

# Why Supreme Court's order in Mahmudabad's case signals a shift in free speech jurisprudence

Professor Ali Khan Mahmudabad's social media posts do not breach the Constitution's narrowly defined limits on free speech, legal experts told *The Hindu*

Updated – May 23, 2025 07:55 pm IST



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Ashoka University professor Ali Khan Mahmudabad escorted by police personnel after his arrest, in Sonipat, Haryana on May 18, 2025. | Photo Credit: PTI

**T**he Supreme Court on Wednesday (May 21, 2025) granted interim bail to Ashoka University professor Ali Khan Mahmudabad, but declined to stay the ongoing investigation into his social media posts related to Operation Sindoor, India's military offensive targeting terrorist infrastructure in Pakistan and Pakistan-occupied Kashmir (PoK). The professor was arrested by police in BJP-ruled Haryana on May 18, following the registration of two first information reports (FIRs) in connection with his online statements.

A Bench comprising Justices Surya Kant and N. Kotiswar Singh clarified that the interim relief was being extended solely to “facilitate” the investigation. Expressing concerns that the academicians may have engaged in “dog whistling” through his posts, the court also ordered the constitution of a Special Investigation Team (SIT) to examine “the complexity of the phraseology employed.”

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The case now hinges on whether the SIT can credibly demonstrate that the professor's posts meet the stringent threshold necessary to invoke the serious criminal charges against him. More importantly, it raises a fundamental question: whether purportedly unpopular or unpatriotic social media posts can be excluded from the protective ambit of free speech under Article 19(1)(a) of the Constitution?

## The posts in question

In a Facebook post dated May 8, Professor Ali Khan Mahmudabad criticised the actions of Pakistan's military while commending the strategic restraint exercised by the Indian armed forces. Describing the loss of civilian lives on both sides as “tragic,” he called for a de-escalation of hostilities. He also noted that the inclusion of women officers — Colonel Sofiya Qureshi and Wing Commander Vyomika Singh — in India's press briefings reflected the country's pluralist ideals but would amount to “hypocrisy” if not backed by tangible change on the ground, referring to instances of bulldozing of houses and mob lynching.

In a subsequent post on May 11, he condemned the **online abuse directed at Foreign Secretary Vikram Misri** for announcing the ceasefire. Quoting both Prophet Muhammad and the Bhagavad Gita, he denounced the “blind bloodlust for war” displayed by certain netizens. Warmongering, he wrote, “disrespects the seriousness of war and dishonours the lives of soldiers whose lives are actually on the line.”

## Criminal charges invoked

Stringent criminal charges under the **Bharatiya Nyaya Sanhita (BNS), 2023**, have been **levelled** against Mr. Mahmudabad based on two separate complaints—one filed by BJP Yuva Morcha leader Yogesh Jathedi, and the other by Haryana State Women's Commission Chairperson Renu Bhatia.

The first FIR, stemming from Mr. Jathedi's complaint, **invokes Section 152, which penalises acts “endangering sovereignty, unity and integrity of India”**. This provision closely mirrors the language of the colonial-era sedition law under the now-repealed Indian Penal Code—an offence the **Supreme Court placed in abeyance in 2022**, citing its incompatibility with the “current social milieu” and its susceptibility to misuse against dissidents.

Additional charges in the same FIR include Section 196(1)(b), which penalises acts that disturb communal harmony and public tranquillity; Section 197(1)(c), which targets “imputations [and] assertions prejudicial to national integration”; and Section 299, which criminalises “deliberate and malicious acts intended to outrage religious feelings.”

The second FIR, filed on Ms. Bhatia's complaint, invokes two further offences: Section 79, penalising "acts, words or gestures intended to insult modesty of a woman" and Section 353, which pertains to "statements conducing to public mischief".

Of these, Section 152 alone prescribes a prison term of up to seven years, while the others are punishable with imprisonment of up to three years.

## Supreme Court's conditional relief

Senior advocate Kapil Sibal, appearing for Mr. Mahmudabad, contended that his client harboured no criminal intent and that his statements were an expression of patriotism. However, Justice Kant observed that, *prima facie*, certain words used by the professor appeared to carry a "dual meaning" and questioned his motives, asking during the proceedings why he was seeking "cheap popularity" at a time of national crisis.

While acknowledging the professor's right to free expression, the judges stressed that this freedom must not be exercised in a manner that causes "hurt" to others.

Accordingly, the court directed him to join the investigation and extend full cooperation. It instructed Additional Solicitor-General S.V. Raju, appearing for the State of Haryana, to ensure that no further FIRs are registered in relation to the two contentious posts. The Director General of Police, Haryana, was also ordered to constitute a three-person SIT comprising senior IPS officers from outside both Haryana and Delhi to examine and interpret the true meaning of the posts.

The interim relief of bail was made conditional on Mr. Mahmudabad surrendering his passport and refraining from commenting on or writing about the two posts under investigation, as well as from expressing any opinion on the Pahalgam terror attack or Operation Sindoor.

## ‘Unpatriotic’ speech protected

The Constitution permits restrictions on speech only on eight narrowly defined grounds under Article 19(2), which includes incitement to an offence and disruption of public order. The Supreme Court has consistently held that the state cannot impose restrictions beyond these constitutionally prescribed limitations.

In 2015, in the case of *Shreya Singhal v. Union of India*, the court struck down Section 66A of the Information Technology Act, 2000, holding that vague grounds such as “annoyance,” “insult,” or “hatred” cannot justify the criminalisation of speech. It affirmed that speech which “offends, shocks, or disturbs” remains protected under Article 19(1)(a), and any restriction must satisfy the test of reasonableness under Article 19(2).

Most recently, in *Kaushal Kishore v. State of Uttar Pradesh* (2023), a Constitution Bench reiterated that the grounds enumerated in Article 19(2) are exhaustive. No additional restrictions—however well-intentioned—can be read into the constitutional framework. The judges underscored that “no one can either be taxed or penalised for holding an opinion which is not in conformity with the constitutional values”.



“I do not believe there is anything inherently objectionable in either of Mr. Mahmudabad’s posts,” Justice Gautam Patel, former judge of the Bombay High Court, told *The Hindu*. “Nothing in them appears to violate the parameters set forth in Article 19(2). Even if the posts are complex or susceptible to multiple interpretations, constitutional ethos demands that the interpretation favouring the right to free speech must prevail.”

He further observed that while the state must be afforded an opportunity to present any incriminating material, an alleged deficiency of “patriotism” cannot serve as a legitimate basis to criminalise speech.

## Inconsistent precedents

As recently as March, the Supreme Court laid down clear standards for the registration of FIRs under Sections 196, 197(1), and 299 of the BNS, while hearing a petition filed by Congress MP Imran Pratapgarhi, who had been booked for a social media post quoting one of his poems. A Bench comprising Justices Abhay S. Oka and Ujjal Bhuyan underscored that, in such cases, the impact of the spoken or written words must be assessed from the perspective of “reasonable, strong-minded, firm and courageous individuals,” rather than those “who always have a sense of insecurity or perceive criticism as a threat to their power or position.”

In a resolute affirmation of the right to free expression, Justice Oka observed that speech may well discomfort even members of the judiciary, but it remains the court’s “duty to uphold” and “zealously protect” the fundamental freedoms guaranteed under Article 19(1)(a) of the Constitution.

Alok Prasanna Kumar, advocate and co-founder of the Vidhi Centre for Legal Policy, observed that judicial disregard for precedents set by coordinate benches has become a “routine feature” of the courts.

“Judges are increasingly allowing personal biases or prevailing public sentiment to influence their decision-making. Rather than upholding constitutional guarantees, there is a growing tendency to project a veneer of neutrality — one that is, in truth, farcical,” he told *The Hindu*.

Published – May 23, 2025 07:14 pm IST