



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 3rd OF JULY, 2025

MISC. CRIMINAL CASE No. 24617 of 2025

HEMANT MALVIYA

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Rishabh Gupta - Advocate for the applicant.

Shri Amit Raval - G.A. appearing on behalf of Advocate General.

Shri Govind Rai Purohit - Advocate for the objector.

ORDER

1. This is applicant's first application under Section 482 of Bhartiya Nagrik Suraksha Sanhita, 2023 (Section 438 of Criminal Procedure Code, 1973) for grant of anticipatory bail, as he/she is apprehending his/her arrest in connection with Crime No.563/2025 registered at Police Station Lasudiya, District Indore (MP) for offence punishable under Section 196, 299, 302, 352, 353(3) of Bhartiya Nyay Sanhita, 2023 and Section 67-A of the I.T. Act, 2000.

2. Allegation against the applicant is that he has drawn a caricature, purportedly against the Rashtriya Swayam Sewak (RSS) and the Prime Minister Shri Narendra Modi, showing them in an undignified manner, offending the complainant's religious fervour and temperament and also



hurting his religious sentiments.

3. Counsel for the applicant has submitted that the applicant has been falsely implicated in the case as he had only drawn the caricature in his satirical work, which was published on the applicant's Facebook page, and it was open for all to access. It is submitted that certain comments have also been made on the said caricature, which are not of the applicant and the applicant cannot be held responsible for the same.

4. In support of his submission, counsel for the applicant has also submitted that the decision rendered by the Supreme Court in the case of *Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273* has not been followed, and has also relied upon the decision rendered by the Kerala High Court in the case of *Mammen Varghese and others vs. State of Kerala and another 2024/KER/57138*, and in the case of *Imran Pratapgadi vs. State of Gujrat and another 2025 SCC Online SC 678* in an identical matter, where the cartoonist was alleged to have drawn a caricature that had hurt the feelings of the complainant. Thus, it is submitted that the application be allowed, and the applicant be released on anticipatory bail.

5. Counsel for the respondent / State as also the objector, on the other hand, have vehemently opposed the prayer and it is submitted that no case for anticipatory bail is made out. Counsel for the objector has submitted that in the name of freedom of expression, the applicant cannot be allowed to draw a caricature, which depicts the RSS of which the objector is also a Member, as also the Prime Minister of this country in an offensive and degrading manner. Counsel has also submitted that the applicant is in the habit of making such caricatures every now and then



which can also be seen on his facebook page, disturbing the harmony of the society, and to maligning the reputation of the RSS, which is a social organization.

6. Heard. On due consideration of the rival submissions and perusal of the case diary, it is found that in the applicant's Facebook page which has been found to be objectionable by the complainant, RSS is shown in a human form with its Khaki shorts with a black belt and white shirt, which is the uniform of RSS. This man is bending over with his shorts pulled down and exposing his bottom to the caricature of the Prime Minister, who is shown with a stethoscope around his neck and who is also holding an injection in his hand, which he is administering on the bottom of the person bending over i.e. RSS. This caricature is tagged along with the lines,

“है शिव के अवतार, पिछवाड़ा हाजिर है, जाति जनगणना का ऐसा डोज लगाईये कि पहलगांव वक्फ बोर्ड सब भूल जाउ”,

7. In addition to that, the applicant has also made his own comments on the same in the following manner:

‘इस तरह आप मेरे किसी भी कार्टून को अपनी मर्जी से अपना नाम और व्यंग्य लिख के प्रयाग कर सकते हैं, मेरा हर कार्टून जनता के लिए जनता के द्वारा जनता को समर्पित है, भाई जिसने भी लिखा अच्छा लिख है, मित्र Mukesh Upadhyay ji ने टेग किया,’

8. In the considered opinion of this court, on the face of it, the conduct of the applicant in depicting the RSS, which is a Hindu organisation, along with the Prime Minister of this country in the aforesaid caricature, coupled with his endorsement of a rather demeaning remark, dragging unnecessarily the name of lord Shiva in the comments tagged to it, is nothing but the sheer misuse of the freedom of speech and



expression as enshrined under Art.19(1)(a) of the Constitution, and falls under the definition of offence as contended by the complainant. In the considered opinion of this Court, the post becomes more unsettling when the aforesaid derogatory lines involving Lord Shiva are also added to it, and which have also been favourably endorsed by the applicant himself who is also encouraging other people to experiment with the said caricature, which certainly cannot be said to be made in good taste or faith. It is apparent that the applicant's aforesaid act is deliberate and malicious intended to outrage religious feelings of the complainant and the public at large by insulting its religion, which is prejudicial to the maintenance of harmony in the society.

9. Thus, against the applicant, who has clearly demonstrated his propensity to commit the said offence and to promote the same in future also, the provisions of s.41(1)(b)(i) and (ii) would be attracted in full force and he cannot take recourse of the benefit of the provisions of s.41A of Cr.P.C./s. 35 of BNSS and consequently, the benefit of the dictum in the case of *Arnesh Kumar (supra)* would also not be available to him.

10. So far as the decisions relied upon by counsel for the applicant are concerned, the same are distinguishable, as in the case of *Imran Pratapgadi (supra)*, the Supreme Court was considering the publication of a poem, which did not have any religious connotations and in-fact it was written against the ruler and the applicant himself was not the author of the said poem. The aforesaid petition confined to the poem contained in a video which was posted by the petitioner on the social media platform “X” from his verified account, whereas, in the present case, the caricature itself has been drawn by the applicant, and he has favourably endorsed the



remarks made by some user tagging the aforesaid caricature made by the petitioner. Similarly, in the case of *Mammen Varghese and others (supra)*, the Division Bench of Kerala High Court was considering a cartoon which was published with a National Flag, and the same looked like number “70” and the saffron colour portion of the National Flag was outlined with black line, and as per the complainant, the black colour was purportedly given to dishonour the National Flag, thus, the facts of the aforesaid case are also entirely different from the case at hand, and hence distinguishable.

11. Counsel for the petitioner has also tried to draw a comparison of his work with the work that of *R.K. Laxman* the noted cartoonist of his era, and the other cartoonists also, however, no such caricature drawn by *R.K.Laxman* or any other noted cartoonist has been brought to the attention of this court which may be said to be similar or close enough to the caricature drawn by the present applicant.

12. Be that as it may, the applicant ought to have used his discretion while drawing the aforesaid caricature, and he has clearly overstepped the threshold of freedom of speech and expression, and does not appear to know his limits. In view of the same, this Court is of the considered opinion that the custodial interrogation of the applicant would be necessary.

13. Accordingly, M.Cr.C. is hereby ***dismissed.***

Sd/-

(SUBODH ABHYANKAR)
JUDGE

K.R.Joshi