

Bail Application No.1564/2020

State V/s Shah Alam

FIR No.80/2020

U/s: 147/148/149/427/436/34 IPC And Section 3/4 PDPP Act

PS: Dayalpur

09.12.2020

THROUGH WEBEX VIDEO CONFERENCING

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

Shri Dinesh Tiwari, Ld. Counsel for accused Shah Alam/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. At the outset, learned counsel for the applicant has pointed out that as many as seven co-accused persons namely Riyasat Ali, Arshad Qayuum @ Monu, Mohd. Shadab, Rashid Saifi, Mohd. Abid, Mohd. Rehan and Gulfam have been enlarged on bail by this Court vide orders dated 31.08.2020, 16.09.2020, 28.09.2020 and 05.10.2020 respectively and the role assigned to the applicant in the matter being on same/identical footing, he is also entitled for grant of bail on the ground of parity.

3. Besides harping upon the ground of parity, the learned counsel for the applicant has very vehemently argued that the applicant has been falsely implicated in the matter. He was initially arrested in case FIR No.101/2020, PS Khajuri Khas and thereafter, he was formally arrested in this case on 21.04.2020 in Mandoli Jail. There is no recovery of any sort from the applicant in the matter. It is further argued that the alleged incident in the matter took place on 25.02.2020, but the FIR was registered on 28.02.2020, without explaining the reasons for the delay. It is further argued that the only evidence available on record against the applicant in the matter is his identification by PWs Surender Singh, Shri Rajbir Singh Yadav, Shri

Radhey Kishan and police personnel namely Constable Vikrant and Constable Pawan. It is argued that identification of applicant by Constable Vikrant and Constable Pawan (who were posted as Beat Officers in the area at the relevant time) is hardly of any consequence, as it is beyond comprehension that why the said Beat Officers waited till 06.03.2020 (when their statements U/s 161 Cr.P.C was recorded by the IO) 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 official(s), 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. It is submitted that they are “**planted witnesses**”. It is further argued that even the statement of PW Shri Radhe Kishan (alleged eye witness) has been recorded in the matter on 12.08.2020, i.e almost after expiry of 5½ months from the date of incident. 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.

4. Per contra, the learned Special PP has very vehemently argued that the present case FIR is a “**general FIR**” regarding use of the building of principal accused Tahir Hussain by the rioters for vandalizing the houses, properties and lives of the persons of other community; whereas, other FIRs viz., FIR No.101/2020, PS Khajuri Khas; FIR No.98/2020, PS Dayalpur; FIR No.109/2020, PS Dayalpur; FIR No.116/2020, PS Dayalpur; FIR No.117/2020, PS Dayalpur; and FIR No.120/2020, PS Dayalpur are “**cluster FIRs**” of the place(s) at or around the house of principal accused Tahir Hussain. It is very vehemently argued that the evidence led in other cases can be read into this case as well, as the cases were so contemporaneous that they “**formed part of a single transaction**” on both days, i.e on 24.02.2020 and 25.02.2020.

5. As regards the delay in registration of FIR in the present case, the learned Special PP has relied upon the *decision dated 06.07.2020*, passed by the Hon'ble High Court of Delhi in *Bail Application No.922/2020*, titled as, "**Raiees Khan V/s State of NCT of Delhi**". Para 11 of the said decision is re-produced hereunder:

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11. No doubt, there was a delay in registration of the FIR, but it was only because of the circumstances prevalent at that time. On the day of incident, I am told about 18689 PCR calls were received on a single day; 3450 calls were from the Dayalpur area itself and then it took time to register the FIRs; the last FIR being registered on 28.03.2020. Pandemic Covid-19 further delayed the investigation.

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6. It is further argued that **applicant is the real younger brother of principal accused Tahir Hussain**, who was actively involved in the riots on the date of incident and as such, he cannot claim parity with other co-accused persons who have already been enlarged on bail in the matter. In the end, it is argued that although the chargesheet in 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 released on bail, the applicant may threaten the witnesses, who are residents of the same locality and as such, the dismissal of instant bail application has been prayed for.

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

8. It is a matter of record that as many as eight (8) FIRs were registered with regard to the role of Tahir Hussain, principal accused in the matter. It is further a matter of record that in other cases, there is independent identification of the applicant and there is other connecting material on which the reliance is being placed by the prosecution. Present case is a "**general case**" about the use of

building of principal accused Tahir Hussain by the rioters as well as commission of acts of arson and looting of public and private property(ies). In this case, only one witness namely Shri Jai Bhagwan has been added. I have been taken through his complaint, which is at page 57 and upon a perusal of the endorsement made on the complaint, it appears that the name of this witness has been kept deliberately in this case, as there was no other independent witness herein. Even the statement of PW Shri Radhe Kishan has been recorded in the matter on 12.08.2020, i.e almost after expiry of 5½ months of the date of incident, which prima facie appears to be an omnibus one. The “*rule of prudence*” guides us that separate and independent material in other case(s) should not be read into this case. Furthermore, the identification of applicant by Constable Vikrant and Constable Pawan (who were posted as Beat Officers in the area at the relevant time) is hardly of any consequence, as this Court is not able to comprehend as to why said Beat Officers waited till 06.03.2020 (when their statements U/s 161 Cr.P.C was recorded by the IO) 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 official(s), 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 cast a serious doubt on the credibility of these witnesses. The Hon’ble High Court of Delhi vide *order dated 07.10.2020*, passed in *Bail Application No.2696/2020*, titled as, “*Irshad Ahmed V/s State of NCT of Delhi*”, has been pleased to observe in paragraphs No.3 and 4 as under:

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3. It is not in dispute that there is no electronic evidence such as CCTV footage or photos to implicate the petitioner in the present case. As per the statement of Constable Pawan and Constable Ankit (both are eye witnesses and were present at the spot), they had identified the petitioner and other co-accused. However, they have not made any complaint on the date of incident, i.e 25.02.2020, whereas the FIR was lodged on 28.02.2020. Thus, the said witnesses seem to be planted one.

4. Chargesheet has already been filed. Trial of the case shall

take substantial time. However, without commenting on the merits of the case, this Court is inclined to grant bail to the petitioner.

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9. The investigation in the matter is complete. The applicant is already in custody in other matters. No useful purpose is going to be served by keeping him behind bars in this case. It is a matter of record that as many as seven co-accused persons namely Riyasat Ali, Arshad Qayuum @ Monu, Mohd. Shadab, Rashid Saifi, Mohd. Abid, Mohd. Rehan and Gulfam have already been enlarged on bail by this Court vide orders dated 31.08.2020, 16.09.2020, 28.09.2020 and 05.10.2020 respectively and the prosecution has not been able to point out the role of applicant being different/distinct to the aforesaid co-accused persons, except for the fact that applicant is younger brother of principal accused Tahir Hussain. As such, I am of the considered opinion that applicant is also entitled for grant of bail in the matter on the ground of parity. He cannot be made to incarcerate in jail for infinity merely on account of the fact that he is younger brother of principal accused Tahir Hussain or that other persons who were part of the riotous mob have to be identified and arrested in the matter.

10. Considering the facts and circumstances of the case in totality, applicant Shah Alam 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 Ld.CMM/Ld.Illaka MM/Ld.Duty MM, 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.

11. The application stands disposed off.

12. 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/pre-committal stage”*.

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

VINOD
YADAV

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by VINOD YADAV
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ASJ-03(NE)/KKD COURTS/09.12.2020