must not only be done but

must also be seen to have been done'. When the process of criminal law is used to punish a person then it is definitely not the sign of a healthy democracy.

2. State is the guardian of the citizens and there should not be any sort of vendetta for any particular person, if that person is critical of the policies of the government.

3. In matters where the person is behind the bars the onus is on the prosecution to convince the court as to why a person is needed behind the bars. Justice Krishna Iyer in *State of Rajasthan V Bal Chand*<sup>3</sup> laid the rule being bail and jail an exception. This has to be followed in letter and spirit as the life and personal liberty of citizens needs to be respected.

4. This judgement is pathbreaking in the sense that it curbs the excesses of the executive on one person. Where a person was harassed by registering multiple FIRs against him in multiple jurisdictions, so that he will have to run in multiple courts for bail and is kept in continued incarceration and there are chances of future proceedings being initiated. The court made a provision of granting interim bail on those FIRs as well which may be registered in future on the same issue.

5. Another tenet of criminal law is that for one offence there must be only one trial hence in this case all the FIRs were clubbed to the one in Delhi and also direction was issued by the court that if any future FIR is registered the same shall also be clubbed with the others. The supreme court by this judgement tried to balance the scales of justice and ensure no atrocities are made to citizens by way of using the state machinery.

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<sup>3</sup> 1977 AIR 2447.