**State v. Disha A. Ravi**

**Date of Judgment:** February 23, 2021

**Case Number:** Bail Application No. 420/2021in FIR No. 49/ 2021

**Judicial Body:** District Court, New Delhi

**Type of law:** Criminal law

**Themes:** Sedition

**Tags:** sedition, protest, bail, dissent, global conspiracy, personal liberty

**Status:** Interim decision

**Mode of Expression:** social media, protest, dissent, digital, internet

**Outcome:** Motion granted

**Case Summary and Outcome**

The Patiala House Court, a lower court in the Indian capital of New Delhi, in its interim decision granted bail to the accused involved in the creation and sharing of the ‘toolkit’ documents (**Toolkit**) on social media in relation to the nationwide protests against the newly introduced Farmers Bills in India. The relief comes in an application filed by the Respondent/ accused who was arrested for the offences of sedition and criminal conspiracy, amongst others, for her involvement in creation and sharing of a set of the digital Toolkit. While allowing the Respondent’s bail application because of the lack of any strong reason or evidence that would result in the contrary, the Court made pertinent observations on applicability of law of sedition. The Court has upheld a citizen’s right to dissent and protest, which rights are protected under the fundamental right to free speech. Dissent and divergence of opinion is a sign of a healthy democracy. The Court also held that the right to seek a global audience without any geographical barriers on communication is also a part of freedom of speech and expression.

**Facts**

The present proceedings arose from the criminal case filed by the State against Disha Ravi, the Respondent/ Applicant, a 22 year old environmental/ climate activist. The Respondent is accused of offences punishable under Section 153 (Wantonly giving provocation with intent to cause riot), 153A (Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony), 124A (Sedition) with 120B (criminal conspiracy) of the Indian Penal Code, 1860 (**IPC**), the primary code setting out the criminal offences in India. The Respondent was arrested for her involvement in the circulation of the Toolkit, a digital kit created and shared during the farmer protests against Farmers Bills 2020. The Respondent filed an application before the court under Section 439 of the Code of Civil Procedure seeking bail, resulting in the present decision.

The Respondent argued that as Section 153A was a bailable offence, she ought not to have been arrested in view of the Hon’ble Supreme Court’s decision in *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273. In the absence of any criminal antecedents, the Respondent was falsely arrested on 13.02.2021, brought from Bangalore, a city in the southern part of India, to the Indian capital of New Delhi and sent to police custody till 19.02.2021. The investigating agency had failed to observe the mandatory legal procedures at the time of Respondent’s arrest by failing to allow the Respondent to seek counsel or securing any judicial order for her transfer from Bangalore to Delhi thus, violating her rights under Article 22 of the Constitution. [para.7]

It was argued that the investigating agency had maliciously invoked allegations of sedition under Section 124A IPC to portray a minor offence as a grave offence. Further the investigating agency maliciously used terms such as ‘global conspiracy’ to sensationalise the case and prejudice the personal liberty of the Applicant. [para. 3] Respondent argued that the Toolkit demonstrates is an expression of free speech rights which are protected under Article 19(1)(a) of the Constitution of India. No offence of sedition was made out as the Respondent was merely exercising her freedom of speech and expression to oppose the farm laws enacted by the government. [para. 4] The Respondent relied on the Supreme Court decision in *Kedar Nath Singh v. State of Punjab*, AIR 1962 SC 955 to argue that actual violence or incitement to violence associated with the words in question, the necessary conditions for establishing a case under Section 124A of the IPC, were absent in the present case. Mere involvement of Respondent in creation or sharing of the Toolkit could not be construed as an offence. [para. 5]

It was further submitted that there was no likelihood of the Respondent fleeing away or obstructing justice as she was gainfully employed in India and was recognised both nationally and globally for her effort in promoting climate justice and environmental concerns. In any event, the investigation with respect to the Respondent was complete as all the recoveries from her were made. Therefore, keeping the Respondent in prison without setting her free on bail would not serve any purpose. [para. 8] As the evidence in the present case was entirely documentary in nature, there was no scope for the Respondent to influence any witness in the case. The Respondent further submitted that it was willing to abide by all conditions that may be imposed for the grant of bail in view of the which the Court ought to allow the Respondent’s bail application. [para. 6]

The State argued that the Applicant was involved in creating and disseminating seditious content on social media by circulating the Toolkit which ‘reflected disaffection against the lawfully elected government of India’. The toolkit was directly linked to several secessionist organisations such as the ‘Poetic Justice Foundation’ of Canada, a secessionist group advocating for creation of an independent country from India namely, Khalistan. [para. 9,10 &12] The segment of the Toolkit titled 'Prior Action' called for a digital strike in India through hashtags on 26.01.2021 i.e., the Republic day in India. It was even argued that the statements in the Toolkit incited and led to public disorder both in India and abroad on 26.01.2021. The Toolkit had contents ‘which malignantly, or wantonly gave provocation to any person and also promoted or attempted to promote, on grounds of religion, race, caste, community and other grounds, disharmony and feelings of enmity, hatred and ill will between different religions, racial language and regional groups, castes and communities.’ The Toolkit even contained hyperlinks to websites including ‘GenocideWatch.Org’ which contained malicious and provocative material against the government of India. [para 9 &10] Further, the investigating agency even discovered that a banned terrorist organisation, ‘Sikhs for Justice’, had issued an open communication declaring reward for anti-national activities including hoisting of Khalistan (a secessionist group in India) flag at India Gate, a landmark public place in the Indian capital, on Republic day. [para.11] The present Respondent was involved in the creation of the Toolkit, had editing rights to it and also created a whatsApp group named “Intl Farmers Strike” on 06.12.2020. [para.12] The Respondent along with other individuals was a part of the sinister plan ‘Global Day of Action on India’s Republic Day’. It was the State’s case that as the Respondent along with other individuals could not create disaffection against the government, the Respondent participated in a vicious social media campaign to spread fake news after 26.01.2021 by sharing the Toolkit with Ms Greta Thunderberg, a noted environmentalist. [para.12]

The State even argued that on 13.02.2021, when the investigation agency reached the Respondent’s place, Respondent denied knowledge of the Toolkit and the fact that she created any WhatsApp group. According to the State, the Respondent had deleted the WhatsApp group resulting in deletion of vital information. Further, several incriminating material was found with the Respondent’s cellular phone and laptop as a result of which she was arrested in Bangalore. The State submitted that from the analysis of Respondent’s electronic devices, it was certain that the Respondent was in contact with individuals from New Delhi who were collaborators of the conspiracy to incite disaffection and violence on 26.01.2021 and garnered support for secessionist Khalistan movement in the guise of Farmers protests. [para.12] The State argued that custodial interrogation of the Respondent was necessary to recover the deleted WhatsApp group and for recovery of the Toolkit along with other incriminating material and to confront her with the other co-accused to unravel the whole conspiracy. At the initial stage of investigation if the Respondent was set free on bail, there would be a likelihood of the Respondent hampering the fair course of investigation. [para. 13] Lastly, it was also argued that the order of the Ld. Judge remanding the Respondent accused to judicial custody having attained finality, the instant bail application was not maintainable under Section 439 of the Code of Criminal Procedure. [para. 14]

**Decision Overview**

Ld. Additional Sessions Judge, Mr Dharmendra Rana delivered the decision. On the issue of maintainability of the bail application, the objection raised by the State was rejected by the Court. [para. 16]

The primary issue considered by the Court was whether the Respondent was merely involved in peaceful protest and dissent against the Farmers Bills or was she actually involved in seditious activities under the guise of protests. The Court noted that under Sections 124A and 153A of the IPC only such activities as would be intended or having a tendency to create disorder or disturbance of public peace by resort to violence would have penal consequence. [Reliance on *Kedar Nath v. State of Bihar* AIR 1962 SC 955] In the present case, the State had conceded that there was no direct evidence establishing the link between the applicant/ accused and the violence perpetrated on 26.01.2021. [para. 21] The allegation that the Applicant was a part of a larger conspiracy to perpetuate violence by secessionist forces could not be proved by mere inferences. [Reliance on *Arun G. Gowli v. State of Maharashtra*, 1998 Cr.LJ 4481 (Bombay)] The State had failed to produce any proof in support of its contention that there was a direct association of the Respondent with individuals connected to the Poetic Justice Foundation. In any event, neither was the organisation banned nor were there any criminal actions pending against the named individuals having connections with the Poetic Justice Foundation. [para. 22.1] Further, there was nothing on record to show that the Respondent or the aforesaid organisations and its associates led to the violence on 26.01.2021. ‘Mere engagement with persons of dubious credentials is not indictable rather it is the purpose of engagement which is relevant for the purpose of deciding culpability’, said the Court. There was no proof to support that the Respondent had link with Sikhs for Justice, the banned terrorist organisation or the fact that the Respondent or Kisaan Ekta.co had any link with Indian conspirators or had any seditious agenda. [para.22.1]

The Court held that the Toolkit did not, in any manner, call for/ incite violence. ‘Citizens, the conscience keepers of government in a democratic nation, cannot be put behind bars simply for their disagreement with the State politics.’ The Court opined that, ‘difference of opinion, divergence, dissent or even disapprobation are recognised legitimate tools to infuse objectivity in state policies.’ In fact, ‘an aware and assertive citizenry, in contradistinction with an indifferent or docile citizenry, is indisputably a sign of a healthy and vibrant democracy.’ Therefore, ‘offence of sedition cannot be invoked to minister to the wounded vanity of the governments.’ [Reliance on *Niharendu Dutt Mazumdar v. Emperor* AIR 1942 FC22] Due respect is given to divergence of opinion by recognising the freedom of speech and expression as an inviolable fundamental right. Freedom of speech and expression includes the right to seek a global audience without any geographical barriers on communication. The Court reiterated the well-recognised fundamental right of a citizen ‘to use the best means of imparting and receiving communication, as long as the same is permissible under the four corners of law and as such have access to audience abroad.’ [Reliance on *Secretary, Ministry of I&B v. Cricket Association of Bengal* (1995) 2 SCC 161] With respect to the hyperlinks imbedded in the Toolkit, the Court held that while one out of the two pages i.e., Genocide.org, had imputations of objectionable nature, the said material was not of seditious nature. The imputations on the said website though false, exaggerated, the same could not be termed as seditious unless they had the tendency to incite violence. [Reliance on *Balbir Singh Saina v. State of Haryana* 1989 SCC 93 (P&H)] [para. 22.2]

The Court held that creation of a WhatsApp group or by virtue of being editor of the Toolkit the Respondent had not committed any offence. Further, as the content of the Toolkit was not objectionable, mere deletion of the WhatsApp chat to destroy the evidence which could the Respondent with the Toolkit is inconsequential. In view of the fact that the protest march was duly permitted by the Delhi Police, the fact that one of the co-accused reached Delhi to attend the protest did not constitute an offence. [para. 22.3]

In allowing the bail application, the Court held that there was nothing to suggest that the Respondent subscribed to any secessionist idea. The State even failed to prove as to how by forwarding the Toolkit to Greta Thunderberg, the Respondent brought global audience to the ‘secessionist elements.’ [para. 23] No evidence was brought to demonstrate that any violence actualy took place at Indian Embassies pursuant to the acts of the Respondent and the co-conspirators. [para. 26] Further, neither rule of law nor prudence requires a person to be mandatorily detained in custody to be confronted with other co-accused persons as submitted by the State. The State had failed to recover anything from the Respondent despite interrogating her in custody for 5 days. While the investigation is at a nascent stage and the investigation agency is in the process of collecting more evidence and arrested the Respondent on the basis of the material available, ‘the personal liberty of the Respondent could not be restricted any further merely on the basis of propitious anticipations.’ Therefore, State’s objection to the bail plea was ‘more ornamental in nature’. [para. 28]

The Court upheld the general rule of ‘Bail, not jail’ as there was no palpable reason to restraint the Respondent who had a blemish free criminal antecedent. The bail application was allowed subject to furnishing personal/ surety bond of Indian Rupees 100,000 with two sureties each in the like amount. During the bail, the Respondent will continue to cooperate with the ongoing investigations, will not leave the country without permission of the Court and will appear at each proceeding before the Court without causing any obstruction to the progress of the case. [para. 29]

**Decision Direction**

Expands Freedom

The decision of the Court reemphasises the importance of the right to dissent, disagree and protest which are integral to freedom of speech and expression. The observation of the Court that, ‘charges for the offence of sedition cannot be invoked to minister to the wounded vanity of the governments’ is appropriate and equally applies to all democracies. For a true democracy to flourish the importance of a citizen’s right to debate, dissent, disagree, question the State policies or partake in peaceful protests is critical. Further, for a democracy to survive, equally important is to recognise the right of access to a global audience as a part of freedom of speech and expression. The decision values fundamental right of speech and expression at the highest pedestal, thus expanding the said right.

**Global Perspective**

**National Standards, Law and Jurisprudence**

[India, Const. art. 14.](https://indiankanoon.org/doc/367586/)

[India, Const. art. 19.](https://indiankanoon.org/doc/1218090/)

[India, Const. art. 21.](https://indiankanoon.org/doc/1199182/)

India, Const. art. 22.

India, Indian Penal Code, 1860, [sec 153A](https://indiankanoon.org/doc/345634/).

India, Indian Penal Code, 1860, [sec 153](https://indiankanoon.org/doc/857209/#:~:text=%E2%80%94Whoever%20malignantly%2C%20or%20wantonly%2C,such%20provocation%2C%20be%20punished%20with).

India, Indian Penal Code, 1860, [sec 124A](https://indiankanoon.org/doc/1641007/).

India, Indian Penal Code, 1860, [sec 120B](https://indiankanoon.org/doc/81396/).

India, Criminal Procedure Code, 1972, [sec 156.](https://indiankanoon.org/doc/1291024/#:~:text=156.,power%20to%20investigate%20cognizable%20case.&text=(2)%20No%20proceeding%20of%20a,under%20this%20section%20to%20investigate.)

India, Criminal Procedure Code, 1972, [sec 439](https://indiankanoon.org/doc/1290514/).

India, Arnesh Kumar v. State of Bihar (2014) 8 SCC 273

India, Kedar Nath Singh v. State of Punjab, AIR 1962 SC 955

India, Arun G. Gowli v. State of Maharashtra, 1998 Cr.LJ 4481 ( Bombay)

India, Niharendu Dutt Mazumdar v. Emperor AIR 1942 FC22

India, Secretary, Ministry of I&B v. Cricket Association of Bengal (1995) 2 SCC 161

India, Balbir Singh Saina v. State of Haryana 1989 SCC 93 (P&H)

**Case Significance**

This interim decision of the lower court is subject to appeal and modification by superior courts. Given the public support for this decision and the fact that the decision recognises and values freedom of speech and expression and a citizen’s right to protest/ dissent above all else, the decision could have an impact on the adjudication of sensationalised cases where the State invokes charges of sedition to stifle the right to dissent.

**Links:**

* The arrest of this activist should put India’s ‘democracy’ title in question

<https://www.washingtonpost.com/opinions/global-opinions/the-arrest-of-this-activist-should-put-indias-democracy-title-in-question/2021/02/24/a18b6ae4-7602-11eb-8115-9ad5e9c02117_story.html>

* What Exactly is the Crime Disha Ravi is Accused Of?

<https://thewire.in/rights/disha-ravi-toolkit-sedition-bail-farmers-protest-khalistan>

* The Disha Ravi Bail Order Raises Questions Prime Minister Narendra Modi Needs to Answer

<https://thewire.in/government/disha-ravi-bail-narendra-modi-international-conspiracy-toolkit#:~:text=New%20Delhi%3A%20In%20ordering%20bail,still%20commit%20the%20mistake%20of>

* Disha Ravi Bail Order: Takeaways on Law, Liberty, and Dissent

<https://www.thequint.com/news/law/key-takeaways-from-disha-ravi-bail-order>