

\$~47

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision : 2<sup>nd</sup> March, 2016

+

W.P.(CRL) 558/2016 & Crl.M.A. Nos.3237/2016 & 3262/2016

KANHAIYA KUMAR

..... Petitioner

Through : Mr.Kapil Sibal, Senior Advocate,  
Ms.Rebecca M.John, Senior Advocate  
with Mr.Sushil Bajaj, Mr.Bankim  
Kulshreshtha, Ms.Vrinda Grover,  
Mr.Vishal Gosain, Mr.Victor Dhissa,  
Mr.Bajinder, Ms.Tarannum Cheema  
and Mr.Harsh Bora, Advocates.

Versus

STATE OF NCT OF DELHI

..... Respondent

Through : Mr.Tushar Mehta, ASG, Mr.Sanjay  
Jain, ASG, Mr.Chetan Sharma, Senior  
Advocate with Mr.Anil Soni, Special  
PP, Mr.Shailendra Babbar, Special  
PP, Mr.Mukesh Gupta, Mr.Amit  
Gupta, Mr.Rishabh Juneja, Mr.Rajat  
Nair, Mr.Manan Popli, Mr.Aadit  
Khorana, Ms.Ruchi Jain, Mr.Sarfraz  
Ahmed, Advocate for the State.

Mr.Rahul Mehra, Standing Counsel  
(Criminal) for Govt. of NCT of Delhi  
with Ms.Richa Kapoor, ASC,  
Mr.Sanjay Lao, ASC, Mr.Rajesh  
Mahajan, ASC and Mr.Aditya Swarup  
Aggarwal, Advocate.

  
Court Master  
High Court of Delhi  
New Delhi

**PRATIBHA RANI, J. (Oral)**

1. *'Rang hara Hari Singh Nalve se,  
Rang laal hai Lal Bahadur se,  
Rang bana basanti Bhagat Singh,  
Rang aman ka veer Jawahar se.  
Mere Desh ki Dharti sona ugle  
Ugle here moti mere desh ki dharti'*

2. This patriotic song from 'Upkaar' by Lyricist Indeevar symbolizes individual characteristics representing by different colours and love for motherland.

3. Spring season is a time when nature becomes green and flower blooms in all colours. This spring why the colour of peace is eluding the prestigious Jawaharlal Nehru University (JNU) situated in the heart of Delhi needs to be answered by its students, faculty members and those managing the affairs of this national university.

4. On 9<sup>th</sup> February, 2016 a programme was proposed to be organised under the title 'Poetry Reading – The Country Without A Post Office' at Sabarmati Dhaba, Jawaharlal Nehru University. Since the title of the programme did not suggest anything objectionable, permission was granted. When the posters of the said programme revealed the topic of the programme to be organized that evening, the authorities at JNU acted swiftly by cancelling the permission and communicating the same to the organizers as well the security staff. What followed thereafter has been recorded in FIR No.110/2016 under Section 124-A/34 IPC at PS Vasant Kunj North. The status report shows that now the case is under investigation for the offence punishable under Sections 124-A/120-B/34/147/149 IPC.

  
Court Master  
High Court of Delhi  
New Delhi

5. In the writ petition bearing W.P.(CrI.) No.29/2016 the Supreme Court on 19.02.2016 ordered for transmitting the record of bail petition of petitioner Kanhaiya Kumar to High Court of Delhi for hearing by passing the following order:-

*'After hearing learned counsel for the petitioner, learned Solicitor General and the submissions of other members of the Bar (who volunteered to make submissions in this matter), we are of the opinion that the present petition be transmitted to the Delhi High Court for consideration of the prayer for bail of accused Kanhaiya Kumar in FIR No.110/2016 filed at PS Vasant Kunj, New Delhi. We also grant liberty to the petitioner to file such further petitions or other material which he deems appropriate to bring the application in tune with the requirement of law. We permit the petitioner to move the Delhi High Court today. We request the Delhi High Court to consider the application expeditiously and pass appropriate orders in accordance with law.*

*Having regard to the background in which the instant application came to be filed, certain apprehensions were expressed at the Bar on behalf of the petitioner and other learned members of the Bar that some special precautions are required to be taken which the proceedings are taken by the Delhi High Court to ensure the safety of the learned counsel appearing for the petitioner and also the journalists.*

*Having regard to the history of the case, we deem it appropriate to request the High Court to take such appropriate steps at it deems fit and proper to ensure the peaceful conduct of the proceedings. We also place on record that the learned Solicitor General appearing for the Union of India as well as the Commissioner of Police, Delhi assure that all necessary precautions will be taken in consultation with the Registrar*

*General of the Delhi High Court for the peaceful conduct of the case.*

*The writ petition is disposed of and transmitted to the Delhi High Court. The Registry is directed to transmit the papers to the Delhi High Court forthwith along with the order.'*

6. This is how the bail application of the petitioner made in W.P.(Crl.) No.558/2016 is being heard by this Court.

7. The writ petitioner before this Court seeks his release on bail in case FIR No.110/2016 under Sections 124-A/120-B/34/147/149 IPC registered at PS Vasant Kunj North asserting that the charge of sedition levelled against him is false as he has never made any seditious utterances or raised any anti-national slogans on 9<sup>th</sup> February, 2016.

8. Referring to the contents of FIR, the petitioner has claimed that there was no incident of violence after the alleged incident of raising alleged anti-national slogans. Rather the JNU Campus remained peaceful and no disturbance was reported from within the campus. The so called video recording of the incident by some channels has been reported to be doctored by the Press. The petitioner has been remanded to police custody thrice and has also joined the investigation. He is no more required for investigation of this case.

9. In his speech delivered on 11<sup>th</sup> February, 2016 the petitioner has projected himself to be a law abiding citizen having full faith in the Constitution. The petitioner has claimed himself to be a public figure and member of AISF Students Political Party affiliated to Communist Party of India. He is also President of Jawaharlal Nehru University Students Union.

He is pursuing Ph.d. at School of International Studies, Jawaharlal Nehru University. He has deep roots in the society. He is the victim of conspiracy by certain vested elements who are fabricating evidence against him. There is no possibility of his being capable of tampering with the evidence.

10. The petitioner asserts his fundamental rights guaranteed under Article 19(1)(a) of the Constitution of India on the ground that the utterances (speech or slogans) attributable to him cannot be termed to be in violation of any law and as such he has not committed any offence. The petitioner has agreed to abide by the terms and conditions that may be imposed in case he is ordered to be released on bail.

11. Detailed status report has been filed by the State which also includes slogans raised and some of photographs of the event.

12. I have heard Mr.Kapil Sibal, learned Senior Advocate for the petitioner as well as Mr.Tushar Mehta, learned ASG for the State and Mr.Rahul Mehra, learned Standing Counsel (Criminal) for Govt. of NCT of Delhi.

13. Mr.Kapil Sibal, learned Senior Advocate representing the petitioner Kanhaiya Kumar has submitted that the incident dated 9<sup>th</sup> February, 2016 has to be divided in three parts :-

- (i) from 4.30 pm to 7.25 pm
- (ii) from 7.25 pm to 8.30 pm
- (iii) After 8.30 pm

14. Mr.Kapil Sibal, learned Senior Advocate for the petitioner has placed on record the photocopy of the proforma for booking venue for the event and the undertaking annexed therewith which is not signed by the petitioner.

15. Mr.Kapil Sibal, learned Senior Advocate for the petitioner has submitted that the petitioner has no role in that event. His name also does not appear on the poster about the topic of that event, contents of which were considered anti-national by JNU authorities. The petitioner has not been seen raising anti-national slogans in any of the video footage. Rather on 11<sup>th</sup> February, 2016 the petitioner had given a speech, full text of which is annexed with the petition as Annexure-G (as reported by Indian Express). In the said speech, the petitioner had raised his voice against those who were trying to break the country and break JNU. He has asserted that JNU will strengthen the voice of democracy, voice of independence, freedom of expression and he has expressed full faith in the Constitution of India.

16. Mr.Kapil Sibal, learned Senior Advocate for the petitioner has drawn the attention of this Court to the contents of FIR wherein referring to the Zee News Programme telecasted on 10<sup>th</sup> February, 2016 in the evening, it has been recorded that in the clipping, JNU students were seen raising anti-national slogans (*Pakistan Jindabad*). However, this slogan does not find mention in the thirty slogans quoted from pages 3 to 5 of the status report filed by the State.

17. Mr.Kapil Sibal, learned Senior Advocate for the petitioner has submitted that role of the petitioner Kanhaiya Kumar is limited to the extent that he reached the spot in his capacity as President of JNU Students Union, on coming to know about the tension between the two groups. After the situation came under control, he left the spot. There was no untoward incident leading to violence in the campus on that day. The petitioner is stated to have reached the spot at about 7.30 pm and it is mentioned in the status report (para 32) that after the situation was brought under control by

8.30 - 9.00 pm, all the students reached Ganga Dhaba, some of the leaders including petitioner addressed them and thereafter they dispersed. The speech made by the petitioner Kanhaiya Kumar on 11<sup>th</sup> February, 2016 cannot be termed as anti-national and whatever he has stated in that speech is within his right to freedom of speech guaranteed under the Constitution of India. Mr.Kapil Sibal, learned Senior Advocate for the petitioner has submitted that the petitioner had been remanded to police custody thrice and he is no more required for investigation. In the circumstances, he may be ordered to be released on bail.

18. Mr.Tushar Mehta, learned ASG for the State has submitted that on 8<sup>th</sup> February, 2016 permission was initially sought by a group of students for organising a cultural evening at Sabarmati Dhaba at JNU Campus which was granted. The subject matter of the programme was referred to as 'Poetry Reading – The Country Without A Post Office'. The permission was granted to them to conduct the programme from 5.00 pm to 7.30 pm on 9<sup>th</sup> February, 2016.

19. Mr.Tushar Mehta, learned ASG for the State has referred to further developments. The JNU authorities on getting the information that in the guise of cultural function, some anti-national activities were to take place, cancelled the permission and the organising group was duly informed. The reason being that the posters about the proposed programme were against the judicial killing of Afzal Guru and Maqbool Bhatt and have been put up at all the hostels and these activities were likely to disrupt the peace and harmony of the campus. Apprehending breach of peace at the campus, the Chief Security Officer, JNU as well local police was informed. There were arguments between the students on one side and security staff on other side

  
Court Master  
High Court of Delhi  
New Delhi

on fixing the mike and other equipments. The local police assisted by security staff and positioned themselves between the two groups to maintain distance between them. The shouting of anti-national slogans continued unabated which were opposed/countered by the other group of students by shouting slogans in support of the nation. In this process, the students from both the groups had at many times engaged in verbal as well as physical jostling and heckling. This situation led to law and order problem which disturbed the public order in JNU campus. The situation was brought under control by 8.30 to 9.00 pm. Both the groups reached Ganga Dhaba where some of the students leaders addressed the assembly before dispersing.

20. Mr. Tushar Mehta, learned ASG for the State has further stated that on the basis of telecast by Zee News on 10<sup>th</sup> February, 2016 about the incident at JNU on 9<sup>th</sup> February, 2016, raw video footage was obtained from that channel and thereafter FIR No.110/2016 under Sections 124-A/120-B/34/147/149 IPC was registered at PS Vasant Kunj North.

21. Alongwith the status report, the State has placed on record certain photographs to point out that some of the persons in the photographs are covering their faces. Their identity and links are not known to the investigating agency. Posters having photographs of Afzal Guru have been held by the students. The posters for the programme to be organised on 9<sup>th</sup> February, 2016 is with the heading 'Against the judicial killing of Afzal Guru & Maqbool Bhatt'. The permission was applied by co-accused Umar Khalid on the prescribed proforma for 'Poetry Reading – The Country Without A Post Office' and it was only from the posters circulated on 9<sup>th</sup> February, 2016 that the authorities at JNU came to know about the nature of the programme being anti-national resultantly permission was withdrawn.

  
Court Master  
High Court of Delhi  
New Delhi

22. Mr.Tushar Mehta, learned ASG for the State has referred to the statement of various witnesses recorded under Section 161 CPC to describe the role played by the petitioner in organising as well as during the event. It has been submitted that merely because the petitioner is not a signatory on the application form for seeking permission for the programme, is not sufficient to infer that he has nothing to do with the event. Attention of this Court has been drawn to the fact that as per the statement of witnesses (learned ASG did not want to disclose the identity of the witnesses examined under Section 161 CrPC though copies of same have been placed on record), the petitioner also talked to the concerned authorities showing his resentment about the cancellation of the permission and his active participation in the event, which led to a situation that police had to be called and both the factions of the students raising slogans were separated.

23. Mr.Tushar Mehta, learned ASG for the State has further submitted that the speech given by the petitioner on 11<sup>th</sup> February, 2016 was part of his strategy to create a defence.

24. Referring to the details of the investigation conducted till filing of the status report as well various aspects on which the investigation is yet to be conducted, prayer for bail has been strongly opposed on the ground that the slogans raised during the programme as well honoring martyrdom of Afzal Guru and Maqbool Bhatt justified registration of a case under Sections 124-A/120-B/34/147/149 IPC against the petitioner and other accused persons involved which can be established not only by video footage but also by independent evidence.

  
Court Master  
High Court of Delhi  
New Delhi

25. Mr.Rahul Mehra, Standing Counsel (Criminal) for Government of NCT of Delhi has submitted that in the facts and circumstances of the case, the petitioner may be released on bail.

26. The writ petitioner before this Court is President of JNU Students Union. His presence at the spot on the day of incident when alleged anti-national event was organised, is not disputed. He explains his presence for not to participate in the activities but to control the unpleasant situation that had arisen because of conflict between two factions of the students having different political affiliations.

27. The FIR in this case has been registered only about three weeks back. The investigation has now been transferred to Special Cell. At this stage, a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination for satisfying about the existence or otherwise of a prima facie case is necessary. (Ref. *State through C.B.I. vs. Amarmani Tripathi AIR2005SC3490*)

28. The principles governing bail have also been considered by the apex Court in *Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr. (2004) 7 SCC 528* as under:

*'10. Before we discuss the various arguments and the material relied upon by the parties for and against grant of bail, it is necessary to know the law in regard to grant of bail in non-bailable offences.*

*11. The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence*

  
Court Master  
High Court of Delhi  
New Delhi

*and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are,*

*(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;*

*(b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*

*(c) Prima facie satisfaction of the Court in support of the charge;'*

29. Thus, within the above limited scope, it would be necessary to refer to the material available to decide this bail application. The facts as noted in the FIR have already been narrated. Alongwith the status report, slogans (thirty) as well various photographs of the event have been annexed.

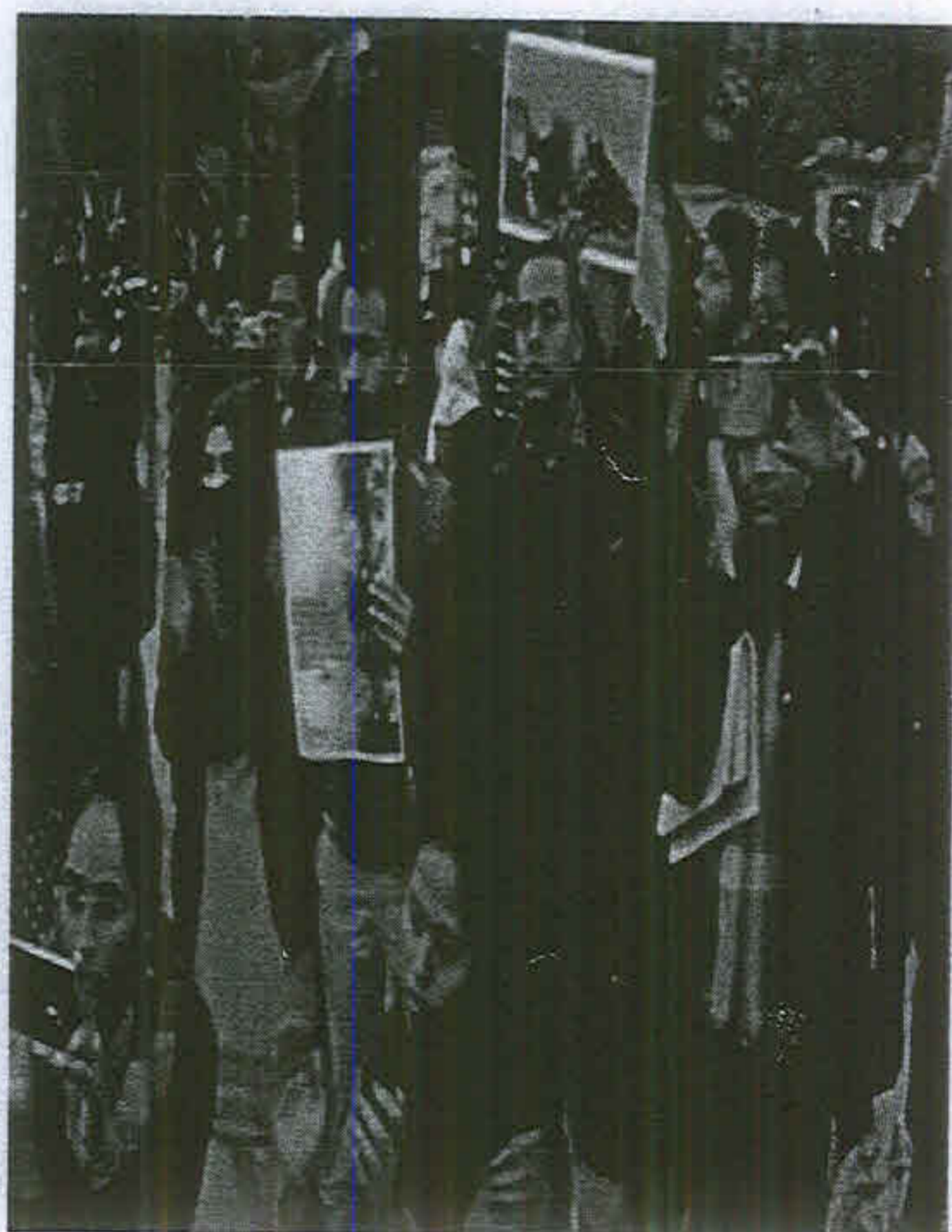
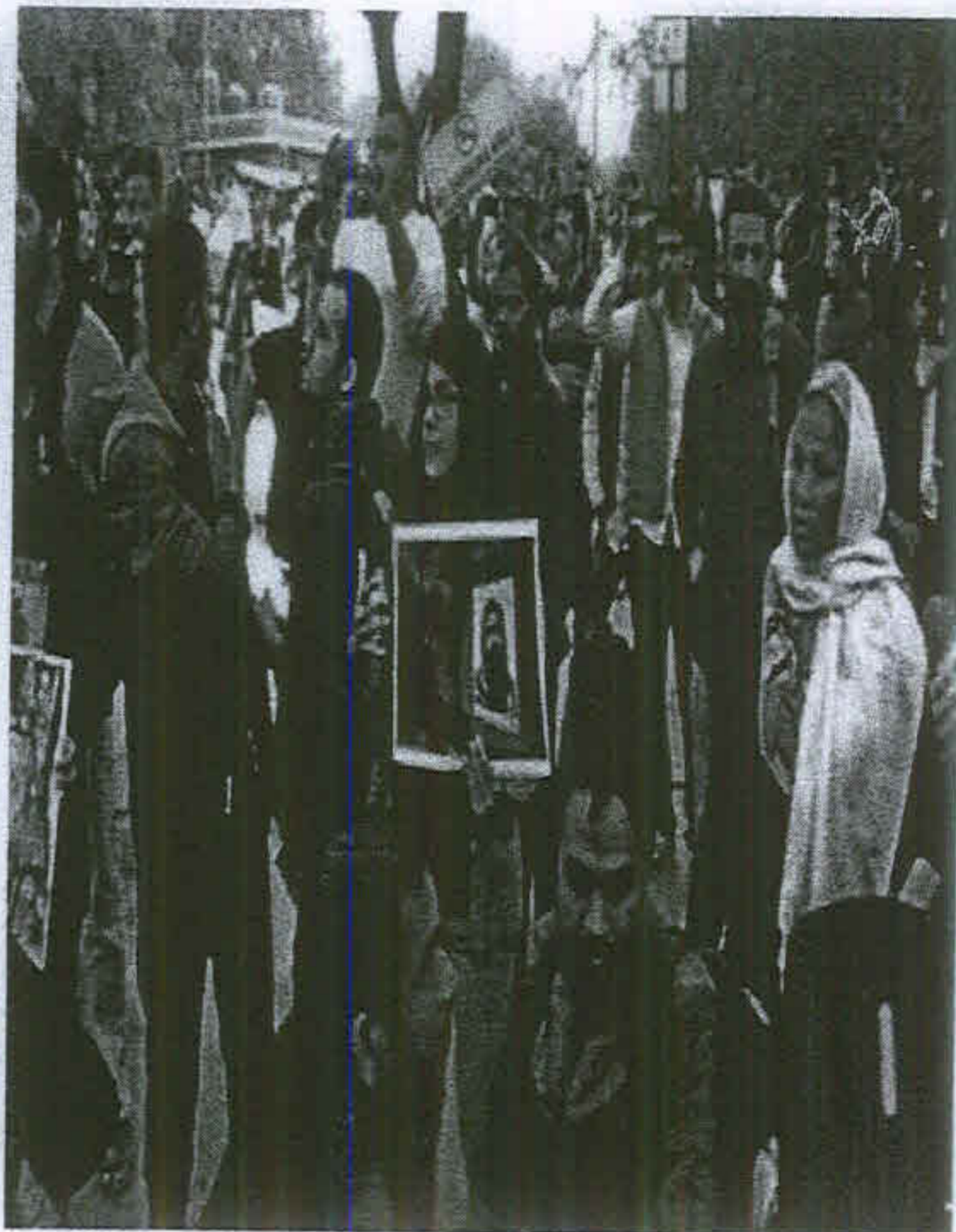
30. To examine the instant case for the limited purpose of consideration of bail, here I would like to refer to some of the slogans and refer some of the photographs:-

**Slogans:**

1. AFZAL GURU MAQBOOL BHATT JINDABAD.
2. BHARAT KI BARBADI TAK JUNG RAHEGI JUNG RAHEGI
3. GO INDIA GO BACK
4. INDIAN ARMY MURDABAD
5. BHARAT TERE TUKKDE HONGE- INSHAALLAHA INSHAALLAHA
6. AFZAL KI HATYA NAHI SAHENGE NAHI SAHENGE
7. BANDOOK KI DUM PE LENGE AAZADI.'



Court Master  
High Court of Delhi  
New Delhi



  
Court Master  
High Court of Delhi  
New Delhi



  
Court Master  
High Court of Delhi  
New Delhi



(39)

*Arif*  
Court Master  
High Court of Delhi  
New Delhi

50

Against the Brahmanical 'Collective Conscience'  
Against the judicial killing of Afzal Guru & Maqbool Bhatt  
In solidarity with the struggle of the Kashmiri people  
for their democratic right to self-determination...

We invite you for a

# Cultural Evening

of protest with poets, artists, singers,  
writers, students, intellectuals, cultural activists

9th February, Tuesday, 5pm, Sabarmati Dhaba

There will also be an art exhibition & a photo exhibition portraying the  
history of the occupation of Kashmir & the people's struggle against it.

We invite everyone to join us in protest, in rage against the  
occupation and in solidarity with the valiant people of Kashmir!

Anirban, Anjali, Anwesha, Aswathi, Bhavna, Komal, Reyaz, Rubina, Umar, Sama

*Aswathi*  
2/3

Court Master  
High Court of Delhi  
New Delhi

31. The petitioner is President of JNU Students Union and actively involved in various activities carried out in the University. He admits his presence at the spot on the alleged date of occurrence. The photographs of the incidents placed on record have been filed to show his presence at the spot. The limited controversy as on date is whether the petitioner was actively participating in the alleged anti-national activities on that day or he was present there only to intervene between two rival factions of the students. What was the role played by the petitioner on that day is subject matter of investigation and it is desirable at this stage to leave it to the investigating agency to unearth the truth. It is not disputed by the State at this stage that in the footage of video recording of the incident, the petitioner has not been seen raising anti-national slogans but learned ASG for the State has referred to the statement of various witnesses recorded under Section 161 CrPC who have stated about the presence as well active participation of the petitioner in that incident. The petitioner takes shelter under the speech made by him on 11<sup>th</sup> February, 2016 affirming his allegiance to the Constitution of India to defeat the forces indulged in disintegration of the country. Whether the speech dated 11<sup>th</sup> February, 2016 by the petitioner contains his original thoughts and faith in the Constitution and nationalist approach, or the speech was to create a safety gear for himself is again something which cannot be examined by this Court at this stage.

32. Section 124-A of Indian Penal Code reads as under:

*" 124A. Sedition.—Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India shall be punished with imprisonment for life, to*

  
Court Master  
High Court of Delhi  
New Delhi 213

*which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine."*

Thus, the punishment which can be awarded for the above offence are:

- (i) *imprisonment for life, to which fine may be added, or;*
- (ii) *with imprisonment which may extend to three years, to which fine may be added, or;*
- (iii) *with fine."*

33. It is again subject to outcome of investigation that will determine the category in which the accusations against the petitioner would fall.

34. What constitutes sedition has been recently considered by Gujarat High Court in *Hardik Bharatbhai Patel vs. State of Gujarat & Ors. 2016 (1) RCR (Criminal) 542* as under:-

*14. I should be mindful of the fact that the case in hand is one wherein the accused is praying for quashing of the F.I.R. at a stage when the investigation is in progress. I should look into the allegations levelled in the F.I.R., as they are without adding or subtracting anything from it. I am of the view that a speech or a statement, in which the speaker exhorts the persons, who are listening to him, to resort to violence, prima facie, could be said to be intended to excite disaffection towards the established Government and amounts to an offence under Section 124A of the Indian Penal Code. To put it in other words, to advise a person to persuade to violence as a means of attaining a particular goal or seeking revenge is not less objectionable than advising that person to commit violence himself for that purpose. In either case, the advice is to pursue a course of action, it is calculated to disturb the tranquility of the State. It is a recommendation to oppose the established Government by force.*

  
Court Master  
High Court of Delhi  
New Delhi

35. While seeking release on bail, the writ petitioner Kanhaiya Kumar has also asserted his constitutional right to freedom to speech confirmed under Article 19(1)(a) of the Constitution of India.

36. In the case *Shreya Singhal vs. Union of India (2015) 5 SCC 1* the expression "freedom of speech and expression" has been considered as under:-

*"13. This leads us to a discussion of what is the content of the expression "freedom of speech and expression". There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in.<sup>3</sup> It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty & integrity of India, the security of the State, friendly relations with foreign States, etc."*

37. The vision and object of Jawaharlal Nehru University as reflected in the Website of University is :

‘ .....

*The living ambience and social milieu of the campus is also reflected in an integrated, interdisciplinary approach in teaching and research. There is freedom to define and design course content or start new courses. Research themes evolve with new developments in the area and the interface between different areas of study. Everyone at the university competes with himself/herself to excel in their own field of research. JNU is academically and socially a vibrant place where all have space to express their views.*

  
Court Master  
High Court of Delhi  
New Delhi

*The JNU campus is a microcosm of the Indian nation, drawing students from every nook and corner of the country and from every group and stratum of society. To make sure that this is so, annual admission tests are simultaneously held at 37 centres spread across the length and breadth of the country, and special care is taken to draw students from the underprivileged castes and ethnic groups by reserving 22.5 per cent of seats for them. Overseas students form some 10 percent of the annual intake. Students' hostels and blocks of faculty residences are interspersed with one another, underlining the vision of a large Indian family."*

38. Today I find myself standing on a crossroad. The FIR in question has been registered only on 11<sup>th</sup> February, 2016. Investigation is at the initial stage. The petitioner is the President of Jawaharlal Nehru University Students Union. His presence at the spot on 9<sup>th</sup> February, 2016 has been claimed on the basis of raw video footing of that day i.e. 9<sup>th</sup> February, 2016. The petitioner at present is in judicial custody. The question is, in view of the nature of serious allegations against him, the anti-national attitude which can be gathered from the material relied upon by the State should be a ground to keep him in Jail.

39. As President of Jawaharlal Nehru University Students Union, the petitioner was expected to be responsible and accountable for any anti-national event organised in the campus. Freedom of speech guaranteed to the citizens of this country under the Constitution of India has enough room for every citizen to follow his own ideology or political affiliation within the framework of our Constitution. While dealing with the bail application of the petitioner, it has to be kept in mind by all concerned that they are enjoying this freedom only because our borders are guarded by our armed

  
Court Master  
High Court of Delhi  
New Delhi

and paramilitary forces. Our forces are protecting our frontiers in the most difficult terrain in the world i.e. Siachen Glacier or *Rann of Kutch*.

40. It is a case of raising anti-national slogans which do have the effect of threatening national integrity. The averments made in para 14 of the writ petition is extracted as under :-

*'14. That the petitioner has committed no offence whatsoever, and the wild and baseless allegations being made against him are not only irresponsible and false, but have also caused serious harm to his reputation. As a responsible students' union President, the petitioner has never sought to subvert the law. The petitioner is a proud citizen of India and has always affirmed his faith in the Constitution of India. The petitioner now seeks the protection of his life, liberty and rights as guaranteed under the Constitution of India. The utterances (speech or slogans) attributable to the petitioner, is not in violation of any law, or the Constitution of India, and as such the petitioner has committed no offence.'*

41. Suffice it to note that such persons enjoy the freedom to raise such slogans in the comfort of University Campus but without realising that they are in this safe environment because our forces are there at the battle field situated at the highest altitude of the world where even the oxygen is so scarce that those who are shouting anti-national slogans holding posters of Afzal Guru and Maqbool Bhatt close to their chest honoring their martyrdom, may not be even able to withstand those conditions for an hour even.

42. The kind of slogans raised may have demoralizing effect on the family of those martyrs who returned home in coffin draped in tricolor.

43. The petitioner claims his right regarding freedom of speech and expression guaranteed in Part-III under Article 19(1)(a) of Constitution of

  
Court Master  
High Court of Delhi  
New Delhi

India. He has also to be reminded that under Part-IV under Article 51A of Constitution of India fundamental duties of every citizen have been specified alongwith the fact that rights and duties are two sides of the same coin.

44. The petitioner belongs to an intellectual class pursuing Ph.d. from International School of Studies, Jawaharlal Nehru University, which is considered as hub of intellectuals. He may have any political affiliation or ideology. He has every right to pursue that but it can be only within the framework of our Constitution. India is a living example of unity in diversity. Freedom of expression enjoyed by every citizen can be subjected to reasonable restrictions under Article 19(2) of our Constitution. The feelings or the protest reflected in the slogans needs introspection by the student community whose photographs are available on record holding posters carrying photographs of Afzal Guru and Maqbool Bhatt.

45. The faculty of JNU also has to play its role in guiding them to the right path so that they can contribute to the growth of the nation and to achieve the object and vision for which Jawaharlal Nehru University was established.

46. The reason behind anti-national views in the mind of students who raised slogans on the death anniversary of Afzal Guru, who was convicted for attack on our Parliament, which led to this situation have not only to be found by them but remedial steps are also required to be taken in this regard by those managing the affairs of the JNU so that there is no recurrence of such incident.

47. The investigation in this case is at nascent stage. The thoughts reflected in the slogans raised by some of the students of JNU who organized and participated in that programme cannot be claimed to be protected as

fundamental right to freedom of speech and expression. I consider this as a kind of infection from which such students are suffering which needs to be controlled/cured before it becomes an epidemic.

48. Whenever some infection is spread in a limb, effort is made to cure the same by giving antibiotics orally and if that does not work, by following second line of treatment. Sometimes it may require surgical intervention also. However, if the infection results in infecting the limb to the extent that it becomes gangrene, amputation is the only treatment.

49. During the period spent by the petitioner in judicial custody, he might have introspected about the events that had taken place. To enable him to remain in the main stream, at present I am inclined to provide conservative method of treatment.

50. Taking into consideration the facts and circumstances, I am inclined to release the petitioner on interim bail for a period of six months.

51. Once the decision of releasing the petitioner on interim bail is taken, now the question comes as to what should be the amount for monetary security. In his speech dated 11<sup>th</sup> February, 2016 the petitioner has claimed that his mother works as *Anganbadi* worker and earns ₹3000/- per month on which the entire family survives. If this aspect is considered then the amount to be required to be filled in the personal bond and surety bond cannot be so high as to put him in a position that he cannot avail the interim bail.

52. The time is ripe that while giving some concession to the petitioner on monetary aspect for purpose of furnishing the bond, he can be required to furnish an undertaking to the effect that he will not participate actively or passively in any activity which may be termed as anti-national. Apart from that, as President of JNU Students Union, he will make all efforts within his

  
Court Master  
High Court of Delhi

power to control anti-national activities in the campus. His surety should also be either a member of the Faculty or a person related to the petitioner in a manner that he can exercise control on the petitioner not only with respect to appearance before the Court but also to ensure that his thoughts and energy are channelized in a constructive manner.

53. I may record here that the affidavit filed alongwith this petition is by Professor Himanshu as parokar, Resident Warden 3, Jhelum Hostel, Jawaharlal Nehru University, Delhi.

54. The petitioner is granted interim bail for a period of six months on his furnishing personal bond in the sum of ₹10,000/- and an undertaking on above lines, with one surety, who should preferably be a Faculty member of Jawaharlal Nehru University, to the satisfaction of learned concerned Metropolitan Magistrate/Link Metropolitan Magistrate, with the condition that he shall not leave the country without the permission of the Court. The surety shall also furnish an undertaking on the lines similar to that of the petitioner.

55. The writ petition stands allowed in above terms.

56. The observations made above are only for the purpose of deciding the bail application and shall not be considered as an expression on merits.

57. A copy of this order be sent to the concerned Jail Superintendent for information and compliance.

Copy of the order be given dasti to the parties under the signature of Court Master.

  
PRATIBHA RANI, J.

March 02, 2016  
'st'

  
Court Master  
High Court of Delhi  
New Delhi