

FREE SPEECH CANNOT BE CHOKED BY ARREST: SC

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

Jagisha Arora, wife of journalist Prashant Kanojia, speaking to reporters outside the Supreme Court. PTI

Ordering the immediate release on bail of arrested journalist Prashant Kanojia, the Supreme Court on Tuesday said, "We are not appreciative of the manner of his tweets, but we are bothered about his arrest and incarceration..."

Addressing Additional Solicitor General (ASG) Vikramjit Banerjee, appearing for the Uttar Pradesh government, Justice Indira Banerjee said, "We live in a country where there is a Constitution. Proceed against him in accordance with law, but should he be behind bars?"

'Not absolute right'

Mr. Banerjee countered that free speech is not "absolute" and another's right cannot be trampled upon. "With great liberty comes great responsibility," he said.

To this, Justice Banerjee said free speech and criticism on social media cannot be choked by incarceration. "Even we take in a lot from social media, but does that mean incarceration? Show your magnanimity," she told the State.

To this, the ASG said, "This order of release should not be seen as an endorsement of his tweets."

Justice Banerjee responded, "It is very wrong to think whatever uploaded will be swallowed by the public. People are educated."

However, the court later clarified in its order that the journalist's release should not be construed as an "endorsement" of his tweets, but as a firm stand taken by the highest court to protect personal liberty.

The court said fundamental rights of free speech and personal liberty were "non-negotiable."

"We need not comment on the nature of the posts/tweets for which the action has been taken. The question is whether Prashant Kanojia ought to have been deprived of his liberty for the offence alleged. The answer to that question is *prima facie* in the negative," it recorded in the order.

The court said the State would follow procedure as per law in Kanojia's case. "We direct that the petitioner's husband [Kanojia] be immediately released on bail on conditions to the satisfaction of the jurisdictional Chief Judicial Magistrate," it said.

The U.P. government then referred to how the court, in another case on May 14, asked BJP Yuva Morcha leader Priyanka Sharma to apologise on her release from custody for posting a morphed image of West Bengal Chief Minister Mamata Banerjee on social media.

Justice Banerjee was heading that Bench too.

“That was on entirely different facts. It was a photo,” Justice Banerjee replied.

The hearing on Tuesday was based on *habeas corpus* petition moved by Mr. Kanojia's wife, Jagisha Arora, under Article 32 of the Constitution to know the whereabouts of her 26-year-old husband.

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