

IA No.01/2021 in SC No.108/2021

**State V/s Kasim**

FIR No.92/2020

U/s 147/148/149/153-A/505/307/436/120-B/34 IPC

And Section 27/30 Arms Act

PS: Dayalpur

09.04.2021

**PHYSICAL HEARING**

Present: Shri Manoj Chaudhary, Ld. Special PP for the State.

Shri Salim Malik, Ld. Counsel for accused Kasim/applicant.

**ORDER**

Pursuant to the directions issued by Hon'ble High Court of Delhi, from today the physical hearing has been dispensed with, however, there is no arrangement/infrastructure available for video-conferencing in the Court.

2. This is the second application filed under Section 439 Cr.P.C on behalf of applicant, thereby seeking regular bail in the matter. The first bail application of the applicant stood dismissed by this Court vide order dated 27.08.2020.

3. I have heard arguments advanced at bar by both the sides and perused the report filed in the matter as well as the chargesheet.

4. Before advertng to the application in question, it would be appropriate to have a brief overview of the facts of the case in hand. The case FIR in the matter was registered on 02.03.2020 on the basis of an information received from Sushrat Trauma Centre vide GD No.151A, dated 25.02.2020, regarding **gunshot injury sustained by Shri Prince Bansal**, S/o Shri Narender (aged about 19 years) on his upper abdomen left side, at Chand Bagh Puliya, near Lakhpat School Main Road. On receipt of said information, IO/ASI Hukam Singh initially reached at the trauma

centre and from there to LNJP Hospital and collected the MLC No.8508/2020 of the injured, however, he was not found fit for statement. Thereafter, during the course of investigation, IO recorded the statement of complainant/injured namely Prince, wherein he stated that on 25.02.2020, at about 4.00 PM he had come out from his house to purchase few household articles and when he reached near Lakhpat School, Chand Bagh (near the house of principal accused Tahir Hussain), he noticed that a riotous mob was pelting stones, throwing petrol bombs and firing gunshots from the terrace of the house belonging to principal accused Tahir Hussain upon the persons of other community. Suddenly, one of the persons from the said riotous mob fired upon him, as a result of which he sustained gunshot injury.

5. At the very threshold, learned counsel for the applicant made a strong pitch by submitting that one co-accused namely Nazim has already been enlarged on bail by this Court vide detailed order dated 28.11.2020 and thereafter another co-accused namely **Tanveer Malik also stood admitted on bail by Hon'ble High Court of Delhi vide order dated 04.02.2021 (passed in Bail Application No.3864/2020)**. As such, it is prayed that applicant is also entitled for grant of bail in the matter on the ground of parity, **as role assigned to him is on a much better footing as compared to co-accused Tanveer Malik**. It is further submitted that the based upon the observations made by Hon'ble High Court in Bail Application No.3864/2020, **this Court has also enlarged another co-accused Shah Alam on bail in the matter vide detailed order dated 05.04.2021**.

As a corollary to the aforesaid contention(s), it is further submitted that in two matters of somewhat similar nature being case FIR(s) No.88/2020 and 91/2020 (both pertaining to PS Dayalpur), applicant already stood admitted on bail and as such, it is prayed that applicant is entitled for grant of bail in the instant matter as well.

6. Besides pressing into service the ground of parity, learned counsel very vehemently argued that applicant has been falsely implicated in the matter by the investigating agency just because he was declared “***Bad Character***” (B.C) of Dayalpur area. It is further argued that initially the applicant was arrested in case FIR No.88/2020, PS Dayalpur and thereafter falsely roped in the present matter in as much as his arrest was formally effected in the case in hand at Mandoli Jail on 30.04.2020. He has been in judicial custody since 30.04.2020. It is further argued that applicant has neither been specifically named in the FIR nor recovery of any sort has been effected from him. **There is no electronic evidence available against the applicant either in the form of CCTV footage or CDR location on record.** The judicial “***Test Identification Parade***” (TIP) of the applicant was not got conducted in the matter. There is an “***unexplained delay***” of about five days in registration of FIR in as much as the alleged incident took place on 25.02.2020; whereas, the FIR in the matter was registered on 02.03.2020. It is emphasized that statement(s) recorded under Section 161 Cr.P.C of injured Prince Bansal, PWs Kuldeep Bansal and Narender Bansal are all “**undated**” and no cogent/plausible explanation in this regard has been accorded by the investigating agency. It is further argued that the identification of applicant by Constable Pawan and Constable Saudan on an undisclosed date is hardly of any consequence as the alleged incident in the matter occurred on 25.02.2020 and as per the story propounded by the prosecution both of them had witnessed the alleged incident; then why they waited till registration of FIR to name the applicant, when they had categorically seen and identified the applicant indulging in riots on the date of incident, i.e 25.02.2020. Being police officials, what stopped them from reporting the matter then and there in the PS or to bring the same in the knowledge of higher police officers. This casts a serious doubt on the credibility of said witnesses. He has further argued that “***pre-trial detention has been deprecated by the Courts***”

and “*bail is the rule and jail is an exception.*” In the end, it is argued that the investigation in the matter is complete; chargesheet has already been filed; applicant is no more required for custodial interrogation; and no useful purpose would be served by keeping him behind bars, as the trial in the matter is likely to take long time.

7. Though, the learned Special PP for State has opposed the instant bail application by strenuously submitting that although the chargesheet in the matter has been filed, yet the investigation of the case is still in progress and more skeletons are likely to tumble out of the cupboard as the investigation progresses. However, at this stage, **the learned Special PP is unable to establish that the role assigned to applicant is not similar to the role attributed to co-accused Tanveer Malik in the matter.**

8. I have given thoughtful consideration to the arguments advanced at bar.

9. It is noted that Hon'ble High Court of Delhi while granting bail to co-accused Tanveer Malik vide order dated 04.02.2021 (passed in Bail Application No.3864/2020) has been pleased to categorically discard the identification of co-accused Tanveer Malik by police witnesses namely Constable Saudan and Constable Pawan. It is further a matter of record that **injured Prince Bansal had not specifically named the applicant in his complaint dated 02.03.2020. The applicant is further not visible in any CCTV footage/video-clip. No recovery of any sort has been effected from the applicant.** It is further a matter of record that the statements (recorded under Section 161 Cr.P.C) of P.Ws Kuldeep Bansal and Narender Bansal are “**undated**” and no suitable/plausible explanation in this

regard has been accorded on behalf of investigating agency. Be that as it may, it is further a matter of record that **even no call at number 100 was made by the aforesaid witnesses on the date of incident.**

10. At this stage, it is further noted that as per the chargesheet filed in the matter, **the role assigned to co-accused Tanveer Malik is of firing towards the persons/members of another community; whereas the role attributed to applicant is merely of stone pelting and taking active part in the rioting activity.** Thus, I find substance in the submissions of learned counsel that the role assigned to applicant is on a much better footing as compared to the role attributed to co-accused Tanveer Malik. Needless to say, investigation in the matter is complete and chargesheet has already been filed; trial in the matter is likely to take long time; applicant cannot be made to incarcerate in jail for infinity merely on account of the fact that other persons who were part of the riotous mob have to be identified and arrested in the matter.

11. Keeping in view the aforesaid fact, I am of the considered opinion that applicant deserves bail in the matter on the ground of parity with co-accused persons namely Tanveer Malik (who stood admitted on bail by the order of Hon'ble High Court of Delhi) and Shah Alam (who stood admitted to bail by this Court).

12. Accordingly, applicant Kasim is admitted to bail in the matter on his furnishing a Personal Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one surety in the like amount to the satisfaction of the Court, subject to the condition that he shall not tamper with the evidence or influence any witness in any manner; he shall maintain peace and harmony in the locality and that he shall appear before the Court on each and every date of hearing to attend the proceedings

in accordance with the terms of Bail Bond, which would be executed by him; he shall furnish his mobile number to SHO, PS Dayalpur upon his release from the jail and will ensure the same to be in working condition and further he shall also get installed “*Aarogya Setu App*” in his mobile phone.

13. The application stands disposed off accordingly.

14. It is hereby clarified that anything stated hereinabove shall not be construed as expressing any opinion on the final merits of the case.

15. A copy of this order be sent to Superintendent Jail concerned as also to learned counsel for the applicant through electronic mode.

(VINOD YADAV)  
ASJ-03(NE)/KKD COURTS/09.04.2021