

which has been forwarded by the police after due investigation be also quashed. Still further, we are of the view that even the gang-chart, which was prepared without any due discussion and without any application of mind, deserves to be quashed and, therefore, the gang-chart which is made the basis of the first information report is also quashed.

22. The writ petition stands allowed.

(2025) 5 ILRA 224

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 22.05.2025

BEFORE

**THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE DR. YOGENDRA KUMAR
SRIVASTAVA, J.**

Criminal Misc. Writ Petition No. 21016 of 2024

Mohammad Zubair ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Devaang Savla, Rajrshi Gupta, Tanmay Sadh

Counsel for the Respondents:

Kapil Tyagi

Criminal Law – Constitution of India, 1950 - Article 19(1)(a), 19(2), 21 & 226 - Bhartiya Nyaya Sanhita (BNS) – Sections 132, 132(1), 221, 152, 191(2), 193(3), 196, 221, 228, 298, 299, 302, 351, 351(2), 353 & 356(3) - - The Information Technology Act, 2000 - Sections 66 - Writ Petition – seeks to quash FIR – alleging that petitioner’s tweets, including a video, incited violence and led to an attack on Dasna Devi Temple – plea taken that FIR is a misuse of law aimed at curbing dissent, asserting that tweets

are protected under Article 19(1)(a) and lacked any intent to provoke rebellion or separatism – Section 152 BNS added without proper investigation – St.’s counsel opposed plea, contending that petitioner’s influential tweets incited subversive activities and endangered national integrity, thereby attracting restrictions under Article 19(2) – St. insists FIR involves serious allegations and cannot be quashed in part – Court finds that – (i) India is a country with diverse religions, tribes and races, and tweets made by petitioner, if misunderstood by any section of society, could potentially affect public harmony, – (ii) the “test of fire in a crowded theatre” is not applicable in the present case, – (iii) while Section 152 BNS serves as a safeguard for the St. against seditious activity, whether petitioner’s St.ments excited secession, armed rebellion or encouraged separatist sentiments is a matter to be determined through investigation, – (iv) investigating agencies are best equipped to examine the allegations and the truth is yet to emerge, – (v) interim protection granted earlier was not misused by petitioner – Court held – a false implication may prejudice rights guaranteed under Article 21, hence, refrains from interfering at this stage – direction issued to continue investigation in the instant case, with protection that petitioner shall not be arrested or harassed in any manner pursuant to the FIR, till conclusion of investigation, subject to full cooperation – writ petition disposed of with further directions that petitioner shall remain available for investigation and shall not leave the country. (Para – 44, 45, 46, 49, 50, 52, 53, 55)

Writ Petition Allowed. (E-11)

List of Cases cited:

1. Tejender Pal Singh @ Timma Vs St. of Raj. (S.B. Criminal Misc. (Pet.) No.5005/2024 decided on 16.12.2024),
2. Javed Ahmad Hajam Vs St. of Mah. & anr.- (2024) 4 SCC 156,
3. Mohammad Wajid & anr.Vs St. of U.P. & ors.- 2023 SCC Online SC 951,
4. St. of Har. Vs Bhajan Lal, reported in 1992 Supp (1) SCC 335,

5. Lovely Salhotra Vs St. of NCT Delhi & anr- (2018) 12 SCC 391,

6. Ramji Lal Modi Vs St. of U.P. - AIR 1957 SC 620,

7. The St. of U.P. Vs Lalai Singh Yadav - (1976) 4 SCC 213,

8. Anuradha Bhasin Vs U.O.I.& ors.reported in (2020) 3 SCC 637,

9. Kaushal Kishor Vs St. of U.P. & ors.: (2023) 4 SCC 1,

10. 63 L. Ed. 470: Charles T. Schenck Vs United St.s of America,

11. 63 L. Ed. 1173 (Jacob Abrams Vs United St.s),

12. 23 L. Ed. 2d 430 (Clarence Brandenburg Vs St. of Ohio),

13. Tehseen S. Poonawala Vs U.O.I.& ors.- (2018) 9 SCC 501,

14. Anuradha Bhasin Vs U.O.I.& ors.- (2020) 3 SCC 637,

15. Amish Devgan Vs U.O.I.& ors.: (2021) 1 SCC 1,

16. Dineshbhai Chandubhai Patel Vs St. of Gujarat & ors.- (2018) 3 SCC 104,

17. Rafiq Ahmedbhai Paliwala Vs St. of Gujarat & ors.- (2019) 5 SCC 464,

18. Somjeet Mallick Vs St. of Jharkhand & ors.- (2024) 10 SCC 527,

19. Vinod Raghuvanshi Vs Ajay Arora & ors.- (2013) 10 SCC 581,

20. Satvinder Kaur Vs St. Govt. of NCT of Delhi - (1999) 8 SCC 728,

21. Neeharika Infrastructure Pvt. Ltd. Vs St. of Mah. & ors., (2021) SCC Online SC 315,

21. Criminal Misc. Writ Petition No. 7463 of 2024 (Shobhit Nehra and Anr. Vs St. of U.P. & 2 Ors.),

22. Hema Mishra Vs St. of U.P. & ors. reported in (2014) 4 SCC 453.

(Delivered by Hon'ble Siddhartha Varma, J.)

1. Heard Sri Dileep Kumar, learned Senior Advocate assisted by Sri Tanmay Sadh, learned counsel for the petitioner and Sri Manish Goyal, learned Additional Advocate General assisted by Sri Pankaj Saxena, Sri A.K. Sand, learned Government Advocate. Sri Kapil Tyagi, learned counsel for the informant was heard along with Sri Adhitya Srinivasan who appeared through Video Conference.

2. This writ petition has been filed with a prayer that the First Information Report dated 7.10.2024 giving rise to Case Crime No.992 of 2024 against the petitioner-Mohd. Zubair lodged under sections 196, 228, 299, 356(3), 351(2) and 152 of the Bharatiya Nyaya Sanhita, 2023 and under section 66 of the Information Technology Act be quashed.

3. The brief facts leading to the lodging of the FIR are that on 3.10.2024, the petitioner had tweeted certain messages at 9.30 pm. Thereafter on 4.10.2024 he had again tweeted at 11 hours and 08 minutes and thereafter on 5.10.2024 he had again done so at 12.38 PM. Thereafter and as a result of the tweets, specifically the one that was made on 3.10.2024, in the night of 4.10.2024 at Dasna Devi Temple, certain persons attacked a temple. The FIR was lodged on 7.10.2024 at 2.19 PM. The FIR alleged that the co-founder of ALT News Mohd. Zubair on 3.10.2024 at 9.30 PM had tweeted and had also uploaded a video of Yati Narsinghanand Giri and because of the tweet, certain persons had got provoked. It has been stated in the FIR that apart from the above tweets, certain old incidents were

also mentioned therein. It was stated in the FIR that the Yati Narsinghanand Giri was also alleged by the accused of insulting some political leaders. It had been stated that in that list, the name of Dr. Udita Tyagi (first informant) had been included. The first informant has thereafter stated that after those tweets, she was receiving life threatening messages about which she had also reported earlier. It has thereafter been stated that Mohd. Zubair did not stop after the tweeting of messages on 4.10.2024. He thereafter again tweeted on 5.10.2024 at 11.08 AM. And then again he tweeted on that very date i.e. on 5.10.2024 at 12.38 PM. In the FIR, it has been stated that the posts of the accused were a complete thread of events which also showed the old speeches of Yati Narsinghanand Giri. Along with the FIR, the link of the posts was also attached and a written request was made to look into those links and to see the comments which were made by the general public who were being provoked. Thereafter in the FIR it had been mentioned that on 4.10.2024, certain persons had attacked the temple. It has been stated that earlier also the petitioner had tweeted about one Nupur Sharma and had tried to provoke the public at large and because of that provocation eight people had lost their lives. In the FIR it had been stated that on 4.10.2024, Yati Narsinghanand Giri and the first informant herself were present in the temple but they had a narrow escape. In the end, it was stated that the petitioner was provoking a certain group of people against a particular community.

4. Initially the FIR was lodged under section 196, 228, 299, 356(3) and 351(2) of the BNS but subsequently after some investigation, the offences under section 152 BNS and under section 66 of the Information Technology Act were also added. Then the

petitioner amended the writ petition accordingly.

5. When the case was taken up on 18.11.2024, the State had requested the Court to grant time to file a short counter affidavit to enable the State to bring on record all the tweets which were not filed along with the writ petition. Thereafter on 20.12.2024, the Investigating Officer filed a short counter affidavit and had brought on record certain tweets and had also informed the Court through the short counter affidavit as to how many times tweets were also re-posted.

6. Sri Dileep Kumar, learned Senior Counsel assisted by Sri Tanmay Sadh and Sri Rajarshi Gupta, learned counsel for the petitioner submitted that no case under sections 196, 228, 299, 356(3), 351(2) and 152 BNS and under section 66 of the IT Act was made out. Learned counsel for the petitioner has submitted that the lodging of the FIR was a grave abuse of the process of law and that it was filed with the sole aim to harass the petitioner and to intimidate him from performing his role as a fact checker and also that of a responsible citizen of the country.

7. Learned counsel for the petitioner with regard to the explanation to section 152 BNS added that the explanation to section 152 BNS, however, provides that if a person comments for the purposes of disapprobation of the measures of the Government, or comments disapprovingly of administrative or other actions of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in section 152, then there shall be no offence under this section.

8. Learned counsel for the petitioner, for making out a case for the quashing of the FIR viz.-a-viz. section 152

BNS, relied heavily upon a judgment of the Rajasthan High Court in **Tejender Pal Singh @ Timma vs. State of Rajasthan (S.B. Criminal Misc. (Pet.) No.5005/2024 decided on 16.12.2024)** and submitted that if the tweets referred to in the FIR, which had been reproduced in the writ petition and in the short counter affidavit which was filed by the State on 20.12.2024 are read, it becomes evident that those tweets would not constitute any offence punishable under section 152 of BNS. He submits that the tweets (alleged acts of the petitioner) cannot be said to be amounting to exciting or attempting to excite secession or armed rebellion. They also could not be said to be exciting subversive activities. Definitely they were not encouraging separatist activities or endangering the sovereignty, unity and integrity of India. Learned counsel for the petitioner states that if the tweets are seen, they were just reproduction of certain speeches which Yati Narsinghanand Giri had delivered on various dates at various places and that the petitioner was dissatisfied with the inaction of the State authorities in taking action against Yati Narsinghanand. Learned counsel for the petitioner states that on 3.10.2024, the police itself had lodged an FIR against Yati Narsinghanand Giri and the FIR was with regard to the statement which he had given on 29.9.2024. Learned counsel for the petitioner has also referred to another FIR which was lodged on 5.10.2024 against 100-150 unknown persons who had attacked the temple of Dasna because of the comments which had been given by Yati Narsinghanand and if one goes by that FIR, he submits, it was evident that the attack had occurred at Dasna temple because of the irresponsible statements given by Yati Narsinghanand on 29.9.2024. Even otherwise, learned counsel for the petitioner submits that if the tweets

as were tweeted by the petitioner are seen, they do not constitute any offence under section 152 of BNS.

9. Learned counsel for the petitioner further submitted that looking into the ingredients of the Section 152 of BNS it becomes abundantly clear that Section 152 of the BNS is primarily aimed at protecting the country from onslaughts of any secessionist who might by his acts bring about an armed rebellion. The offence as is to be found under section 152 BNS requires to be curbed viz.-a-viz. anyone trying to bring about a feeling of separatism and thereby trying to endanger the sovereignty, unity and integrity of the country. Thus it criminalizes all acts of any individual who might either be trying to excite or attempting to excite secession or an armed rebellion. It also criminalizes the acts of such individuals who might be trying to encourage the feeling of separatism and putting the sovereignty, unity and integrity of India into jeopardy and thereby threatening the country's stability.

10. Learned counsel for the petitioner states that definitely if a person indulges in an offence which is punishable under Section 152 of BNS, commits something very grave. He submits that therefore the punishment provided is also a heavy one whereby imprisonment for life is also possible. He, therefore, submits that a high threshold of intent (*mens rea*) ensuring that only deliberate action with malicious action would fall within the ambit of the offence provided under Section 152 of BNS. He submits that offence under Section 152 would thus be such which would be committed purposely or knowingly. He submits that purposely done acts would be done knowingly by

words either spoken or written or by signs and visible representation.

11. Learned counsel for the petitioner states that the Section 152 of BNS which had no parallel in the IPC is such a Section which has been brought in with the intention of maintaining national integrity and also for discouraging any onslaughts of separatism.

12. Learned counsel for the petitioner submits that however this section could not be used to settle personal scores. It is, therefore, thus to protect national security and cannot be used to subvert political dissent/criticism etc. Learned counsel for the petitioner therefore drew the attention of the Court to the explanation to Section 152 of BNS which reads as under:-

"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."

13. After having elaborated on the necessity of seeing the intention to commit the offence under Section 152 of BNS, learned counsel for the petitioner submitted that it was important also for the Courts to see whether when the accused who was alleged to have committed the offence under Section 152 of BNS was at all capable of committing the same. He submits that a country like India having a population of more than 142.86 crores whether would be affected by the singular and sporadic act of a person trying to excite secession or armed rebellion. It would also have to be seen whether that person was

capable of encouraging the feelings of separatist activities to the extent that the entire population would get excited and thereby sovereignty, unity and integrity of the country would get affected.

14. In the instant case, learned counsel for the petitioner states that if one goes by the averments made in paragraph 6 of the short counter affidavit dated 20.12.2024 then the viewership of the tweets of the petitioner were as follows:

Sl. No.	Date of Post/Time	Number of viewers
1.	03.10.2024/ 22:40	143.6K
2.	04.10.2024/10:36	536.7K
3.	04.10.2024/10:44	25.4K
4.	04.10.2024/11:21	8520
5.	04.10.2024/12:14	168.8K
6.	04.10.2024/15:16	145.6K
7.	04.10.2024/19:51	38.8K(reposted tweets)
8.	05.10.2024/00:21	49.1K
9.	05.10.2024/11:08	181.2K(reposted tweets)
10.	05.10.2024/12:38	45.9K(reposted tweets)
11.	06.10.2024/12:48	81.5K(reposted tweets)
12.	06.10.2024/12:59	419.8K(reposted tweets)

15. Thus, the maximum number of the reach of the posts appears to be to 536.7 thousands viewers and, therefore, learned counsel for the petitioner states that if a person of such meagre followings was tweeting then it could not, by any means, be said that he could have any intention of exciting secession/armed rebellion. He could also not encourage feeling of separatism and also thus could not endanger sovereignty, unity and integrity of the country.

16. Thereafter learned counsel for the petitioner relied upon a judgment of the Supreme Court reported in **(2024) 4 SCC 156 : Javed Ahmad Hajam vs. State of Maharashtra and another** and submitted

that the doings of an offender had also to be judged considering as to what was the structure of a country in which he was trying to commit the offence. He submits that our country has been a democratic country for more than 75 years and that our people know the importance of democratic values. He further submits that it was not possible to conclude that tweets as were made by the petitioner would promote disharmony in our country or would weaken the country in any manner. He submits that the test is a general impact of utterances on reasonable people who are significant in number. Merely because a few people would develop hatred or ill-will because of the acts of the petitioner definitely would not make him liable for the offence under section 152 BNS. It would not be sufficient to say that the petitioner had attempted to excite or had even excited a secession or armed rebellion in the entire country or even in a part of it. It also could not be said that he had excited subversive activities or had encouraged the feelings of separatism and thus had endangered the sovereignty, unity and integrity of the country.

17. Thus, in effect the learned counsel for the petitioner has tried to convince the court on four broad issues:-

I. The offence being a grave one, the intention/*mens rea* should be looked into extensively and very high standards should adopted to fathom its extent.

II. The person who tries to excite or attempts to excite secession or armed rebellion purposely or knowingly by words either spoken or written or by signs or by virtual representation or by an electronic communication or by the use of financial means or otherwise should be such a person

who can effectively encourage feelings of separatism and thereby endanger the sovereignty, unity and integrity of the country.

III. The people amongst whom he tries to spread his ideas for exciting secession or armed rebellion or subversive activities and thereby tries to encourage the feelings of separatism and ultimately endangers the sovereignty, unity and integrity of the country should be such as people would actually get affected by those efforts/acts.

IV. In the event there was approbation intended then no offence under section 152 BNSS was made out.

18. Learned counsel for the petitioner further submits that if a person who was of no consequence was repeatedly entering into such activities would also not mean that he was an offender under Section 152 of BNS.

19. Relying upon a judgment of Supreme Court in **Mohammad Wajid and another vs. State of U.P. and others** reported in 2023 SCC Online SC 951, learned counsel for the petitioner states that when it comes to quashing of first information reports or criminal proceedings, criminal antecedents cannot be the sole consideration to decline the relief of quashing the criminal proceedings. An accused has a legitimate right to say before the Court that howsoever bad his antecedents may be, if the first information report fails to disclose the commission of any offence or his case falls within the parameters as are laid down in the case of **State of Haryana v. Bhajan Lal**, reported in **1992 Supp (1) SCC 335** then the FIR compulsorily requires to be quashed. The parameters given in the above judgment are being reproduced here as under:-

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide 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."

20. Learned counsel for the petitioner further relied upon the Article 19(1)(a) of the Constitution of India and has submitted that the petitioner had the freedom of speech and expression to tweet and that no law in the country could restrain him from exercising his right to freedom of speech and expression. He submits that though there were restrictions which could be enforced but they could not prevent the petitioner from ventilating his views.

21. Learned counsel for the petitioner in the end vehemently submitted that even if the tweets which were made from 3.10.2024 to 6.10.2024 were seen, it becomes evident that there was no attempt to excite secession or armed rebellion. He further submits that there was also no attempt to excite subversive activities and no effort was made to encourage feelings of separatist activities and also the actions were not such as could be classified to attempting to endanger sovereignty or unity and integrity of India. Learned counsel for the petitioner has taken the Court through the various tweets and has submitted that initially the tweets were to the effect that certain hateful speeches of Yati Narsinghanand which had targeted a particular religion, were being highlighted and disapprobation of the measures of the administration and the Government to take action on that had been expressed. Then, he had tweeted the speech of Yati Narsinghanand Giri and had reproduced the video of his in which he had made vile comments about women in politics. Learned counsel for the petitioner further

states that the followers of the petitioner had only in continuation of what had been done by the petitioner made further other tweets and that they were all asking the State to take action on those tweets and, therefore, learned counsel for the petitioner states that in fact the only effort of the petitioner and his followers was to see that Yati Narsinghanand was punished and for this they had expressed their disapprobation of the measures taken by the administration.

22. Learned counsel for the petitioner further submitted that even though the police had taken action against Yati Narsinghanand Giri, they were submitting charge sheets only for the offences which were very mild. He further states that the kind of statements Yati Narsinghanand Giri was making required much more stringent action on the part of the State and this having not being done by the State, the petitioner had every right to make comments expressing disapprobation of the measures taken by the State.

23. Further, learned counsel for the petitioner stated that the FIR initially was lodged under sections 196, 228, 299, 356(3) and 351 of BNS. He submits that the police authorities without any reason, thereafter, had added section 152 BNS in the list of sections. The Investigating Agencies had hardly done any investigation till the date when section 152 BNS was added and on the basis of the contents of the original FIR, the section 152 BNS was added subsequently. There was hardly any investigation done by that date. Learned counsel for the petitioner further states that even the reading of the counter affidavit and the other affidavits filed by the Investigating Officer does not show that any further material was there in the

possession of the State to add section 152 of the BNS. He, therefore, submits that even though the section 152 BNS was added subsequently, the investigation had taken place only viz.-a-viz. the contents of the original FIR and thus learned counsel for the petitioner very categorically stated that there was nothing new which came into the possession of the Investigating Agencies which made them to add section 152 BNS to the FIR. Learned counsel for the petitioner also submitted that when the Court was adjudicating as to whether the FIR was to be quashed then it was always open for the Court to either quash the entire FIR or quash the same in part. Learned counsel for the petitioner relied upon the decision of the **Supreme Court in (2018) 12 SCC 391 : Lovely Salhotra vs. State of NCT Delhi & Anr.** and submitted that in that case the FIR was quashed viz.-a-viz. a few of the petitioners-accused and it was not so quashed with regard to the other petitioners-accused. Learned counsel for the petitioner submitted that applying the same principle a few of the offences if were not made out in the FIR could be quashed and the others which were made out from the bare reading of the FIR could be investigated into.

24. Learned Additional Advocate General for the State has vehemently opposed the writ petition and he submits that a bare reading of the tweets made on 3.10.2024, 4.10.2024, 5.10.2024 and 5.10.2024 which were posted by the petitioner and were thereafter re-posted by his followers/public at large would go to indicate that the petitioner was in every possible manner trying to excite secession and armed rebellion. He submits that by the tweets, he was also trying to excite subversive activities and was therefore encouraging the feeling of separatism and

the end result of it all was that he was endangering the sovereignty, unity and integrity of the country.

25. Learned Additional Advocate General further submitted that deliberately the petitioner was making false statements that no action was being taken against Yati Narsinghanand Giri vis-a-vis the first information reports which were lodged against him.

26. Learned Additional Advocate General further submitted that the protest which was held on 4.10.2024 was not a result of the speech which Yati Narsinghanand Giri had made on 29.9.2024, but was a direct result of the tweets which the petitioner had made on 4.10.2024.

27. Learned Additional Advocate General states that the petitioner was having a viewership of his tweets of around 5 lacs and that he was being followed by around 15 lac people.

28. Learned counsel submitted that the petitioner was a Co-founder and Director of Alt-News which was an agency which checks facts and wrongly the petitioner was going about saying that no action had been taken against Mahamandaleshwar Yati Narsinghanand Giri despite the fact that all possible action had been taken against him.

29. Learned Additional Advocate General Sri Manish Goyal also has submitted that the petitioner was a person who was in the profession of journalism and he was through his platform ALT News always trying to find out correctness of any fact which was mentioned by any political or public person. He submits that

against the doings of Yati Narsinghanand, an FIR was lodged on 5.10.2024 under section 302 BNS. Further under sections 298, 353, 191(2), 193(3), 132, 132(1) and 221 of BNS another FIR was lodged by one Bhanu Prakash against 100-150 unknown persons for the offence of raising slogans against Yati Narsinghanand Giri for having made objectionable statements. Learned Additional Advocate General has again drawn the attention of the Court to the lodging of the FIR dated 5.10.2024 against 18 named persons and 60-70 unknown persons for having raised their voices against the fact that Yati Narsinghanand Giri had made certain objectionable statements. Learned AAG also stated that there were FIRs lodged specifically against Yati Narsinghanand on 3.10.2024 by one Trivendra Singh for having made objectionable statements and in effect he states that there were 24 cases pending against him and out of the 24 cases, the police had submitted its charge sheets in 21 cases and Final Reports in two cases and in one case probably, he submits, investigation was still going on. Learned, AAG therefore, submitted that the petitioner, despite the fact that he was a renowned fact checker, he had not known the fact that FIRs were also lodged against Yati Narsinghanand.

30. Learned AAG relying upon the decision of the Supreme Court in **Ramji Lal Modi vs. State of U.P.** reported in **AIR 1957 SC 620**, submitted that though the petitioner had a right to freedom of speech and expression but he had to confine it to the restrictions as were imposed by the State and he submits that the restrictions were such which if were observed properly by the petitioner, he would definitely not make the tweets he had made. Still further, learned counsel for

the State relied upon the decision of the Supreme Court in **The State of Uttar Pradesh vs. Lalai Singh Yadav** reported in (1976) 4 SCC 213 and submitted that the freedom of speech is something which had to be exercised considering the restrictions imposed by Article 19(2) of the Constitution of India. Similar, he submits, was the view taken by the Supreme Court in **Anuradha Bhasin vs. Union of India & Ors.** reported in (2020) 3 SCC 637. To bring home his point, he specifically relied upon paragraphs 37, 38, 50, 139 and 140 of the judgment and they are being reproduced here as under :-

"37. The right provided under Article 19(1) has certain exceptions, which empowers the State to impose reasonable restrictions in appropriate cases. The ingredients of Article 19(2) of the Constitution are that:

a. The action must be sanctioned by law;

b. The proposed action must be a reasonable restriction;

c. Such restriction must be in furtherance of interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

38. At the outset, the imposition of restriction is qualified by the term 'reasonable' and is limited to situations such as interests of the sovereignty, integrity, security, friendly relations with the foreign States, public order, decency or morality or contempt of Court, defamation or incitement to an offence. Reasonability of a restriction is used in a qualitative, quantitative and relative sense.

50. During the Vietnam war, the US Supreme Court had to deal with the

case of **Brandenburg v. Ohio**, 395 US 444 (1969), wherein the Court over-ruled **Dennis** (supra) and held that the State cannot punish advocacy of unlawful conduct, unless it is intended to incite and is likely to incite 'imminent lawless action'.

139. Although, the Respondents submitted that this Court cannot sit in appeal or review the orders passed by the executive, particularly those pertaining to law and order situation, the scope of judicial review with respect to law and order issues has been settled by this Court. In **State of Karnataka v. Dr. Praveen Bhai Thogadia**, (2004) 4 SCC 684, this Court observed, specifically in the context of Section 144, Cr.P.C., as follows:

"6. Courts should not normally interfere with matters relating to law and order which is primarily the domain of the administrative authorities concerned. They are by and large the best to assess and to handle the situation depending upon the peculiar needs and necessities within their special knowledge. *Therefore, whenever the authorities concerned in charge of law and order find that a person's speeches or actions are likely to trigger communal antagonism and hatred resulting in fissiparous tendencies gaining foothold, undermining and affecting communal harmony, prohibitory orders need necessarily to be passed, to effectively avert such untoward happenings.*

7... If they feel that the presence or participation of any person in the meeting or congregation would be objectionable, for some patent or latent reasons as well as the past track record of such happenings in other places involving such participants, necessary prohibitory orders can be passed. Quick decisions and swift as well as effective action necessitated in such cases may not justify or permit the authorities to give prior

opportunity or consideration at length of the pros and cons. The imminent need to intervene instantly, having regard to the sensitivity and perniciously perilous consequences it may result in if not prevented forthwith, cannot be lost sight of. *The valuable and cherished right of freedom of expression and speech may at times have to be subjected to reasonable subordination to social interests, needs and necessities to preserve the very core of democratic life - preservation of public order and rule of law.* At some such grave situation at least the decision as to the need and necessity to take prohibitory actions must be left to the discretion of those entrusted with the duty of maintaining law and order, and interposition of courts unless a concrete case of abuse or exercise of such sweeping powers for extraneous considerations by the authority concerned or that such authority was shown to act at the behest of those in power, and interference as a matter of course and as though adjudicating an appeal, will defeat the very purpose of legislation and legislative intent..."

(emphasis supplied)

140. It is true that we do not sit in appeal, however, the existence of the power of judicial review is undeniable. We are of the opinion that it is for the Magistrate and the State to make an informed judgement about the likely threat to public peace and law and order. The State is best placed to make an assessment of threat to public peace and tranquillity or law and order. However, the law requires them to state the material facts for invoking this power. This will enable judicial scrutiny and a verification of whether there are sufficient facts to justify the invocation of this power."

31. Further, relying upon the judgment of the Supreme Court in **Kaushal**

Kishor vs. State of Uttar Pradesh & Ors. : (2023) 4 SCC 1 submitted that in paragraph 251 of the judgment it was observed that every citizen of India must consciously be restrained in speech and exercise the right to freedom of speech and expression under Article 19(1)(a) only in the sense that it was intended by the framers of the Constitution. Since, learned AAG relied heavily upon paragraphs 251, 252 and 253 of the judgment, the same are being reproduced here as under :-

"251. Every citizen of India must consciously be restrained in speech, and exercise the right to freedom of speech and expression under Article 19(1)(a) only in the sense that it was intended by the Framers of the Constitution, to be exercised. This is the true content of Article 19(1)(a) which does not vest with citizens unbridled liberty to utter statements which are vitriolic, derogatory, unwarranted, have no redeeming purpose and which, in no way amount to a communication of ideas. Article 19(1)(a) vests a multi-faceted right, which protects several species of speech and expression from interference by the State. However, it is a no brainer that the right to freedom of speech and expression, in a human-rights based democracy does not protect statements made by a citizen, which strike at the dignity of a fellow citizen. Fraternity and equality which lie at the very base of our constitutional culture and upon which the superstructure of rights are built, do not permit such rights to be employed in a manner so as to attack the rights of another.

252. Verse 15 of Chapter 17 of the Srimad Bhagavad Gita describes what constitutes discipline of speech or "van-maya tapas":

अनुद्वेगकरं वाक्यं सत्यं प्रियहितं च यत् ।

स्वाध्यायाभ्यसनं चैव वाङ्मयं तप उच्यते ।।
 ।दनकअमहं।तंड आंलंड जलंड चतपलं.
 ीपजंड बी लंड
 "अंकीलंलंडीलेदंड बीपअं अंद.उलंड जंच
 नबीलंजम

Words that do not cause distress, are truthful, inoffensive, pleasing and beneficial, are said to be included within the discipline of speech, and are likened to regular recitation of the Vedic scriptures.

253. The discussion presented hereinabove was with a view to rekindle some ideas on the content of Article 19(1)(a) of the Constitution and on other pertinent issues surrounding the right to free speech guaranteed under the aforesaid Article. However, as far as the substantial analysis of Question 1 is concerned, I respectfully agree with the reasoning and conclusions proposed by His Lordship, Ramasubramanian, J."

32. Learned AAG thereafter submitted that definitely as per Article 19(2) of the Constitution there is a reasonable restriction on the exercise of the right conferred by the Constitution to protect the sovereignty and integrity of the country. He, therefore, submitted that the reasonable restriction which the petitioner ought to have exercised was not so exercised and, therefore, the writ petition be dismissed.

33. Learned counsel for the State, therefore, submitted that if the FIR is perused, it could definitely be concluded that the intention/mens rea was there of the petitioner and, therefore, investigation was essential. Also, he submitted that whether the petitioner was a person of influence and could affect a large community by his tweets was not to be judged by this Court and had to be looked into by the investigating agencies. The investigating

agencies would after looking into all the tweets/re-tweets and as to how the tweets had affected the population in general come to a conclusion whether the petitioner could effectively endanger the sovereignty, integrity and unity of the country. Also, he submitted whether the mettle of the people amongst whom the effort was made by the petitioner to spread his ideas for exciting secession or armed rebellion would be effective, could be known only after a full-fledged investigation and therefore he submitted that the writ petition be not entertained. He submitted that howsoever much the petitioner might call himself a nobody, he definitely was a somebody in the world of journalism and anything which flowed out of his articles and tweets or utterances had affected not only one section of the people of the country but on all who came across his articles, tweets or utterances.

34. Learned AAG further relied upon the American Principles of fire in a crowded theater test and relied upon **63 L. Ed. 470 : Charles T. Schenck vs. United States of America** and submitted that no amount of protection of free speech would protect a man in falsely shouting fire in a theater when there was no fire in the theater and he was thus causing a panic. In this context he also submitted that insults to religion done unwittingly or carelessly or without any deliberate or malicious intent to outrage religious feelings of any particular class would not protect the maker of those statements in any circumstance.

35. Learned counsel for the State further relied upon **63 L. Ed. 1173 (Jacob Abrams vs. United States)** and submitted that when a country was going through a tumultuous situation then just any statement made by a person of some repute

causes disaffection, sedition, riots and as a result, a revolution. He submits that the statement then would be considered as an offence and that the maker of that statement should definitely be punished by the provisions of section 152 BNS. In this regard, learned AAG also relied upon **23 L. Ed. 2d 430 (Clarence Brandenburg vs. State of Ohio)**. He also relied upon the judgment of the Supreme Court in **Tehseen S. Poonawala vs. Union of India & Ors. reported in (2018) 9 SCC 501** and submitted that all legal principles including that of freedom of speech and expression have to be exercised with restraint and that the interest of sovereignty, unity and integrity of the country and also the security of the State etc. should be protected.

36. Learned AAG also relied upon the judgment of **Anuradha Bhasin vs. Union of India & Ors. reported in (2020) 3 SCC 637** and submitted that it had to be seen as to whether the right to freedom and speech was a threat to public peace, tranquility and law & order. This could be looked into only by the State and that the Court, in such circumstance, should not interfere. He further submitted that the accused-petitioner had been consistently making tweets and, therefore, the tweets for which the instant FIR had been lodged would be looked into by the State/Investigating Agency and no interference be made by this Court. Learned AAG still further relied upon the judgment of the Supreme Court in **Amish Devgan vs. Union of India & Ors. : (2021) 1 SCC 1** and submitted that hate speeches should not be tolerated as they could blow out of proportion at times for no reason whatsoever also. For this reason, learned counsel relied upon paragraphs 98 and 108 of the judgment which are being reproduced here as under :-

"98. In the context of Section 153A(1)(b) we would hold that public tranquillity, given the nature of the consequence in the form of punishment of imprisonment of up to three years, must be read in a restricted sense synonymous with public order and safety and not normal law and order issues that do not endanger the public interest at large. It cannot be given the widest meaning so as to fall foul of the requirement of reasonableness which is a constitutional mandate. Clause (b) of Section 153-A(1), therefore, has to be read accordingly to satisfy the constitutional mandate. We would interpret the words "public tranquillity" in clause (b) to mean *ordre publique* a French term that means absence of insurrection, riot, turbulence or crimes of violence and would also include all acts which will endanger the security of the State, but not acts which disturb only serenity, and are covered by the third and widest circle of law and order. Public order also includes acts of local significance embracing a variety of conduct destroying or menacing public order. Public Order in clause (2) of Article 19 nor the statutory provisions make any distinction between the majority and minority groups with reference to the population of the particular area though as we have noted above this may be of some relevance. When we accept the principle of local significance, as a sequitur we must also accept that majority and minority groups could have, in a given case, reference to a local area.

108. Having interpreted the relevant provisions, we are conscious of the fact that we have given primacy to the precept of "interest of public order" and by relying upon "imminent lawless action" principle, not given due weightage to the long-term impact of "hate" speech as a propaganda on both the targeted and non-targeted groups. This is not to undermine

the concept of dignity, which is the fundamental foundation on the basis of which the citizens must interact between themselves and with the State. This is the considered view of the past pronouncements including the Constitution Bench judgments with which we are bound. Further, a "hate speech" meeting the criteria of "clear and present danger" or "imminent lawless action" would necessarily have long-term negative effect. Lastly, we are dealing with penal or criminal action and, therefore, have to balance the right to express and speak with retaliatory criminal proceedings. We have to also prevent abuse and check misuse. This dictum does not, in any way, undermine the position that we must condemn and check any attempt at dissemination of discrimination on the basis of race, religion, caste, creed or regional basis. We must act with the objective for promoting social harmony and tolerance by proscribing hateful and inappropriate behaviour. This can be achieved by self-restraint, institutional check and correction, as well as self-regulation or through the mechanism of statutory regulations, if applicable. It is not penal threat alone which can help us achieve and ensure equality between groups. Dignity of citizens of all castes, creed, religion and region is best protected by the fellow citizens belonging to non-targeted groups and even targeted groups. As stated earlier, in a polity committed to pluralism, hate speech cannot conceivably contribute in any legitimate way to democracy and, in fact, repudiates the right to equality."

37. Learned counsel for the State submitted that when the entire FIR is looked at in its entirety then definitely a case was made out against the petitioner

under sections 196, 228, 299, 356(3), 351(2) and 152 BNS with regard to which an investigation was imperative and had to be undergone. He submitted that as per the judgments of the Supreme Court in **Dineshbhai Chandubhai Patel vs. State of Gujarat & Ors. : (2018) 3 SCC 104; Rafiq Ahmedbhai Paliwala vs. State of Gujarat & Ors. : (2019) 5 SCC 464 and Somjeet Mallick vs. State of Jharkhand & Ors. : (2024) 10 SCC 527** the FIR could not be quashed in part. If the FIR with regard to certain sections was being investigated into then investigation had to take place vis.-a-vis. other sections also. Investigation had to be done as a whole.

38. Learned AAG laid much stress on paragraphs 25 to 35 of the judgment of the Supreme Court in **Dineshbhai Chandubhai Patel (supra)** and, therefore, the same are being reproduced here as under :-

"25. The law on the question as to when a registration of the FIR is challenged seeking its quashing by the accused under Article 226 of the Constitution or Section 482 of the Code and what are the powers of the High Court and how the High Court should deal with such question is fairly well settled.

26. This Court in *State of W.B. v. Swapan Kumar Guha* [*State of W.B. v. Swapan Kumar Guha*, (1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] had the occasion to deal with this issue. Y.V. Chandrachud, the learned Chief Justice speaking for three-Judge Bench laid down the following principle: (SCC pp. 576-77 & 598, paras 21 & 66)

"21. ... the condition precedent to the commencement of investigation under Section 157 of the Code is that the FIR must disclose, prima facie, that a

cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under Section 157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR, prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. ... The court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences.

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. ... If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence.”

27. Keeping in view the aforesaid principle of law, which was consistently followed by this Court in later years and on perusing the impugned judgment, we are constrained to observe that the High Court without any justifiable reason devoted 89 pages judgment (see paper book) to examine the aforesaid question and then came to a conclusion that some part of the FIR in question is bad in law because it does not disclose any cognizable offence against any of the accused persons whereas only a part of the FIR is good which discloses a prima facie case against the accused persons and hence it needs further investigation to that extent in accordance with law.

28. In doing so, the High Court, in our view, virtually decided all the issues arising out of the case like an investigating authority or/and appellate authority decides, by little realising that it was exercising its inherent jurisdiction under Section 482 of the Code at this stage.

29. The High Court, in our view, failed to see the extent of its jurisdiction, which it possesses to exercise while examining the legality of any FIR complaining commission of several cognizable offences by the accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

30 At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the complainants and vice versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine the questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

31. In our considered opinion, once the court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code.

32. The very fact that the High Court in this case went into the minutest details in relation to every aspect of the case and devoted 89 pages judgment to quash the FIR in part led us to draw a conclusion that the High Court had exceeded its powers while exercising its inherent jurisdiction under Section 482 of the Code. We cannot concur with such approach of the High Court.

33. The inherent powers of the High Court, which are obviously not defined being inherent in its very nature, cannot be stretched to any extent and nor can such powers be equated with the appellate powers of the High Court defined in the Code. The parameters laid down by this Court while exercising inherent powers must always be kept in mind else it would lead to committing the jurisdictional error in deciding the case. Such is the case here.

34. On perusal of the three complaints and the FIR mentioned above, we are of the considered view that the complaint and FIR, do disclose a prima facie commission of various cognizable offences alleged by the complainants against the accused persons and, therefore, the High Court instead of dismissing the application filed by the accused persons in part should have dismissed the application as a whole to uphold the entire FIR in question.

35. The learned counsel for the accused persons after the arguments were over filed brief note and placed reliance on two decisions of this Court in *Jetking Infotrain Ltd. v. State of U.P.* [*Jetking Infotrain Ltd. v. State of U.P.*, (2015) 11 SCC 730 : (2015) 4 SCC (Cri) 542] and *Harshendra Kumar D. v. Rebatilata Koley* [*Harshendra Kumar D. v. Rebatilata Koley*, (2011) 3 SCC 351 : (2011) 1 SCC (Civ) 717 : (2011) 1 SCC (Cri) 1139] in support of their

contentions. We have perused the two decisions. In our view, both the decisions are distinguishable on facts, whereas the decision on which we have placed reliance is more on the point. It is for the reason that in the first place, the two decisions relied on by the learned counsel for the accused persons were the cases where a complaint was filed in the Court under Section 138 of the Negotiable Instruments Act and in other case under some sections of IPC. It is this complaint which was sought to be quashed by invoking the inherent jurisdiction under Section 482 of the Code. Such is not the case here. Secondly, the decision therefore turned on the facts involved in the respective cases.

39. Similarly, learned AAG specifically relied upon paragraphs 8 to 13 of the judgment of the Supreme Court in **Rafiq Ahmedbhai Paliwala (supra)** and therefore the same are being reproduced here as under :-

"8. In our view, the High Court erred in entertaining the petition filed by Respondents 2 to 17 under Section 482 of the Code and further erred in allowing it in part.

9. It is not in dispute that no proper investigation could be made by the investigating officer (IO) much less concluded on the basis of the FIR lodged by the complainant and before it could be brought to its logical conclusion, the impugned order [*Yusuf Faridmiya Ajmerwala v. State of Gujarat*, 2017 SCC OnLine Guj 2471] intervened resulting in quashing of the FIR itself in relation to cognizable offences which were of more serious nature than the remaining one which survived for being tried.

10. The High Court, in our view, instead of quashing the FIR at such a preliminary stage should have directed the

IO to make proper investigation on the basis of the FIR and then file proper charge-sheet on the basis of the material collected in the investigation accordingly. It was, however, not done. It was more so because, we find that FIR did disclose prima facie allegations of commission of offences concerned.

11. We cannot, therefore, countenance the approach of the High Court when it proceeded to quash the FIR partly in relation to more serious offences (Sections 392, 395 and 397 IPC) without allowing the IO to make proper investigation into its allegations.

12. In the light of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order [*Yusuf Faridmiya Ajmerwala v. State of Gujarat, 2017 SCC OnLine Guj 2471*] is set aside.

13. We are, however, informed that pursuant to the directions issued [*Yusuf Faridmiya Ajmerwala v. State of Gujarat, 2017 SCC OnLine Guj 2471*] by the High Court, the charge-sheet has been filed in relation to the minor offences, which survived after quashing of the FIR. Be that as it may, the IO shall now make full and proper investigation into the allegations made in the original FIR lodged and after conclusion of the investigation will file additional charge-sheet in relation to any other offences, if found made out."

40. Still further, he relied upon paragraphs 15 to 22 of the judgment of the Supreme Court in **Somjeet Mallick (supra)** and the same are being reproduced here as under :-

"15. Before we proceed to test the correctness of the impugned order, we must bear in mind that at the stage of deciding whether a criminal proceeding or FIR, as

the case may be, is to be quashed at the threshold or not, the allegations in the FIR or the police report or the complaint, including the materials collected during investigation or inquiry, as the case may be, are to be taken at their face value so as to determine whether a prima facie case for investigation or proceeding against the accused, as the case may be, is made out. The correctness of the allegations is not to be tested at this stage.

16. To commit an offence, unless the penal statute provides otherwise, mens rea is one of the essential ingredients. Existence of mens rea is a question of fact which may be inferred from the act in question as well as the surrounding circumstances and conduct of the accused. As a sequitur, when a party alleges that the accused, despite taking possession of the truck on hire, has failed to pay hire charges for months together, while making false promises for its payment, a prima facie case, reflective of dishonest intention on the part of the accused, is made out which may require investigation. In such circumstances, if the FIR is quashed at the very inception, it would be nothing short of an act which thwarts a legitimate investigation.

17. It is trite law that FIR is not an encyclopaedia of all imputations. Therefore, to test whether an FIR discloses commission of a cognizable offence what is to be looked at is not any omission in the accusations but the gravamen of the accusations contained therein to find out whether, prima facie, some cognizable offence has been committed or not. At this stage, the court is not required to ascertain as to which specific offence has been committed.

18. It is only after investigation, at the time of framing charge, when materials collected during investigation are

before the court, the court has to draw an opinion as to for commission of which offence the accused should be tried. Prior to that, if satisfied, the court may even discharge the accused. Thus, when the FIR alleges a dishonest conduct on the part of the accused which, if supported by materials, would disclose commission of a cognizable offence, investigation should not be thwarted by quashing the FIR.

19. No doubt, a petition to quash the FIR does not become infructuous on submission of a police report under Section 173(2)CrPC, but when a police report has been submitted, particularly when there is no stay on the investigation, the court must apply its mind to the materials submitted in support of the police report before taking a call whether the FIR and consequential proceedings should be quashed or not. More so, when the FIR alleges an act which is reflective of a dishonest conduct of the accused.

20. In the instant case, the FIR alleges that the accused took original complainant's truck/trailer on hire for a period starting from 14-7-2014 up to 31-3-2016 at a monthly rent of Rs 33,000 but, after payment of the first month's rent, the rent was not paid despite false assurances. The allegation that rent was not paid by itself, in ordinary course, would presuppose retention of possession of the vehicle by the accused. In such circumstances as to what happened to that truck becomes a matter of investigation. If it had been dishonestly disposed of by the accused, it may make out a case of criminal breach of trust. Therefore, there was no justification to quash the FIR at the threshold without looking into the materials collected during the course of the investigation.

21. In our view, the High Court ought to have considered the materials collected during investigation before taking

a call on the prayer for quashing the FIR, the cognizance order and the proceedings in pursuance thereof.

22. To peruse the police report and to understand as to what type of investigation was carried out by the police, on 19-7-2024 we required the State to place the charge-sheet on record. However, unfortunately, though the State filed its affidavit, the charge-sheet was not produced. The affidavit filed by the State only indicates that they were not able to trace out the truck/trailer. In these circumstances, we have no option but to remit the matter to the High Court to decide the quashing petition afresh in accordance with law after considering the materials collected by the investigating agency during the course of the investigation."

41. He submitted, relying upon **Vinod Raghuvanshi vs. Ajay Arora & Ors.** reported in (2013) 10 SCC 581 that investigation should not be shut out at the threshold if the allegations have some substance. Similarly, he relied upon the decision of the Supreme Court in **Satvinder Kaur vs. State Govt. of NCT of Delhi** reported in (1999) 8 SCC 728 and submitted that the legal position is well settled that if an offence is disclosed, the Court would not normally interfere with the investigation of the case. Learned counsel for the State further relied upon the decision of the Supreme Court in **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others**, (2021) SCC Online SC 315 and submitted that in the case at hand definitely an investigation was necessary which should not be stopped or restricted by this Court. He submitted that where the offence committed is buried in the depth of the various allegations and which would surface only after a thorough investigation, then in those cases the High

Court should not exercise its extraordinary jurisdiction to clear a haze which exercise could be undertaken only by the investigating agency.

42. Learned counsel for the informant Sri Kapil Tyagi and Sri Adhitya Srinivasan, learned counsel for the informant also adopted the arguments of the learned Additional Advocate General and further submitted that the petitioner was a busy body who was all the time trying to find mistakes in the way the Government was functioning and thus was disturbing the very functioning of the Government and in fact was exciting secession and rebellion and was also indulging in separatist activities and, therefore, endangering sovereignty, unity and integrity of the country. He was also attempting to excite subversive activities.

43. Having heard learned counsel for the parties, this Court is of the view, after having seen the tweets made, that apparently the petitioner was aggrieved by the various speeches made by Yati Narsinghanand. From the tweets it appeared that the petitioner was aware of the fact that the police was lodging FIRs against Yati Narsinghanand. Also, from the perusal of the tweets, we get a feeling that the petitioner was apprehensive that the offences which were committed by Yati Narsinghanand Giri were much graver than were reported by the police.

44. The Court, however, finds that the petitioner who was the owner of an agency which was engaged in "fact checking" definitely was an influential person and the tweets which he made, if they were misunderstood by a certain section of the people, it could definitely affect a fairly large number of people of the country. Still further,

the Court is of the view that the Court definitely has no scale by which it could fathom as to how much would be the effect of the utterances and the tweets of the petitioner on the population of the country.

45. India is a country which has a variety of religions, tribes and races and they have all merged together and are very peacefully living together. Whether restraint was being exercised by the petitioner would be something which would have to be looked into by the investigating agencies.

46. The Court finds that the "test of fire in a crowded theater" would not apply in the instant case. Also, the Court is of the view that the statements which were made by the petitioner though apparently were such that they were not in any manner violating the freedom of expression and speech but what inputs the State had one does not know and whether an offence was being made out, only an investigation could reveal. If a person felt that police was not taking action and was expressing disapprobation of the measures taken by the administration then definitely he could express the same but whether those expressions excited secession or armed rebellion or could encourage feelings of separatist activities and as a result endanger sovereignty or unity of the country, could be looked into and judged by the investigating agencies alone. Definitely the provisions of section 152 BNS are a shield for the State against any kind of seditious activity of any individual. Whether it was being used to gag the voice of anyone commenting on the way the State was functioning would again be a subject matter of investigation.

47. Even if the petitioner was tweeting truncated version of the speech of Yati Narasinghanand Giri, he was definitely trying to convey the gist of the

speech of his and wanted State action against him. In this process whether secession or armed rebellion could be brewed is not for this Court to judge. The investigating agencies would be better equipped in these days with modern technologies to look into the allegations made.

48. Also we are of the view that from a reading of the FIR, it cannot be said that the offences under Sections 196, 228, 299, 356(3), 351(2) of the B.N.S., 2023 are not made out. Thus, it would be an exercise in futility to examine whether an offence under Section 152 of the B.N.S. was at all made out in view of the judgments of the Supreme Court in **Dineshbhai Chandubhai Patel (supra)**, **Rafiq Ahmedbhai Paliwala (supra)** and **Somjeet Mallick (supra)**.

49. Thus, since in the instant case we find that in fact investigation was required and a bare reading of the first information report definitely showed that to a large extent the offences could be made out, we refrain from interfering in the case and leave it to the sagacity of the Investigating Agency to come to a proper conclusion. Definitely, the truth had yet to emerge and that would happen only after a fair investigation.

50. We are also aware that allegations made in the first information report might be found to be false by the Investigating Agency. Investigation in this case is to be done both subjectively and objectively. A lot many psychological angles would have to be looked into. Not only that, the sociological built of the country would also have to be looked into. We are definitely of the view that a false implication might prejudice the rights as

are guaranteed to an individual under Article 21 of the Constitution of India. It would be pertinent at this juncture to refer to a judgment of this Court dated 10.07.2024 passed in **Criminal Misc. Writ Petition No. 7463 of 2024 (Shobhit Nehra and Anr. vs. State of Uttar Pradesh & 2 Ors.)** and relying upon it, specially paragraph no. 43, we are of the view that even though the investigation may continue, the petitioner shall not be arrested or harassed in any manner in pursuance of the first information report dated 07.10.2024 registered as Case Crime No. 992 of 2024, under Sections 196, 228, 299, 356(3), 351(2), 152 of Bharatiya Nyaya Sanhita, 2023 and Section 66 of Information Technology Act, 2000, Police Station – Kavi Nagar, Ghaziabad. Definitely mere lodging of a First Information Report would not call for an immediate arrest.

51. We are also conscious of the fact that the High Court has wide powers under Article 226 of the Constitution of India to prevent any miscarriage of justice and thus to ensure that no injustice is caused to the petitioner, in the event he is found to be innocent after the investigation, we are passing this order. Allegations made under Section 152 B.N.S., at the very outset, definitely if made against a popular person might constitute an offence on the bare reading of the first information report. However, there would also be cases where it may be found after investigation that the offences were not made out at all and, therefore, relying on the judgment of Supreme Court in **Hema Mishra vs. State of Uttar Pradesh & Ors.** reported in **(2014) 4 SCC 453** we also give protection to the petitioner. Here, it would also be relevant to quote paragraph no. 43 of the judgment of this Court in **Shobhit Nehra**

(Supra) and the same is, therefore, being reproduced here as under :

“43. It is clear from the above paragraph that in the case where facts are hazy and the investigation has just begun, High Court should permit the investigation to proceed. In case the High Court stays further investigation it should assign reasons. We are not staying the investigation but it appears from the material on record that in present case implication of petitioners may be found to be false, therefore, their right to liberty is required to be protected during the period of statutory investigation in the allegations made against them in the FIR. Investigation can be stayed in this case but that would come in the way of speedy investigation which in requirement of criminal administration of justice as held by Apex Court in the above paragraph. We do not intend to delay the investigation proceedings at all but for the reasons given above intend to protect the petitioners from arrest till investigation against them is completed by police.”

52. We thus, though have refrained from interfering in the instant case, give protection to the petitioner by providing that he would not be arrested till the investigation is over. This would be subject to the condition that the petitioner would co-operate in the investigation.

53. There is one more reason for granting the above relief. The interim order with regard to stay on the arrest was granted in the month of December 2024 and as per the counsel for the petitioner, the liberty was never misused and that the petitioner had always participated in the enquiry. This fact has not also been denied by the State.

54. With the above observations, the writ petition is accordingly disposed of.

55. Needless to mention that till the investigation is going on, the petitioner shall not leave the country.

(2025) 5 ILRA 244

**APPELLATE JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 30.05.2025

BEFORE

THE HON'BLE ARINDAM SINHA, J.

First Appeal Defective No. 530 of 2025

**Savita Devi @ Pinki Gautam @ Shivangi
Shishodiya ...Appellant**

Versus

Jitendra Gautam ...Respondent

Counsel for the Appellant:

Arun Kumar Tripathi

Counsel for the Respondent:

Akash Chandra Maurya

Civil Law – Hindu Marriage Act, 1955 – Section 5, 5(i), 11 & 24 - Appeal filed by Wife – against order passed by family court, whereby the Family Court rejected her application for maintenance pendente lite - matrimonial dispute – husband filed as petition to declare the marriage void, citing violation of Section 5(i) of the HM Act, - application for maintenance, during pendency of petition - rejected – on the ground of concealment of fact from court regarding previous marriage – Appeal - court finds that - Husband earns ₹65,000/month and owns a business, - no evidence on record to prove the wife's employment or financial independence – court held that, court below should emphasized the Section 24 and focuses on financial need, not validity of marriage – hence, direction issued to the husband to pay Rs. 15,000/month to wife as maintenance pendente lite along with arrears within stipulated time and the Family Court