

IA no.05/21
SC no.15/21
State vs Arif
FIR no.59/20
PS Karawal Nagar

11.11.2021

Present: IO Insp. Gurmeet Singh in person.
Sh. Mehmood Pracha, Ld. Counsel for
accused/applicant.

The applicant/accused Arif is seeking regular bail in this case. He has been in custody since 02.11.2020.

Arguments were heard extensively on the bail application yesterday i.e. on 10.11.2021.

Ld. Counsel Sh. Mehmood Pracha appearing for the applicant commenced his arguments by submitting that the riots that had taken place in North East Delhi in the last week of February, 2020 were not actually communal riots. It is his submission that the riots had taken place at the instance of certain political vested interests to derail the peaceful protest which was going on against the newly promulgated CAA/NRC by the Parliament of India. He argued that only the persons belonging to Muslim Community like the applicant herein were targeted by the police in the aftermath of the riots and were arraigned in false criminal cases.

These submissions of the Ld.Counsel are certainly not in good taste. These are noted with immense disgust, repugnance and strong disapproval. Ld.Counsel for the applicant has not pointed out any

material on record to substantiate his claim that the riots were not communal in nature or were the handiwork of any political party.

It is the Ld.Counsel himself, who is now painting the entire Delhi Police with a communal brush by saying that the criminal cases related to the riots have been fastened upon the members of Muslim Community alone. The statement of Ld.Counsel is not only highly irresponsible but also patently false. This court, while dealing with the cases related to the riots, has noticed that members of both the communities have been arraigned as an accused and have been charge-sheeted by the police. In some cases, it has been observed that there are witnesses belonging to Hindu Community cited against the accused belonging to the same community and witnesses belonging to Muslim community cited against the accused belonging to the same community. The police appears to have done its job with utmost integrity and certainly not on communal lines. May be some lapses have been occurred during the investigation of these cases related to the riots but even those lapses also do not give any slightest indication that the investigation was not fair and impartial or that it was on communal lines.

Ld.Counsel would be well advised to desist from making such irresponsible, uncalled for and patently false submissions. The cases before this court are very serious and sensitive in nature and require to be dealt

with in a professional manner and without any communal taint.

It was next submitted by the Ld. Counsel for the applicant that the charge-sheet in this case is nothing but only a bunch of papers which has been filed only after partial investigation of the case and therefore, same cannot be treated as a complete charge-sheet. It is his submission that since the investigation of the case is still going on, it cannot be said that the charge-sheet is a complete one and therefore, the applicant is entitled to default bail u/s 167 (2) Cr. P.C. The submission of the Ld. Counsel has been noted only to be rejected. It is evident that the Ld. Counsel is himself not sure in his mind about the legality of this argument and for this reason he did not approach this Court for default bail to the applicant u/s 167 Cr. P.C and instead has filed the instant application for regular bail u/s 439 IPC. Moreover, the submissions of the Ld. Counsel that the charge-sheet is only a bunch of papers is again distasteful, to say least. It may be noted here that the charge-sheet alongwith material annexed thereto has been considered in detail by my Ld. Predecessor while pronouncing order dated 21.09.2021 whereby charges have been framed against all the accused in this case including the applicant. Thus, it cannot be termed as an incomplete charge-sheet. Similarly, it can not be said that the investigation qua the applicant is still underway thereby entitling him to seek default bail u/s 167 Cr. P.C.

It is true that the investigating agency has kept open its right to investigate the case further which is permissible u/s 173 (8) Cr. P.C. It has to be borne in mind that the instant case relates to the killing of a person by riotous mob and only few persons amongst that mob have been identified so far against whom the charge-sheet has been filed. It is the duty of the police to continue further investigation so as to identify all the remaining rioters and bring them to book.

On merits, it was submitted by the Ld. Counsel that the applicant has been falsely implicated not only in the instant case but also in the case FIR No. 61/2020 and 54/2020 (both registered in PS Karawal Nagar). It is argued that the eye witness has been planted in all these cases by the investigating agency in order to create false evidence against the applicant and ensure his conviction on false accusations. Ld. Counsel further pointed out that the applicant is not visible in any of the CCTV footages of the date 25.02.2020 and therefore, he cannot be roped in the matter merely by invoking Section 149 IPC for the reason that there is no evidence to show that he shared “common object” with other rioters.

The bail application vehemently opposed on behalf of the State. It is submitted by the IO that besides the statements u/s 161 Cr. P.C and 164 Cr. P.C of the independent eye witness Sh. Ajeet Kumar Tomar, wherein he has categorically mentioned the name of the applicant being present amongst the rioters who attacked

the deceased Alok Tiwari thereby causing his death, the CDR of the mobile phone of the applicant also shows that it was active/operational in the area of the Scene of Crime at the time of incident. The IO further pointed out that the applicant is also involved in two more cases of murder i.e. case FIR No. 61/2020 related to the murder of one Dinesh and case FIR No. 54/2020 related to the murder of one Veerbhan. It was further submitted by the IO that the applicant has refused to take part in TIP which also indicates his involvement in the crime in question. The IO also expressed apprehension that the applicant may hamper the further investigation in this case and may influence/threaten the witnesses and also may abscond, if granted bail.

I have considered the submissions made on behalf of both the parties and have perused the charge-sheet as well as material annexed thereto.

The instant case relates to the murder of one Alok Tiwari who had sustained several blunt and sharp injuries near Shiv Vihar Tiraha on 25.02.2020 during the riots that engulfed almost entire North-East Delhi. As per the post mortem report, the deceased had received 13 injuries by sharp edged and blunt objects and cause of his death was "shock as a result of ante-mortem injury to the brain caused by blunt force impact". As per eye witness account of Ajeet Kumar Tomar, the applicant was part of the riotous mob which attacked deceased with rods, stones and bottles etc. thereby causing his

death. The arguments of the Ld. Counsel for the applicant that Ajeet Kumar Tomar is a planted witness cannot be accepted at this stage for the reason that his statement u/s 161 Cr. P.C and 164 Cr. P.C are on record which prima-facie indicate his presence at the spot of incident. These two statements of the witness cannot be ignored at this stage while considering the instant bail application for the reason that at this stage the material collected by the investigating agency is to be seen at its face value without conducting any mini trial. Moreover, the CDR location of the applicant also has been found near the crime spot on the date of the incident and at the time of incident. The fact that the applicant refused to take part in Test Identification parade (TIP) after his arrest also weighs against him at this stage and adverse inference is liable to be drawn against him in the matter.

It may also be noted here that the bail applications of the co-accused namely Javed Ali, Parvez, Md. Salman and Sonu Saifi, whose role in the incident is almost similar to that alleged against the applicant herein, have already been dismissed by my Ld. Predecessor vide orders dated 19.04.2021, 20.04.2021 and 11.05.2021.

It is well settled that following factors inter-alia shall be borne in mind by the Court while considering the application for bail;

(i) *Whether there is any prima-facie or reasonable ground to believe that the accused had committed the offence;*

(ii) *Nature and gravity of the accusation;*

(iii) *Severity of punishment in the event of conviction;*

(iv) *Danger of the accused absconding or fleeing, if released on bail;*

(v) *Character, behaviour, means, possession and standing of the accused;*

(vi) *Likelihood of the offence being repeated;*

(vii) *Reasonable apprehension of the witness being influenced;*

(viii) *Danger, of course, of justice being thwarted by grant of bail.*

[see Mahipal Vs. Rajesh Kumar (2020) 2 SCC 118].

In the instant case, the allegations against the applicant are very serious in nature. He is stated to be involved not only in the murder of one Alok Tiwari (deceased in the instant case) but also in the murder of two more persons namely Dinesh and Veerbhan in respect of which two separate FIRs bearing No. 61/2020 and 54/2020 have been registered. The evidence on record in this case prima-facie indicates that the applicant was a member of unlawful assembly that attacked and caused death of one Alok Tiwari. There is nothing on record to show that the applicant did not share the common object of that assembly i.e. to kill the deceased Alok Tiwari or that the applicant tried to stop

the other members of the assembly from attacking the deceased or that he tried to disassociate himself from the assembly. The case is still at the initial stage where charges have been framed against all the accused including the applicant herein on 29.09.2021 and the trial is still to begin. There is every likelihood that the applicant may approach or intimidate the only eye witness Ajeet Kumar Tomar or may try to abscond, if released on bail.

In the light of the above discussion, no merit is found in the bail applicant. Same is hereby dismissed.

(VIRENDER BHAT)
ASJ-03(NE)/KKD Courts/Delhi