

## HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

**WPCR No. 325 of 2021**

Dr. Sambit Patra, S/o Shri Rabindranath Patra, Aged About 45 Years, R/o 1536, Deenanath Building, Chandrawal Road, Ghantaghar, New Delhi-110007.

---- **Petitioner****Versus**

1. State of Chhattisgarh, Through Chief Secretary, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District- Raipur (C.G.) Pin 492002.
2. Secretary, Department of Home, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District- Raipur (C.G.) Pin 492002.
3. Station House Officer, Police Station Civil Lines, Raipur, District- Raipur (C.G.)
4. Mr. Akash Sharma, State President, National Student Union of India, R/o Om Society, Sundar Nagar, Raipur, District- Raipur (C.G.) 492007.

---- **Respondents**

<b>11.06.2021</b>	<p>Mr. Ajay Burman, Sr. Advocate with Mr. Vivek Sharma, Mr. Gary Mukhopadhyay, Mr. Avdhesh Kumar Singh, Ms. Tanya Harnal &amp; Ms. Sadhvi Gaur, Advocates for the petitioner.</p> <p>Dr. Abhishek Manu Singhvi, Senior Advocate with Mr. Satish Chandra Verma, Advocate General , Advocate for the State/ respondent No. 1 to 3.</p> <p>Heard on admission.</p> <p>Admit.</p> <p>Learned Advocate General appears and accepts notice on behalf of State/ respondent No. 1 to 3.</p> <p>On payment of process fee, notice be issued to respondent No. 4 by ordinary course as well as by registered mode.</p> <p>Also heard on I.A. No. 01/2021, which is an application for grant of</p>

interim relief.

The petitioner, who is a Member of Bhartiya Janta Party (BJP) and is recently serving as National Spokesperson of BJP has filed present Writ Petition (Cri.) under Article 226 of the Constitution of India for quashing of F.I.R. No. 0215/2021 dated 19.05.2021 lodged at Police Station- Civil Lines, Raipur (C.G.) for alleging that petitioner has committed an offence under Sections 504, 505(1)(b), 505(1)(c), 469 & 188 of I.P.C.

The facts as projected by the petitioner in this petition is that he is member of BJP and National Spokesperson of the political party. He has twitted on 18.05.2021, which reads as under :- :-

“Friends look at the  
#CongressToolKit in extending  
help to the needy during the Pandemic!  
More of a PR exercise with the  
help of “Friendly Journalists” &  
“Influencers” than a soulful  
endeavour.  
Read for yourselves the  
agenda of the Congress:  
#CongressToolKit Exposed”

On the basis of this twitted message, a complaint was filed by one Akash Sharma, who is State President of National Student Union of India (NSUI), Chhattisgarh on 18.05.2021 before Police Station- Civil Lines, Raipur (C.G.). The contents of the complaint read as under:-

“विषयान्तर्गत लेख है कि वर्तमान शिकायत के माध्यम से, छत्तीसगढ़ के पूर्व मुख्यमंत्री डॉ. रमन सिंह जी (राष्ट्रीय उपाध्यक्ष भाजपा) और अन्य व्यक्तियों को एआईसीसी, अनुसंधान विभाग के लेटरहेड को जाली बनाने और उसके बाद उस पर झूठी और मनगढ़ंत सामग्री छापने के लिए, जाली/मुख्यमंत्री डॉ. रमन सिंह जी द्वारा निर्मित दस्तावेज को अपने विविध ट्विटर हैंडल(@DrRamanSingh) और अन्य सोशल मीडिया से साझा करने के

लिए प्लेटफॉर्म, इस इरादे से कि देश में व्यक्तियों के बीच सांप्रदायिक विद्वेष और नागरिक असंतोष पैदा करें, हिंसा को बढ़ावा दें, नफरत को हवा दें और नकली समाचारों को बढ़ावा दें। धोखेबाजों की इस टीम का छिपा हुआ एजेंडा मौजूदा महामारी के बीच भारत के लोगो को आवश्यक सहायता प्रदान करने में मोदी सरकार की भारी विफलता से ध्यान हटाना और कांग्रेस पार्टी की छवि को खराब करना था।”

Learned counsel for the petitioner submits that in column 6 of the FIR, name of the complainant is mentioned as Sub-Inspector- Manish Bajpai in column 14, name of the informant has been mentioned as Manish Bajpai and officer in-charge of the police station is also mentioned as Manish Bajpai, who has registered the F.I.R. It is further contended by learned Senior Counsel that one complaint before Commissioner; Delhi has also been lodged on 18.05.2021. Copy of the same is annexed with this writ petition, preliminary enquiry has also been started on the said complaint by Delhi Police, matter is under investigation by the Delhi police and in the mean time the present F.I.R. has been lodged against the petitioner. He would further submit that the petitioner is not and author of the documents attached with its writ (Annexure /3) and this document is available in social media platform, therefore, before registration of F.I.R., investigation with regard to sources of this document “Tool Kit”, must be done. In fact its source is “Team Bharat”. The Delhi Police has initiated enquiry about sources of this documents “ Tool Kit”, but the complaint has been subsequently withdrawn by Complainant. The Chhattisgarh Police without enquiring about the truth, has lodged the FIR against the present petitioner.

It is further contended that no offence is made out against the petitioner under Sections 504, 505(1)(b), 505(1)(c), 469 & 188 of I.P.C. as the statement of the petitioner is of advisory in nature. From perusal of F.I.R, it cannot be said that petitioner has insulted or provoked anybody in the public against any political party by making his writ. The statement does not reflect any iota of breach of public peace. The offence has been registered at the instance of Congress man, but the police has invoked

the section, there is no material how the police has been insulted by the twitted message of the petitioner. The section has been applied without application of mind.

It is also contended that by the tweet of the petitioner, no one is harmed, as such, invocation of section and further investigation on the offence is, *prima facie*, illegal. It is a political battle between the petitioner and the State Ruling Party i.e. Congress. The tweet does not breach public peace. No community has been affected by the tweet of the petitioner as Bhartiya Janta Party and Congress are not the community and it is a political opposition against each other. This is political clash between two rival political parties. This falls within the ambit of freedom of speech and does not affect peace and tranquility, therefore, no offence is made out against the petitioner.

It is further contended that for invoking Section 505 (1) (b) and 505(1)(c) of I.P.C., tweet of the petitioner is likely to fear or alarm to public or any section of public may be induced to commit an offence against the state or against the public tranquility should, *prima facie*, be made out, no such ingredient is reflected in the F.I.R. In support of his submission, learned Senior counsel referred judgments of Hon'ble Supreme Court in the matter of **Kedar Nath Singh Vs. State of Bihar**, reported in **AIR 1962 SC 955**, **Fiona Shrikhande Vs. State of Maharashtra**, reported in **(2013) 14 SCC 44**, **Ashok Chaturvedi Vs. Shitul H. Chanchani & another**, reported in **(1998) 7 SCC 698**, **State of Haryana & others Vs. Bhajanlal & others**, reported in **1992 Supp. (1) SCC 335** & judgment of this Court passed in **WPCR No. 251 of 2020 (Dr. Sambit Patra Vs. State of Chhattisgarh)** decided on **12.04.2021** & **WPCR No. 310 of 2020 (Dr. Apurva Ghiya Vs. State of Chhattisgarh & others)**, decided on **07.10.2020**.

On the other hand, learned Senior counsel appearing for the State/respondent No. 1 to 3 would submit that the investigation is going on,

therefore, it is a premature stage of filing of this petition. He placed reliance in the matter of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & others**, reported in **AIR 2021 SC 1918**, wherein, it is held that grant of interim protection in criminal matters should be in rare and rarest of the cases, the case in hand is not amongst rare to rarest wherein interim relief can be granted.

It is further contended that after recording of statement under Section 161 of the AICC Research Department, Rajiv Gouda and recorded statement of other persons it is found that it is forged letter and not issued by the department, as such, it is clearly established that offence under Section 469 of I.P.C. is made out against the petitioner. The FIR is not in encyclopedia of the facts, as such, the investigation cannot be stalled by filing petition before this Court.

From perusal of Twitter message (Annexure P/3), it is evident that charge under Section 504, 505(1)(b), 505(1)(c) of I.P.C. is made out.

Learned Advocate General for the State would submit that so far as action taken by Delhi Police is concerned, the petitioner cannot claim that investigation should be carried out as per his choice. The State Police is free to investigate the matter according to their procedure. The further contention of learned Advocate General is that the FIR does mean that the petitioner will be punished, only investigation is being carried out. As such, the petitioner should not be made any attempt to escape from investigation by the police. This case is also hit by judgment passed by the Hon'ble Supreme Court in **State of Haryana & others Vs. Bhajanlal & others**, reported in **1992 Supp. (1) SCC 335**. As such, he prayed for rejection of application for grant of interim relief.

I have heard learned counsel for the parties and perused the records appended thereto.

It is not in dispute that the petitioner is a political person and the

manner in which, FIR has been lodged by the police on 19.05.2021 on the basis of complaint received on 18.05.2021 without examining the truthfulness of the complaint. If we see the face value of the F.I.R. no offence under Section 504, 505(1)(b) and 505(1)(c) of IPC is made out as the averments of the F.I.R reflect that by the Tweet of the petitioner, congress men are aggravated which clearly indicates that no public peace or tranquility is being adversely affected and it is purely political rivalry between two political parties. This, *prima facie*, establishes that present F.I.R has been registered with political motives.

From perusal of FIR, it is apparent that ingredients of forgery with intent to harm reputation, is not made out as attached document is already in public domain much prior to the time petitioner has tweeted the message.

So far as the allegation regarding registration of offence under Section 188 of I.P.C without compliance of Section 195 of the Cr.P.C. is *prima-facie* illegal. The Coordinate Bench of this Court has already quashed the F.I.R. for an offence under Section 188 IPC in the matter of **Dr. Aruva Ghiya Vs. State of C.G. in W.P. (Cri.) No. 310 of 2020.**

Hon'ble Supreme Court in the matter of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & others**, reported in **AIR 2021 SC 1918**, held as under:-

“10 (iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;”

Hon'ble Supreme in the matter of **Kartar Singh Vs. State of Punjab** reported in **(1994) 3 SCC 569**, held as under:-

“459. Law on the subject is fairly settled. In *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 : 1992 SCC (Cri.) 426 a Bench of this Court of which one of us (Pandian, J.) was a

member, after detailed examination of the judicial decisions held, "where the allegations made in the first information report or the complaint, even if they were taken at their face value and accepted in their entirety did not prima facie constitute any offence or make out a case against the accused", or " where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person could ever reach a just conclusion that there was sufficient ground for proceeding against the accused", or "where a criminal proceeding was manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge", then the proceedings were liable to be quashed. In Usmanbhai Dawoodbhai Memon and Others Vs. State of Gujarat, it was conceded that a petition under Article 226 was maintainable. It was urged that the observation made by this Court in Usmanbhai Dawoodbhai Memon and Others Vs. State of Gujarat, in relation to exclusion of High Court's jurisdiction under Sections 439 and 482 were squarely applicable to Article 226. Reliance was placed on Narcotics Control Bureau Vs. Kishan Lal and others, also. It was urged that as far back as Waryam Singh and Another Vs. Amarnath and Another, it having been observed by this Court that power of superintendence conferred by Article 227 was to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds and their authority and not in correcting errors. The High Court should not be permitted to entertain a petition against rejection of bail under Article 226 and 227. Reliance was also placed on State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and Others etc., and Mohd. Yunus Vs. Mohd. Mustaqim and Others, . The power given to High Court under Article 226 is an extraordinary power not only to correct the manifest error but also to exercise it for sake of justice. Under the scheme of the Constitution a High Court is the highest court for purposes of exercising civil, appellate, criminal or even constitutional jurisdiction so far that State is concerned. The jurisdiction possessed by it before coming into force of the Constitution was preserved by Article 225 and by Articles 226 and 227 an extraordinary jurisdiction was conferred on it to ensure that the subordinate authorities act not only in accordance with law but they also function within the framework of law. That jurisdiction of the High Court has not been taken away and in fact could not be taken away by legislation. In England even in absence of Constitution

whenever an attempt was made by Parliament to provide that the order was final and no writ of certiorari would lie the High Court always struck down the provision. Since the High Court under the Constitution is a forum for enforcement of fundamental right of a citizen it cannot be denied the power to entertain a petition by a citizen claiming that the State machinery was abusing its power and was acting in violation of the constitutional guarantee. Rather it has a constitutional duty and responsibility to ensure that the State machinery was acting fairly and not on extraneous considerations. In State of Maharashtra Vs. Abdul Hamid Haji Mohammed, this Court after examining the principle laid down in Kharak Singh Vs. The State of U.P. and Others, and Paras Ram Vs. State of Haryana, held that the High Court has jurisdiction to entertain a petition under Article 226 in extreme cases. What are such extreme cases cannot be put in a strait-jacket. But the few on which there can be hardly any dispute are if the High Court is of opinion that the proceedings under TADA were an abuse of process of court or taken for extraneous considerations or there was no material on record that a case under TADA was made out. If it be so then there is no reason why should the High Court not exercise its jurisdiction and grant bail to the accused in those cases where one or the other exceptional ground is made out.

In view of above legal provisions, considering the facts of the case and from perusal of F.I.R., *prima facie*, no case is made out against the petitioner and criminal proceedings is manifestly attended against the petitioner with malafides or with political grudge.

It is pertinent to mention that earlier complaint against petitioner in the F.I.R for the offence punishable under Section 499, 500, 501, 505(1) IPC has been quashed by the Coordinate Bench of this Court vide its judgment dated 12.04.2021 in Writ Petition (Cri.) No. 251/2020.

Considering the facts and circumstances of the case, I am of the view that the petitioner has made out strong case for grant of stay, as continuation of investigation on basis of F.I.R. dated 19.05.2021 will be nothing but an abuse of process of law.

In view of above, I.A No. 01/2021, application for grant of interim relief is allowed and it is directed that the effect and operation of F.I.R. No. 0215/2021 dated 19.05.2021 registered at Police Station- Civil Lines, Raipur (C.G.) against the petitioner, and further investigation on the basis of F.I.R. No. 0215/2021 shall remain stayed till the next date of hearing.

Learned counsel for State prays for three weeks time to file reply.

As prayed, list this case after four weeks.

Certified copy as per rules.

**Sd/-  
(Narendra Kumar Vyas)  
Judge**