

ITEM NO.47

COURT NO.3

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

WRIT PETITION(S)(CIVIL) NO(S). 940/2022

SHAHEEN ABDULLA

APPLICANT(S)/PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

([ONLY I.A. NO 23156/2023 IS LISTED UNDER THIS ITEM.]
IA No. 23156/2023 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 03-02-2023 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Petitioner(s) Mr. Kapil Sibal, Sr. Adv.
Mr. Nizam Pasha, Adv.
Ms. Rashmi Singh, Adv.
Ms. Sumita Hazarika, AOR

For Respondent(s) Mr. Tushar Mehta, SGI
Mr. K. M. Nataraj, ASG (NP)
Mr. Sanjay Kumar Tyagi, Adv.
Mr. Rajat Nair, Adv.
Mr. Kanu Agarwal, Adv.
Mr. Varun Chugh, Adv.
Mr. Mayank Pandey, Adv.
Mr. Shreekant N. Terdal, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya A. Pande, AOR
Mr. Bharat Baghla, Adv.
Ms. Kirti Dadheech, Adv.
Mr. Shantnu Sharma, Adv.
Mr. Bhuvan Kapur, Adv.
Mr. Rohit Khare, Adv.

Mr. Atmaram Nadkarni, ASG
Mr. Sourabh Mishra, Adv.
Ms. Deepti Arya, Adv.
Ms. Arzu Paul, Adv.
Ms. Manisha Gupta, Adv.
Mr. S. S. Rebello, Ad.
Mr. Gurmeet Singh Makker, AOR

Ms. Garima Prashad, Sr. A.A.G.
Ms. Ruchira Goel, AOR

Mr. Adit Jayeshbhai Shah, Adv.

Mr. Jatinder Kumar Sethi, D.A.G.
Dr. Abhishek Atrey, Adv.
Mr. Ashutosh Sharma, Adv.
Ms. Ambika Atrey, Adv.
Mr. Abhishek Atrey, AOR

UPON hearing the counsel the Court made the following
O R D E R

I.A. No. 23156/2023

The petitioner/applicant filed this interlocutory application seeking following reliefs:-

"a) Direct that the aforementioned rally scheduled to be organized on 05.02.2023 by the *Sakal Hindu Samaj* in Mumbai and similar events/rallies that are intended to incite communal disharmony through hate speeches are prohibited;

b) Direct the Respondent No.6 (Director General of Police, Maharashtra) and such other authorities as deemed appropriate by this Hon'ble Court to take adequate action so as to ensure that the rally scheduled to take place on 05.02.2023 in Mumbai is not allowed;

c) Direct that, in case the Respondent No.6 and such other authorities as deemed appropriate by this Hon'ble Court to fail to stop the said rally scheduled on 05.02.2023 in Mumbai to explain what measures were taken by the Respondent No.6 and other authorities as per law and show cause why they failed to stop the said event;

d) Direct that, in case the Respondent No.6 and such other authorities as deemed appropriate by this Hon'ble Court are unable to stop the aforementioned rally scheduled on 05.02.2023 in Mumbai from taking place, to record the same and place the footage, transcripts and translations before this Hon'ble Court;

e) Issue appropriate directions to Respondent No.6 and such other authorities as deemed appropriate by this Hon'ble Court to take action under the relevant penal statutes against the speakers, organizations and participants of the events mentioned at Paragraph 3 to 5 hereinabove;

f) Initiate contempt action against the erring officials who failed to take adequate preventive and consequential action *qua* the events mentioned in Paragraphs 3-5 hereinabove;"

We heard Mr. Kapil Sibal, learned senior counsel appearing on behalf of the applicant/petitioner and Mr. Tushar Mehta, learned Solicitor General appearing on behalf of the respondent-State of Maharashtra.

After hearing the learned senior counsel and learned Solicitor General, we are of the view that the interest of justice demands that the following order be passed.

We record the submission of Mr. Tushar Mehta, learned Solicitor General appearing on behalf of the Respondent-State of Maharashtra that if permission is applied by *Sakal Hindu Samaj* for holding contemplated meeting on 05.02.2023 and if permission is granted it will be subject to the condition that nobody will make any hate speech and in defiance of law or disturbing the public order.

Mr. Kapil Sibal, learned senior counsel appearing on behalf of the applicant/petitioner drew our attention to Section 151 of The Code of Criminal Procedure, 1973. Section 151 of The Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') reads as under:-

"151. Arrest to prevent the commission of cognizable offences.

(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force."

Mr. Tushar Mehta, learned Solicitor General appearing on behalf of the Respondent-State of Maharashtra would submit that the State is not concerned with Section 151 of the Cr.P.C. alone but it is concerned with the entire gamut of law.

We also direct that the Officer(s), in case, permission is granted and, in case, the occasion arises for invoking the power under Section 151 of Cr.P.C. as aforesaid, it shall be the duty of the Officer(s) concerned to invoke the said power and to act as per the mandate of Section 151 of the Cr.P.C.

Mr. Kapil Sibal, learned senior counsel appearing on behalf of the applicant/petitioner points out that having regard to what has happened according to the petitioner on earlier occasion (29th of January, 2023), the meeting may be video-graphed and the same shall be presented before this Court.

Mr. Tushar Mehta, learned Solicitor General appearing on behalf of the Respondent-State of Maharashtra does not oppose the said request and would submit that the he has no objection to carry

out videography of the meeting in question, if the meeting takes place.

We are inclined to accept this said request as well.

Accordingly, we direct that the Police Inspector of the area in question will conduct videography of the meeting in question and it shall be made available to this Court on the next date of hearing.

Mr. Tushar Mehta, learned Solicitor General appearing on behalf of the Respondent-State of Maharashtra also to get instructions in regard to the allegation made about what has happened in the conduct of previous meeting which took place at the instance of very same organization.

List this case after two weeks.

(JAGDISH KUMAR)
COURT MASTER (SH)

(RENU KAPOOR)
ASSISTANT REGISTRAR