

State V/s Uday Singh: FIR No.234/2020: PS Khajuri Khas

Bail Application No.1532/2020

State V/s Uday Singh

FIR No.234/2020

U/s 147/148/149/188/392/436/395/412/34 IPC

PS Khajuri Khas

28.10.2020

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri Jinendra Jain, Ld. Special PP for the State alongwith
IO, ASI Jamshed Ali.

Shri R.K Kochar and Shri Gaurav Kochar, Ld. Counsels for accused
Uday Singh/applicant.

ORDER

This is an application filed U/s 438 Cr.P.C on behalf of applicant,
seeking anticipatory bail in the matter.

2. I have heard arguments advanced at bar from both the sides and
perused the report filed in the matter.

3. The learned counsel for the applicant has very vehemently argued that
applicant is a senior citizen, aged about 66 years and is permanent resident of
Karawal Nagar, Delhi. It is argued that the applicant is a victim of circumstances
and has been falsely implicated in the matter by the investigating agency in
connivance with complainant Yakub just to extort money from him. The applicant
neither committed any offence, as alleged nor participated in the crime in any
manner whatsoever. It is further argued that said complainant Yakub was a tenant
of the applicant, who did not pay rent and electricity charges for the last two and a
half years and as such, the electricity connection in the tenanted shop was cut by
the concerned authorities. It is further argued that the applicant has nothing to do
with the alleged incident of rioting. He was merely standing in front of his

residence. He is not seen armed with any rioting material. His demeanor is clearly apparent that he appears to be very concerned about the safety and security of his immovable property and family members. The complainant Yakub himself did not make the alleged video vis-à-vis there is no eye witness of the alleged incident. It is argued that the applicant has been receiving phone calls from the official(s) of PS Khajuri Khas thereby threatening him to arrest in the matter and in this regard the police officials have also visited his house several times. It is further argued that falsity of the instant case is apparent from the fact that co-accused Sumit (who is real son of the applicant) has already been enlarged on regular bail in the matter by this Court vide detailed order dated 08.10.2020, while his another son namely Darshan Singh (who is also an accused in the present matter) has been accorded the protection of anticipatory bail vide order dated 21.10.2020. In the end, it is argued that the investigation in the matter is complete; chargesheet has already been filed; applicant is permanent resident of Delhi and there are no chances of his absconding or tampering with the prosecution witnesses and as such, grant of anticipatory bail to him in the matter has been prayed for.

4. Per contra, learned Special PP for the State has very vehemently argued that the communal riots in North-East Delhi were of a very high magnitude, wherein 53 innocent lives were lost and a lot of public and private property was damaged/vandalized and looted and several vehicles, houses and business establishments were set on fire. As regards the present case, it is submitted that FIR in the present matter was registered on the complaint of Shri Atikul Rehman, S/o Shri Mohd. Mustkin, wherein he stated that he was running a cloth factory at A-Block, House No.7, Gali No.1, West Karawal Nagar, Delhi, which was looted and set on fire by the riotous mob on 25.02.2020. It is submitted that during the course of investigation, another complaint was received from Shri Yakub, S/o Shri Mohd. Mustkin, wherein he stated that he was running a tyre repair/puncture shop and on 24.02.2020 his landlord Uday Singh (applicant herein) and his sons namely Sumit and Darshan locked the door of his shop and

looted one Priya Bajaj Scooter bearing Number DHX-9; tyres and autowheel parts worth Rs.7.00 lakhs; RC of Honda CBR Motorcycle No.DL11-SH-0786; and an Air Compressor Tank worth Rs.2.50 lakhs and thereafter set the said shop on fire. Since the timing and place of incidents in both the complaints were almost similar, therefore, both the complaints were clubbed in the present case FIR.

5. It is argued that during the course of investigation, a video footage of the incident was provided by complainant Yakub on 18.03.2020, which on analysis revealed the identity of the son of applicant namely Sumit, as he is categorically seen being part of the “*riotous mob*” that had looted valuable articles from the shop of complainant Yakub. In the end, it is argued that although the chargesheet in the matter has been filed, yet the investigation of the case is still in progress; many persons who were part of the “*riotous mob*” need to be identified and arrested; the “*conspiracy angle*” behind such a large-scale riot needs to be unearthed; and there is every chance that if granted anticipatory bail, the applicant may use it as a tool to threaten the complainant and may tamper with the evidence. It is submitted that the earlier application of the applicant seeking anticipatory bail stood dismissed by the Court of Shri Raghbir Singh, learned ASJ vide order dated 22.07.2020 and presently the applicant is absconding and his NBWs have already been issued by the Court, returnable for 17.11.2020.

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

7. Admittedly, prior to eruption of communal riots, complainant Yakub had been the tenant in the shop, which belongs to the applicant. It is further not in dispute that there has been discord among the parties with regard to payment of rent/electricity charges qua the tenanted shop. I have gone through the video furnished by the investigating agency. Though applicant is seen in the said video, but he does not appear to be participating in the riots. Be that as it may, it is a

matter of record that no independent witness has identified the applicant in the matter. The co-accused in the matter namely Sumit (who is real son of the applicant) has already been enlarged on regular bail by this Court vide detailed order dated 08.10.2020; while his another son namely Darshan Singh (who is also an accused in the matter) has been accorded the protection of anticipatory bail vide order dated 21.10.2020. The applicant is permanent resident of Karawal Nagar, Delhi. He is not a previous convict. The earlier anticipatory bail application of the applicant was probably dismissed without considering the material in chargesheet. It is also evident that even the police is not serious about the involvement of applicant in the present case, as the incident allegedly took place on 24.02.2020 and the NBWs against the applicant have been obtained from the Court on 14.10.2020, when the anticipatory bail of co-accused Darshan was pending, which was ultimately granted on 21.10.2020.

8. In judgment dated 18.06.2020, passed in ***Bail Application No.913/2020***, titled as, "***Navendu Babbar V/s State NCT of Delhi***", the Hon'ble High Court has been pleased to lay down as under:

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18.(vi) The criminal investigation is not a metaphorical fishing-rod handed to an investigating agency, to indulge its penchant for "fishing around" for evidence, at its own leisure and in the fullness of time. Investigation has to be a time-limited process, to be conducted strictly within the structure and framework of the criminal procedure code. As of 21.05.2020, supplementary chargesheet has been filed naming the applicant; and thereby the case to frame charges against the applicant has been laid before the trial court. The investigating agency must, therefore, be taken to have concluded investigation in so far as the applicant is concerned. Viewed from this perspective, no further indulgence is deserved by the investigating agency and it cannot say that the applicant be kept in prison as an undertrial since he has not cooperated in the investigation.

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9. The material on record is really short about the authenticity of viral video. Without commenting on the merits of the prosecution case, I am of the view that the applicant deserves indulgence from this Court in this matter.

10. The applicant is directed to appear before IO on 30.10.2020 at 4.00 PM and shall continue to cooperate in the investigation. In case the IO wishes to arrest the applicant in the matter, he will give clear notice of one week to the applicant, so that he could avail of remedies available to him in accordance with law.

11. The instant application is accordingly disposed off.

12. Before parting with the order, it is hereby clarified that anything stated hereinabove shall not be construed as expression of any opinion on the final merits of the case, as the case is at “*pre-cognizance/pre-committal stage*”.

13. A copy of this order be sent to the learned counsels for the applicant through electronic mode. A copy of this order be also sent to IO/SHO, PS Khajuri Khas for necessary compliance.

VINOD
YADAV

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by VINOD YADAV
Date: 2020.10.28
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ASJ-03(NE)/KKD COURTS/28.10.2020