

State V/s Kundan (FIR No.121/2020: PS Khajuri Khas)

Bail Application No.1144/2020

## State V/s Kundan

FIR No.121/2020

U/s: 147/148/149/435/436/34 IPC & Section 3/4 PDPP Act

PS: Khajuri Khas

23.09.2020

### **THROUGH WEBEX VIDEO CONFERENCING**

Present: Shri Manoj Chaudhary, Ld. Special PP for the State alongwith IO, SI Vipin.

Shri Abbas Khan, Ld. Counsel for accused Kundan/applicant.

### **ORDER**

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

2. The learned counsel for the applicant has very vehemently argued that the applicant has been falsely implicated in the matter. He has been in judicial custody in the matter since 09.03.2020. He was not present at the scene of crime on the date of incident and instead was at his work place on the date of alleged incident. On 10.03.2020, he was called by the police officials of PS Khajuri Khas and falsely implicated in the matter. No recovery of any sort has been effected from him. It is next contended that co-accused Amit Kumar has already been enlarged on bail by this Court vide order dated 20.06.2020 and the applicant is also entitled for grant of bail on the ground of parity, as the role assigned to the applicant is not different from the role assigned to co-accused Amit. He has further argued that “*pre-trial detention has been deprecated by the Courts*”; “*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; the applicant is no more required for custodial interrogation; and no useful purpose would be served by keeping him behind bars in the matter, as trial of the case is likely to take long time. It is claimed that the applicant has clean past antecedents.

3. Before taking up the arguments of prosecution, it is pertinent to mention here that this the fifth bail application filed on behalf of applicant. His earlier bail applications were dismissed vide orders dated 15.06.2020, 23.06.2020, 15.07.2020 (dismissed as withdrawn) and 20.07.2020.

4. Per contra, learned Special PP for the State has very vehemently argued that the present case is a very serious matter, wherein the rioters had caused destruction at "*Fatima Masjid*", situated in C-Block, Gali No.29, Khajuri Khas. It is further argued that the applicant has been clearly identified as one of the members of unlawful assembly, who had caused damage to the Fatima Masjid, namely Mehboob Alam and Akram. It is further argued that even after grant of bail to co-accused Amit, the subsequent bail applications of the applicant have been dismissed and as such, the ground of parity is not available to the applicant. It is further frankly conceded by learned Special PP that at the time of hearing of the bail application of co-accused Amit, sincere efforts were not made by the prosecution to point out the role of applicant properly before this Court. In the end, it is argued that the applicant has not been able to show any change in circumstances after dismissal of his earlier bail applications.

5. This Court has recently dismissed the bail applications of two accused persons namely Mithan and Jony Kumar in case FIR No.233/2020, PS Khajuri Khas, vide detailed order dated 17.07.2020. Furthermore, the bail application of co-accused Mithan Singh in the present matter was also dismissed by this Court vide detailed order dated 29.08.2020. The learned counsel for the applicant has neither been able to point out any change in circumstance(s) after dismissal of last bail application of the applicant vide order dated 20.07.2020 nor he has been able to differentiate the role of applicant from that of co-accused Mithan Singh, who bail application stood already dismissed by this Court vide order dated 29.08.2020. Besides, making bald averments, the learned counsel for the applicant has not placed on record any material to *prima facie* show that the applicant was not present at the scene of crime on the date of incident and

instead was present at his work place; even the address of work place of the applicant has not been mentioned in the instant bail application.

6. I have considered the facts and circumstances of the case in totality, particularly bearing in mind that in recent communal riots in North-East Delhi more than 50 innocent people were killed by the rioters and the dastardly act of rioters in this matter is an act against the country's secular structure. Considering the gravity of allegations, large-scale involvement of the applicant in the cases of riots, I do not find it to be a fit case for grant of bail to the applicant. The bail application is accordingly dismissed.

7. It is hereby clarified that anything stated hereinabove shall not be construed as expressing any opinion on the final merits of the case, as the case is at "*pre-cognizance stage*".

8. A copy of this order be sent to the learned counsel for the applicant through electronic mode.

VINOD  
YADAV  
(VINOD YADAV)

Digitally signed  
by VINOD YADAV  
Date: 2020.09.23  
16:28:11 +05'30'

DUTY JUDGE/ASJ-03(NE)/KKD/23.09.2020