

IN THE COURT OF SH. AMITABH RAWAT, ADDITIONAL SESSIONS
JUDGE-03 SHAHDARA DISTRICT, KARKARDOOMA COURT, DELHI

Bail Application No. 1624-2020

FIR No.53/2020

PS- Jyoti Nagar

U/S. 302/144/147/148/149/186/188/353/336/332/120B/4 IPC r/w

3 PDPP Act

State Vs. Anwar Hussain

11.11.2020

ORDER

1. Vide this order, I shall dispose off application moved on behalf of applicant/accused Anwar Hussain under Section 439 Cr.P.C for grant of bail.

2. Arguments were heard on behalf of accused by Sh. S.Hasan Zaidi, Ld. Counsel for accused and for prosecution by Sh. Rajeev Krishan Sharma, Ld. Prosecutor. I have perused the record including the charge-sheet.

3. **CONTENTIONS OF THE ACCUSED**

Ld. Counsel for the accused had submitted that the accused is innocent person and he has been falsely implicated in the present case. He is in judicial custody since 12.03.2020. He is not named in the FIR. Nothing has been recovered from the possession of the accused or at his instance. He has another case FIR No. 54/20 in which he is on bail. The charge-sheet has already been filed. Applicant/accused is ready to abide all the terms and conditions if imposed by this court.

It was, thus, prayed that accused Anwar Hussain be granted bail.

4. CONTENTION OF THE PROSECUTION

On the other hand, Ld. Prosecutor had vehemently opposed the bail application of accused stating, in the reply of I.O, that in the last week of February, 2020 riots in the area of North-East District, Delhi had happened wherein 53 persons lost their lives and many public and private properties were vandalized.

On 24.02.2020, various groups of persons were protesting against or in favor of CAA. They were armed with illegal arms, lathis, rods, stones and petrol were also present at Kardam Puri Pulia in the area of P.S Jyoti Nagar, Delhi and were fighting a pitched battle between them. On the same day, an information vide DD No. 44A regarding MLC at GTB Hospital, was received that one injured person is brought to GTB Hospital. I.O of P.S. Jyoti Nagar received the MLC of deceased Mohd. Furkan, as per which, the deceased was declared “brought dead”. Complainant Mohd. Imran (brother of deceased) stated that on that day, in evening while he was going to his workshop by scooty, he reached near Kardampuri Pulia at about 5.20 PM and saw a crowd gathered near Kardampuri Pulia. His younger brother Furkan aged around 30 years was also present there. He called his brother. His brother turned back and started moving towards him but suddenly fell down. He quickly reached there and saw that Furkan's left leg was bleeding. Some persons brought Furkan to GTB Hospital. He also accompanied them. Doctors declared Furkan brought dead.

As per PM Report No. 322/20 dated 26.02.2020 done by Board of GTB Hospital, mainly two gunshot injury is reported and the cause of death was “ Shock due to firearm injury”.

During field investigation and eye-witnesses accounts have established that on 24.02.2020, from morning onwards rioting had begun. The Muslims rioters who were residents of Kardam Puri were very violent at Kardam Puri Pulia, protest site and continuously pelting stones on the police party deployed there, even gun shots were being fired. This crowd was trying to reach C-12 Yamuna Vihar, which is a Hindu dominated area and the police was trying to stop it.

Statements of police persons who were on duty at Kardam Puri had been recorded who had stated that Imran alongwith other persons was part of rioters present at Kardam Puri Pulia. He was also seen in the CCTV footage recorded near Kardam Puri Pulia alongwith rioters.

During investigation, on 12.03.2020, secret information was received and present accused Anwar Hussain was arrested. He confessed to his crime about the murder-cum-riot which took place at Kardam Puri Puliya.

Anwar Hussain was present in unlawful gathering and was seen actively participating in the riots.

It was also argued that, as per Section 149 of IPC, if an offence is committed by any member of the unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is guilty of that offence. Accused Anwar Hussain is also liable for the criminal acts committed by any member of that illegal mob gathered on 24.02.2020 at the spot where Furkan was murdered.

It was further submitted that TIP was refused by the accused.

It was prayed that the present bail application be dismissed.

5. (a) As per FIR dated 25.02.2020 registered on the complaint of Mohd. Imran stating that in the evening of 24.02.2020, he was going to his factory from his home on a scooty and at about 5.20 PM, he reached near Kardam Puri Pulia where he saw crowd and stopped there. He saw that his younger brother Furkan, 30 years old, was also standing on the Pulia. He parked his scooty there and called his brother Furkan, who on hearing his voice, turned back and started walking towards complainant and suddenly fallen there and the complainant immediately reached to Furkan and saw that blood was oozing out from the left leg of Furkan as a bullet hit to his left leg. As stones pelting was happening from both the sides, therefore, it could not be established as to from where the bullet was fired. Some persons removed his

brother Furkan in a auto (number unknown) to GTB Hospital and the complainant also accompanied them on his scooty. In the hospital, after examination, the doctors declared Furkan as dead.

(b) Complainant is not an eye-witness to this case.

(c) As per the prosecution, the incident is of 24.02.2020 when the rioters of Kardampuri were very violent at Kardampuri Pulia protest site and continuously pelting stones on the police party deployed at Kardam Puri Pulia and even gunshots were fired. The crowd were trying to reach at C-12, Yamuna Vihar which is a Hindu dominated area and the police were trying to stop it. Thus, the incident is of near Kardampuri Pulia. In the said rioting, more than 20 police personnel were injured and including the death of the deceased by gunshot injury.

The prosecution has relied upon one video footage of 23.02.2020 where accused is seen as participant at Kardam Puri Puliya. The footage was seen and without going into the merits of the nature of the involvement of the accused in the said footage, it can be clearly stated that for whatever footage depicts of the incident of 23.02.2020, by no stretch of criminal liability, can be accounted for the offence of riot and murder committed on 24.02.2020. Thus, the video footage is not of the day of the incident of 24.02.2020 but of 23.02.2020. Clearly this is not a incriminating clinching evidence of involvement of accused in riots of 24.02.2020.

During further investigation, supplementray chargesheet was filed

after Afsar/witness had, in his statement on 24.06.2020, given the name of the present accused Anwar Hussain as participating in the riot. TIP proceedings of the said accused by witness Afsar was done and the accused refused to participate in the TIP proceedings.

6. In view of the video footage which does not pertain to the day of incident, the period of incarceration and in the totality of the facts and circumstances of the case, accused Anwar Hussain is admitted on bail on furnishing of personal bond in the sum of Rs. 40,000/- with one local surety of the like amount to the satisfaction of Ld. MM/Link MM/Duty MM subject to the following conditions:

(a) The accused shall neither leave the jurisdiction of NCT of Delhi without prior permission of the court nor shall he indulge in any kind of criminal activity.

(b) He shall also not tamper with any evidence or contact any witness;

(c) He shall attend the court on every date of hearing or as directed by court.

Application is accordingly disposed off.

Copy of the order be mailed to Ld. counsel for the accused and Ld. Spl. Public Prosecutor.

(Amitabh Rawat)

Addl. Sessions Judge-03

Shahdara District, Karkardooma Courts,