

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No. 1444 OF 2008
[Arising out of S.L.P. (Crl.) No.6864 of 2007]

Jonathan Nitin Brady

..... *Appellant*

Versus

State of West Bengal
Respondent

.....

ORDER

Lokeshwar Singh Panta, J.

1. Leave granted.
2. Challenge in this appeal by special leave is to the order dated 29.10.2007 passed by the High Court of Calcutta in C.R.M. Petition No.11072/2007. By the impugned order, the High Court has rejected the application of the

appellant for the grant of pre-arrest bail filed under Section 438 of the Code of Criminal Procedure.

3. Briefly stated, the facts of the case are that the appellant works as a Radio Jockey at New Delhi with the Radio Channel '*Red FM 93.5*', a channel owned by Digital Radio (Delhi) Broadcasting Limited. During the course of regular morning show called "*Morning No.1*" [hereinafter referred to as 'the Show'], that was broadcasted only in New Delhi from 7-11 a.m., on 24.09.2007, the appellant discussed one Mr. Prashant Tamang's victory in the Tele-Series called "*Indian Idol*" telecasted on Sony Entertainment Television channel.
4. On 25.09.1997, it came to the appellant's knowledge through media reports that sentiments of a certain section of the public in West Bengal were purportedly hurt given to misinterpretation of the above-said discussion on the said show.
5. On 27.09.1997, certain fans of Mr. Prashant Tamang, including one Mr. Dinesh Gurung, filed a written complaint which culminated in registration of FIR

No.125/2007 under Section 153A of the Indian Penal Code [for short 'IPC'] against the appellant in Sadar Police Station, Darjeeling. The remarks attributed to the appellant in the FIR read as follows:-

“If Chowkidars are the Indian Idols (meaning Prashant Tamang), then wherefrom we are to obtain Chowkidars.”

6. It was alleged in the FIR that the comments made by the appellant during the course of the broadcast on 24.09.2007 promoted ill-feelings amongst different races and communities in India and that the activities of the appellant were prejudicial to the communal harmony. On the basis of the misinterpretation of appellant's remarks as reported in certain sections of the media, the complainants also alleged that the appellant had deliberately insulted the “Gorkhali/Nepali” community and hence he was liable to be prosecuted for an offence under Section 153A of IPC. In furtherance of FIR No.125/2007, the Inspector-in-Charge, Sadar P.S. Darjeeling (W.B.) wrote a letter dated 01.10.2007 to

learned Chief Judicial Magistrate, Darjeeling, praying for issuance of Warrant of Arrest against the appellant. On 06.10.2007, the learned Chief Judicial Magistrate, Darjeeling, issued warrant of arrest of the appellant.

7. The appellant apprehending his arrest in connection with the aforesaid case approached the High Court for grant of anticipatory bail on the ground that he has never made the statements being attributed to him by the various media reports and produced copy of the transcripts of the Show. He stated that the requisite *mens rea* for constituting an offence under Section 153A of IPC was missing as the entire Show was based on humour and satire. The appellant contended that he had not made any implicit or explicit statements portraying any community in bad light or disrespect. However, on 26.09.2007 during the course of the Show '*Morning No.1*', the appellant tendered an apology for any unintentional hurt caused to the sentiment of any community owing to any misinterpretation or wrongly portrayal of his remarks. It was stated that during the

said broadcast, Mr. Prashant Tamang appeared on the Show *vide* a telephonic interview and himself clarified the misunderstanding and stated that in his opinion the appellant had not made any derogatory remarks.

8. The Radio Channel of which the appellant is an employee issued a Press Release on 27.09.2007 congratulating Mr. Tamang on his achievement and also quoting his specific remarks regarding the entire sequence of events being just misunderstanding. The said Channel further published an advertisement saluting Mr. Tamang's victory on 28.09.2007 and reaffirming its commitment to the cause of promoting musical talent in North-East India. *Vide a* Press Release dated 29.10.2007, the Channel further tendered a formal public apology for any inadvertent hurt that might have been caused to any community or public in general.
9. It was in these circumstances that the appellant apprehending his arrest approached the High Court for grant of anticipatory bail. The High Court while rejecting the application of the appellant made the following order:

“We have carefully heard the submissions made at the Bar. We have also perused the materials in the Case Diary with utmost circumspection. We find from the materials collected by the Investigating Agency that the elements of Section 153A of the Indian Penal Code have satisfactorily been made out.

We further feel that tendering of the apology, as submitted by the learned Senior Counsel for the petitioner, in our view, cannot modify the gravity of the situation nor whittle down the impact of the remarks made by the petitioner. The exact words spoken by the petitioner squarely attract the provision of Section 153A of the Indian Penal Code and we are also of the firm view that the same was uttered with necessary *mens rea* in mind.

We cannot be oblivious of the situation that has been pointed out on behalf of the State which has arisen as a fall out of such remark made by the petitioner having widespread repercussion on the local area, from where Shri Prashant Tamang hails.

Keeping in mind the aforesaid situation, we are of the considered view that this is not a fit case for entertaining the application under Section 438 of the Code of Criminal Procedure.

Accordingly, we reject the same.”

10. Now, the appellant has approached this Court by way of special leave petition challenging the correctness and validity of the order of the High Court.
11. We have heard Mr. U. U. Lalit, learned senior counsel for the appellant and Mr. Tara Chand Sharma, Advocate, for the respondent-State.
12. On *prima facie* scrutiny of the material on record, we are of the view that in the backdrop of the facts and circumstances narrated hereinabove it is a fit case where the appellant is entitled for the grant of anticipatory bail. We do not see any satisfactory and convincing reason for custodial interrogation of the appellant for the alleged offence registered against him. The appellant can be interrogated by the Investigating Officer without taking him in custody. We, however, do not propose to embark upon the merits of the case at this stage.
13. We, accordingly, allow the appeal and order that in the event of the arrest of the appellant for the alleged offence, he shall be released on bail subject to the following conditions:-

(i) The appellant shall furnish personal bond in the sum of Rs.10,000/- with one solvent surety of the like amount to the satisfaction of the Chief Judicial Magistrate, Darjeeling, or the Investigating Officer.

(ii) The appellant shall make himself available for interrogation as and when he is so directed by the Investigating Officer by sending written *Hukumnama* to him.

(iii) The appellant shall not directly or indirectly make any inducement, promise or threat to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court.

14. We have noticed that the High Court has made certain observations in its above-extracted order, which, in our opinion, are uncalled for and unwarranted at this stage of the case. The High Court ought not to have made the said observations at the preliminary stage of the

investigation of the case, which may have caused prejudice to the defence of the appellant during the trial of the case. We, therefore, make it clear that the said observations shall not be taken into consideration by the trial court at any stage of the proceedings of the case.

15. In the result, this appeal is allowed in the above-said terms and conditions.

.....**J.**
(R. V. Raveendran)

.....**J.**
(Lokeshwar Singh Panta)

New Delhi,
September 10, 2008.