

A.F.R.

Neutral Citation No. - 2025:AHC:109666

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 22915 of 2025

Applicant :- Riyaz

Opposite Party :- State of U.P.

Counsel for Applicant :- Santosh Kumar Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Santosh Kumar Gupta, learned counsel for the applicant, Sri Anish Kumar Upadhyay, learned A.G.A. for the State and perused the record.

2. Instant bail application has been filed with a prayer to release the applicant on bail during the trial in Case Crime No. 169 of 2025, under Section 152 BNS, Police Station- Bahjoi, District Sambhal.

3. Contention of learned counsel for the applicant is that as per the allegation made in the FIR, the applicant has posted following story through his Instagram ID;

"Chahe jo ho jai sport to bas Pakistan ka karenge."

It is further submitted by counsel for the applicant that this post nowhere referable to lower the dignity and sovereignty of country as neither the flag of country was there nor use of name or any photo which shows any disrespect to the country and merely supporting a country, even if, the country is enemy to the country of India, will not attract the ingredients of Section 152 BNS. He further submitted that charge sheet has already been filed by the police, therefore, there is no requirement for custodial interrogation. The applicant has no criminal history and he is languishing in jail since 09.05.2025. He further submitted that as the applicant is 18 year old boy, therefore, he may be released on bail. In case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

4. Per contra, learned A.G.A. for the State vehemently opposed

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the prayer for bail and submitted that such post of the applicant through Instagram ID encourages the separatism activity, therefore, the applicant is not entitled to be released on bail.

5. Considering the submissions of learned counsel for the parties and perusal of record, it is not in dispute that while posting the aforesaid post through Instagram ID, the applicant has not mentioned anything which shows disrespect towards our country. Merely showing support to the Pakistan without referring to any incident or mentioning the name of India, will not *prima facie* attract the offence under Section 152 BNS.

6. The Apex Court in the case of **Imran Pratapgadhi vs State of Gujarat and another; 2025 SCC OnLine SC 678**, has observed that liberty of thought and expression is one of the cornerstone ideals of our Constitution. Article 19(1)(a) confers a fundamental right on all citizens to freedom of speech and expression. Police Officers being citizens, are bound to abide by the Constitution. We are bound to honour and uphold freedom of speech and expression conferred to all citizens. It is further observed by the Apex Court that before registering a case regarding a post on social media, it should be looked into as a reasonable man and decision should be based on standards of reasonable, strong-minded, firm and courageous individuals and not based on standards of people with weak and oscillating minds.

7. Section 152 BNS is a new Section providing stringent punishment and there was no corresponding section in IPC, therefore, before invoking the Section 152 BNS, reasonable care and standards of reasonable person should be adopted as spoken words or posts on social media is also covered by the liberty of freedom of speech and expression, which should not be narrowly construed unless it is of such nature which effect the sovereignty and integrity of a country or encourages separatism. For attracting the ingredients of Section 152 BNS, there must be purpose by spoken or written words, signs, visible representations, the electronic communication to promote secession, armed rebellion, subversive activities or encourages feeling of separating activities or endangers the sovereignty, unity and integrity of India. Therefore merely posting a message to simply shows supporting of any country may create anger or disharmony among citizens of India and may also be punishable under Section 196 BNS which is punishable up to seven years but definitively will not attract the ingredients of Section 152 BNS. It would be beneficial to quote Sections 152 and 196 of BNS, 2023 which are as follows;

152. Act endangering sovereignty, unity and integrity of India. - Whoever,

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purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine.

Explanation. Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.

196. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—(1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or through electronic communication or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity; or

(c) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

8. The Apex Court in the case of **Imran Pratapgadhi (supra)** has observed that before invoking the Section 196 BNS or other offences covered by the law referred to in Clause 2 of Article 19

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of the Constitution of India preliminary inquiry should be conducted as required under Section 173 (3) BNSS to ascertain whether *prima facie* case is made out to proceed against the accused but in the present case record shows that no such preliminary inquiry was conducted while registering the FIR against the applicant. Para 42 (v) and (vi) of the **Imran Pratapgadhi (supra)** case is being quoted as under;

42 (v). Clause (2) of Article 19 of the Constitution carves out an exception to the fundamental right guaranteed under sub-clause (a) of clause (1) of Article 19. If there is a law covered by clause (2), its operation remains unaffected by sub-clause (a) of clause (1). We must remember that laws covered by the clause (2) are protected by way of an exception provided they impose a reasonable restriction. Therefore, when an allegation is of the commission of an offence covered by the law referred to in clause (2) of Article 19, if sub-Section (3) of Section 173 is applicable, it is always appropriate to conduct a preliminary inquiry to ascertain whether a prima facie case is made out to proceed against the accused. This will ensure that the fundamental rights guaranteed under sub-clause (a) of clause (1) of Article 19 remain protected. Therefore, in such cases, the higher police officer referred to in sub-Section (3) of Section 173 must normally grant permission to the police officer to conduct a preliminary inquiry.

(vi). When an offence punishable under Section 196 of BNS is alleged, the effect of the spoken or written words will have to be considered based on standards of reasonable, strong-minded, firm and courageous individuals and not based on the standards of people with weak and oscillating minds. The effect of the spoken or written words cannot be judged on the basis of the standards of people who always have a sense of insecurity or of those who always perceive criticism as a threat to their power or position.

9. In view of above and taking into account the observation made by the Apex Court in **Imran Pratapgadhi (supra)** and considering the age of the applicant and taking into account that charge sheet has already been filed and without expressing any opinion on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

10. Let the applicant- **Riyaz** involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

- i. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.
- ii. The applicant shall cooperate in the trial/investigation sincerely without seeking any adjournment.

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iii. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

iv. The applicant shall attend in accordance with the conditions of the bond executed by him.

v. The applicant shall not post any material on social media which could create disharmony among citizens of India.

11. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

12. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 10.7.2025

A.Kr.