

Bail Application No.17/2021

State V/s Shah Alam

FIR No.92/2020

U/s 147/148/149/153-A/505/307/436/120-B/34 IPC

And Section 27/30 Arms Act

PS: Dayalpur

05.04.2021

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

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. Before adverting to the application in question, it would be appropriate to have a brief overview of the facts of the case in hand. The case FIR in the matter was registered on 02.03.2020 on the basis of an information received from Sushrat Trauma Centre vide GD No.151A, dated 25.02.2020, regarding **gunshot injury sustained by Shri Prince Bansal**, S/o Shri Narender (aged about 19 years) on his upper abdomen left side, at Chand Bagh Puliya, near Lakhpat School Main Road. On receipt of said information, IO/ASI Hukam Singh initially reached at the trauma centre and from there to LNJP Hospital and collected the MLC No.8508/2020 of the injured, however, he was not found fit for statement. Thereafter, during the course of investigation, IO recorded the statement of complainant/injured namely Prince, wherein he stated that on 25.02.2020, at about 4.00 PM he had come out from his house to purchase few household articles and when he reached near Lakhpat School, Chand Bagh (near the house of principal accused Tahir Hussain), he noticed

that a riotous mob was pelting stones, throwing petrol bombs and firing gunshots from the terrace of the house belonging to principal accused Tahir Hussain upon the persons of other community. Suddenly, one of the persons from the said riotous mob fired upon him, as a result of which he sustained gunshot injury.

3. At the very threshold, learned counsel for the applicant made a strong pitch by submitting that one co-accused namely Nazim has already been enlarged on bail by this Court vide detailed order dated 28.11.2020 and thereafter another co-accused namely Tanveer Malik also stood admitted on bail by Hon'ble High Court of Delhi vide order dated 04.02.2021 (passed in Bail Application No.3864/2020). As such, it is prayed that applicant is also entitled for grant of bail in the matter on the ground of parity, as role assigned to him is on the same page/identical footing.

4. Besides pressing into service the ground of parity, learned counsel very vehemently argued that applicant has been falsely implicated in the matter by the investigating agency. It is further argued that initially the applicant was arrested in case FIR No.88/2020, PS Dayalpur and thereafter falsely roped in the present matter in as much as his arrest was formally effected in the case in hand at Mandoli Jail on 30.04.2020. He has been in judicial custody since 30.04.2020. It is further argued that applicant has neither been specifically named in the FIR nor recovery of any sort has been effected from him. **There is no electronic evidence available against the applicant either in the form of CCTV footage or CDR location on record.** The judicial “*Test Identification Parade*” (TIP) of the applicant was not got conducted in the matter. There is an “*unexplained delay*” of about five days in registration of FIR in as much as the alleged incident took place on 25.02.2020; whereas, the FIR in the matter was registered on 02.03.2020. It is emphasized that statement(s) recorded under Section 161 Cr.P.C of injured Prince Bansal, PWs

Kuldeep Bansal and Narender Bansal are all “**undated**” and no cogent/plausible explanation in this regard has been accorded by the investigating agency. It is further argued that the identification of applicant by Constable Pawan and Constable Saudan on an undisclosed date is hardly of any consequence as the alleged incident in the matter occurred on 25.02.2020 and as per the story propounded by the prosecution both of them had witnessed the alleged incident; then why they waited till registration of FIR 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 officials, 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 casts a serious doubt on the credibility of said witnesses. He has further argued that “*pre-trial detention has been deprecated by the Courts*” and “*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; applicant is no more required for custodial interrogation; and no useful purpose would be served by keeping him behind bars, as the trial in the matter is likely to take long time. It is claimed that applicant has clean past antecedents.

5. Per contra, the learned Special PP for the State submits that the case is “*sensitive*” in nature, which involves the riots which took place at or around the house of main accused Tahir Hussain. During investigation, it has emerged that there was a “*deep-rooted conspiracy*” which triggered communal riots in Delhi. A web of conspirators, instigators and rioters has been identified and several of them have been arrested. It is further argued that the riots were not impromptu, but were conspired with the intent to create communal strife and to malign the image of the country under the garb of democratically opposing the Citizenship Amendment Act (in short “*CAA*”). The conspirators caused disruption by the dual scheme of

spreading misinformation on CAA and causing “*Chakka-Jaam*” on main arterial roads, which ultimately triggered the communal riots. It is further argued that the accused persons in furtherance of criminal conspiracy committed the act of riots in the area of PS Khajuri Khas as well as PS Dayalapur and a “*sense of terror*” was created in the minds of general public. They not only mobilized the mob into a group of rioters by way of provoking their religious feelings, but also provided logistic support like lathis, dandas, stones, acids, knives, swords, fire arms, pistols etc., for committing riots in the area and to eliminate the members of other community. The “*common object*” of the accused persons was to cause maximum damage to the persons and property(ies) of other community. The principal accused Tahir Hussain, who was holding the post of “*Municipal Councillor*”, gathered persons from his community on the basis of religious sentiments, promoted enmity between two communities on the ground of religion and facilitated them to the rooftop of his building. The co-accused persons in the matter were very well known to him and some of them are his close relatives, due to which “*meeting of minds*” took place very quickly.

6. **As regards the applicant**, it is specifically argued that he has been categorically identified by PWs Kuldeep Bansal and Narender Bansal, however, at this stage, **it is not disputed that their statements recorded under Section 161 Cr.P.C are “undated”**. It is further argued that besides aforesaid, the presence of applicant at the spot/SOC has also been confirmed by Constable Pawan and Constable Saudan, who were lying posted at “**Beat Constable**” in the area/locality in question.

7. As a corollary thereof, it is further argued that the **role attributed to applicant is of promoting enmity and disharmony by exhorting to rioting**. It is

further submitted by the learned Special PP that after suffering gunshot injuries, injured Prince Bansal was not in a position to get his statement recorded. His MLC prepared in the matter clearly shows the injuries suffered by him to be “***grievous and danger to life***”. He could ultimately get his complaint/statement recorded on 02.03.2020. Injured Prince Bansal was initially taken to Sushrat Trauma Centre, from where he was referred to LNJP Hospital and as such, his MLC is from the said hospital and not from Sushrat Trauma Centre. It is emphasized that the “***common object***” of the unlawful assembly of which the applicant was a part was to cause ***maximum damage to the persons and property(ies) of other community*** and the role attributed to the applicants were to arouse the communal feelings of his community and inciting them by pelting stones and firing at the persons of other community.

8. As regards the contention of the learned counsel for the applicant that there is delay in recording of FIR in the matter, it is argued that the riots at or around the scene of crime were “***very fierce***” from 23.02.2020 till 26.02.2020. Several persons were injured; public and private property(ies) worth crores of rupees were vandalized, arsoned and torched. There was curfew like atmosphere at or around the area. The police officials of PS Dayalpur remained busy in law and order duty and as such, delay in recording of FIRs took place. In support of his aforesaid contention, 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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To be specific, it is argued that incident in question is dated 25.02.2020 and pursuant to receipt of DD No.115A, dated 25.02.2020, IO reached at Trauma Centre on 26.02.2020 and on the said date, injured Prince Bansal was not found fit for giving statement. The situation was such that he was not able to make DD Entry in the police station to attend the injured on 26.02.2020 in the hospital, but he received information on 25.02.2020 itself, which is evident from DD No.115A.

9. It is further submitted that besides the case in hand, applicant is also involved in several other cases of riots. **It is further argued that recently vide detailed order dated 31.03.2021, this Court has already dismissed the regular bail application of co-accused Gulfam @ VIP and as such, dismissal of instant bail application has been prayed for.** 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 released on bail, the applicant may threaten the injured and other public witness(es), who are residents of the same locality and as such, dismissal of the instant application has been prayed for.

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

11. **Admittedly, injured Prince Bansal did not specifically name the applicant in his complaint dated 02.03.2020. The applicant is not visible in any CCTV footage/video-clip. No recovery of any sort has been effected from the applicant.** It is a matter of record that the statements (recorded under Section 161 Cr.P.C) of P.Ws Kuldeep Bansal and Narender Bansal are “**undated**” and no suitable/plausible explanation in this regard has been accorded on behalf of investigating agency. Be that as it may, it is further a matter of record that **even no call at number 100 was made by the aforesaid witnesses on the date of incident.** As regards the identification of applicant by Constable Pawan (No.1139/NE) and Constable Saudan (No.1138/NE), it is noted that same is hardly of any consequence, as this Court is not able to comprehend as to why said Beat Constables waited till the recording of their statements under Section 161 Cr.P.C to name the applicant, when they had categorically seen and identified the applicant indulging in riots on the date of incident and the applicant being previously known to them. 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 is beyond comprehension. This casts a serious doubt upon the credibility of aforesaid police witnesses.

12. 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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13. At this stage, I do not find any substance in the submissions of learned Special PP that since regular bail application of co-accused Gulfam @ VIP stood dismissed by this Court vide order dated 31.03.2021, so the instant bail application is liable to be dismissed for the simple reason that **applicant has not been categorically named by injured Prince Bansal vide his complaint dated 02.03.2020;** whereas, co-accused Gulfam @ VIP was not only categorically named by the injured, but his role of firing from the roof-top of principal accused Tahir Hussain was also categorically attributed to the said co-accused.

Instead, I find that the role assigned to applicant is on the similar lines as attributed to co-accused Tanveer Malik, who already stood admitted on bail by Hon'ble High Court of Delhi vide order dated 04.02.2021 (passed in Bail Application No.3864/2020).

14. Needless to say, investigation in the matter is complete and chargesheet has already been filed; trial in the matter is likely to take long time; applicant cannot be made to incarcerate in jail for infinity merely on account of the fact that other persons who were part of the riotous mob have to be identified and arrested in the matter.

15. Keeping in view the aforesaid fact, I find that the applicant also deserves bail in the matter on the ground of parity with co-accused Tanveer Malik.

16. Accordingly, 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 the Court, 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.

17. The application stands disposed off accordingly.

18. It is hereby clarified that anything stated hereinabove shall not be construed as expressing any opinion on the final merits of the case.

19. 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)
ASJ-03(NE)/KKD COURTS/05.04.2021