

IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on : 13th March, 2018

Date of decision : 10th April, 2018

BAIL APPLN. 537/2018

KAILASH CHAND JAIN

..... Petitioner

Through: Mr. Manoj Ohri, Sr. Adv with. Mr.
Rajesh Srivastava, Mr. Narveer
Dabas, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Ashish Dutta, APP for State.
Mr. Gaurav Singh, APP for SIT.
Mr. Surender Mohit Singh, APP for
SIT.
IO Inspr. Jagdish for SIT.
ACP Ranvir Khatri for SIT.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

ANU MALHOTRA, J.

1. Vide the present bail application, the petitioner Kailash Chand Jain seeks the grant of bail of anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 in FIR No. 137/1991, registered at the Police Station Shahdara and now known as Police Station Welcome, registered under Sections 120B/147/148/149/302/395/397/427/436/201 of the Indian Penal Code, 1860 submitting to the effect that ;

- (a). he is innocent and has been falsely implicated;
- (b). that there are no chances of his influencing the course of

investigation or tampering with the evidence;

(c). that the investigation in the matter is complete;

(d). that no recovery is to be effected;

(e). that similarly placed accused persons named in the FIR have been granted anticipatory bail by the learned Sessions Court;

(f). that he is willing to furnish sound surety to the satisfaction of this Court, if anticipatory is granted to him;

(g). that he is ready to abide by the terms, conditions, if any, imposed by this Court while granting anticipatory bail;

(h). that the petitioner is a permanent resident of Delhi and has deep roots in society;

(i). that there are no chances of his fleeing from justice;

(j). that he has clean antecedents and no case has been registered against him; and

(k). that he has already appeared before the SIT and has already joined the investigation; and

that his anticipatory bail seeking grant of anticipatory bail filed before the learned Additional Sessions Court-04 (Shahdara), Karkardooma, Delhi was rejected on an erroneous premise observing to the effect that the case of the applicant was distinguishable from others granted bail in as much as the charge-sheet had been filed against them submitting to the effect that the charge-sheet was also filed against the present applicant.

STATUS REPORT OF SIT

2. The status report of the State on record indicates that the FIR in

question was registered on the recommendations of the Justice J.D. Jain and Sh. D.K. Agarwal Committee on the basis of an affidavit dated 19.09.1985 filed by Sh. Sardool Singh s/o Sh. Nattha Singh before the Justice Ranganath Misra Commission of Inquiry wherein the complainant Sh. Sardool Singh s/o Sh. Nattha Singh had mentioned that on 02.11.1984 at about 5.30 a.m., a mob of 200-300 persons came to his house carrying iron rods, sticks, countrymade pistols, revolvers, kerosene oil and white powder etc. and the mob threw burning clothes soaked with kerosene oil and white powder in his house and the mob looted his house and set it on fire after looting and killed seven members of his family including his father Nattha Singh, mother Surjeet Kaur, brother Kashmira Singh and four sisters namely Bimal Kaur, Kamaljeet Kaur, Nirmal Kaur and Urmil Kaur by burning and gun shots fired by the mob. The complainant Sh. Sardool Singh identified 11 accused persons including the applicant Kailash Chand Jain in the mob, who were responsible for the murder of his family members stating that he somehow managed to save his own life.

3. It is reported through the status report that investigation of this case was initially conducted by SI Omprakash of the Anti Riot Cell, Delhi police and subsequently by SI Vipin Nayyar, SI Ramesh Kumar and SI Jagpal Singh of the Anti Riot Cell, Delhi Police and after investigation, the case was sent as untraced on 06.01.1993 as the complainant Sh. Sardool Singh could not be traced out during investigation by the investigating agency. It has further been stated that after constitution of SIT (1984 Riots) by the MHA, this case was

thoroughly examined by the SIT and after scrutiny it was decided that this case be further investigated and the case was thus further investigated which investigation was stated to have been conducted after giving intimation to this effect to the Court of the learned MM, Karkardooma Court, Delhi on 01.07.2017 and that during the course of the further investigation, the complainant Sh. Sardool Singh was traced out and was examined and his statement was recorded under Section 161 of the Code of Criminal Procedure, 1973 in which he stated about the murder of seven of his family members and named 12 accused persons from the mob including Kailash Chand Jain as he knew them very well being his neighbours and specifically mentioned about the individual role of some of the accused persons and he specifically mentioned that the accused Kailash Chand Jain had abused his mother and played an active part in the commission of the offences. He also stated that the co-accused Virender Singh was firing with his double barrel gun from the roof of the house and looting and burning his house and that he, the complainant was scared for his life and therefore he changed his name from Sardool Singh to Anil Kumar and kept on changing his residence. As per the status report, the statement under Section 164 of the Code of Criminal Procedure, 1973 of the complainant Sh. Sardool Singh was recorded on 13.07.2017 in which he reiterated the incident of 02.11.1984 and named the accused persons including the applicant Kailash Chand Jain specifying his role in the commission of the offence, as being the member of the unlawful assembly and that he was abusing the complainant and his family and stated that the co-accused Virender Singh was firing from his roof and

he shot dead the complainants' sister Vimala and that the co-accused Rajender Singh fired at the applicants' mother from a countrymade pistol in front of his presence.

4. The status report dated 13.03.2018 under the signatures of Inspector Jagdish Kumar, SIT (1984-Riots), MHA indicates that the applicant Kailash Chand Jain alongwith 11 other persons has been charge sheeted without arrest on the basis of evidence collected during investigation by the SIT and of these, against four accused persons the proceedings have already abated due to their demise. The cognizance of the offence against the accused persons was taken by the learned MM on 22.12.2017. The SIT further submits that the allegations against the applicant are serious in nature and as the complainant had apprehended threat to his life, he had changed his name and had also kept on changing his residence due to fear of the accused persons thus the application of the applicant be dismissed.

5. Arguments were addressed on behalf of the applicant and the State.

**CONTENTIONS QUA ASPECT OF MAINTAINABILITY OF
APPLICATION FOR ANTICIPATORY BAIL, THOUGH
CHARGESHEET FILED**

6. It was at the outset contended on behalf of the State that as the charge sheet in the instant case had already been filed, the application under Section 438 of the Code of Criminal Procedure, 1973 cannot survive and that the regular bail application now ought to be filed by the applicant before the Court of the MM concerned and that the application under consideration was not maintainable. Reliance in

relation thereto was placed on behalf of the State on the verdict of *Shri Gurbaksh Singh Sibbia and Ors. Vs. State of Punjab and Sarbajit Singh and Anr. Vs. State of Punjab decided on 09.04.1980 AIR 1980 SC 1632* wherein it is observed to the effect :-

“Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has 'reason to believe' that he may be arrested for a non-bailable offence. The use of the expression 'reason to believe' shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief', for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.”

7. In relation to this aspect, it is essential to observe that in terms of Section 438 of the Code of Criminal Procedure, 1973 for submission of an application thereunder, all that is required is a reason to believe that a person may have that he/she may be arrested on an accusation of having committed a non-bailable offence and no distinction between a charge sheet having been filed or not, does not

fall within the parameters thereof and is not brought forth through the provision of Section 438 of the Code of Criminal Procedure, 1973.

8. This is so in as much as laid down by the Division Bench of this Court in ***Court on Its Own Motion Vs. State 2017 (4) JCC 2586*** whilst answering the reference under Section 395(2) of the Code of Criminal Procedure, 1973 of the learned Chief Metropolitan Magistrate, East District, Karkardooma Courts, Delhi to the effect: -

“Whether a Metropolitan Magistrate can examine the discretion exercised by the IO for arresting on non-arresting the accused persons; while considering the charge-sheet at the stage of taking of cognizance and if it is found that the IO has not exercised his discretion lawfully, whether the Court of MM can return the charge-sheet for further investigation on the point of arrest of accused persons”

has categorically observed vide paragraph 26(v) thereof to the effect: -

26(v). This Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/Investigating Agency during the investigation nor produced in custody as envisaged in Section 170 Cr.P.C. call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because chargesheet has been filed is against the basic principles governing grant or refusal of bail.”
(emphasis supplied)

makes it apparent thus that there is no embargo to a person being released on anticipatory bail merely because a charge sheet has been filed.

9. The verdict of the Hon'ble Supreme Court in ***Bharat Choudhary and Anr. Vs. State of Bihar and Anr. Decided on 08.10.2003 AIR 2003 SC 4602*** categorically lays down vide para 7 thereof to the effect that there is no restriction in regard to the exercise of this power in a suitable case either by the Court of Sessions, High Court or Supreme Court even when cognizance is taken or charge sheet is filed in as much as the object of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention and merely because either cognizance of the complaint has been taken or the investigating agency has filed a charge sheet that would not by itself, as was held by the Apex Court to prevent the concerned Court from granting anticipatory bail in appropriate cases. Para 7 of the said verdict of Court is to the effect: -

“From the perusal of this part of Section 438 of the Crl. P.C., we find no restriction in regard to exercise of this power in a suitable case either by the Court of Sessions, High Court or this Court even when cognizance is taken or charge sheet is filed. The object of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The fact, that a Court has either taken cognizance of the complaint or the investigating agency has filed a chargesheet, would not by itself, in our opinion, prevent the concerned courts from granting anticipatory bail in appropriate cases. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so

also the need for custodial interrogation, but these are only factors that must be borne in mind by the concerned courts while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of charge sheet cannot by themselves be construed as a prohibition against the grant of anticipatory bail. In our opinion, the courts i.e. the Court of Sessions, High Court or this Court has the necessary power vested in them to grant anticipatory bail in non-bailable offences under Section 438 of the Crl. P.C. even when cognizance is taken or charge sheet is filed provided the facts of the case require the Court to do so.”

(emphasis supplied)

10. Vide para 11 of this verdict, it has been categorically observed to the effect that the contention of the State that the Courts specified in Section 438 of the Crl.P.C. are denuded of their power under the said Section where either cognizance is taken by the concerned court or charge sheet is filed before the appropriate Court,- is untenable.

11. The verdict of the Apex Court in ***Ravindra Saxena Vs. State of Rajasthan decided on 15.12.2009 in Criminal Appeal No. 2406 of 2009*** is to similar effect. Vide para 8 of the verdict, it has been observed categorically to the effect that the anticipatory bail can be granted at any time so long as the applicant has not been arrested and vide para 10 of the said verdict, it has been categorically observed by the Apex Court to the effect that the salutary provision contained in Section 438 of the Code of Criminal Procedure, 1973 was introduced to enable the Court to prevent the deprivation of personal liberty and it cannot be permitted to be jettisoned on technicalities such as “the challan having been presented anticipatory bail cannot be granted” and

the observations of the Apex Court in *Gurbakh Singh Sibbia and others Vs. State of Punjab (1980) 2 SCC 565* were adverted to observing to the effect that the anticipatory bail can be granted at any time so long as the applicant has not been arrested and that the merits of these issues shall have to be assessed at the time of the trial of the accused persons and denial of anticipatory bail only on the ground that the challan has been presented would not satisfy the requirements of Section 437 and 438 of the Code of Criminal Procedure, 1973. **Thus, it is apparent that the contention raised on behalf of the State that the charge-sheet having been filed, the present petition under Section 438 of the Code of Criminal Procedure, 1973 is not maintainable,- cannot be accepted and thus the present application under Section 438 of the Code of Criminal Procedure, 1973 is held to be maintainable.**

**ALLEGATIONS AS IN AFFIDAVIT DATED 19.09.1985 OF
COMPLAINANT SARDOOL SINGH**

12. It is essential to advert to the affidavit dated 19.09.1985 of the complainant Sh. Sardool Singh submitted to the Justice Ranganath Misra Commission of Inquiry as detailed in the charge-sheet that has been submitted, which is to the effect that : -

“1. Sardool Singh S/o Natha Singh, aged about 23 years previous R/o 14A, Chajju Colony, Babarpur, Shahdara, Delhi-32, now resident of C-366, Shaheed Nagar, UP Boarder Distt. Ghaziabad, P.O. Chikamlapur, do hereby solemnly affirm and state as under:-

Name of the persons killed:-

- 1. Father- Natha Singh s/o Chet Singh aged 65 years*
- 2. Mother- Surjit Kaur w/o Natha Singh, aged 60 years*
- 3. Brother- Kashmira Singh S/o Natha Singh aged 35 years*
- 4. Sister-Bimal Kaur d/o Natha Singh aged 24 years*
- 5. Sister- Kamaljit Kaur d/o Natha Singh aged 22 years*
- 6. Sister-Nirmal Kaur d/o Natha Singh, aged 20 years*
- 7. Sister- Urmil Kaur D/o Natha Singh, 18 years*
- 2. On 31.10.84 when we learnt of the sad news of the death of Prime Minister, we were greatly grieved.*
- 3. On 01.11.84 at 9.00 a.m. we came to know that outside Sikhs are being killed and burnt and that their houses looted and shops are being burnt. For this reason, we did not open the factory and remained in the house.*
- 4. On 2.11.84 at about 5.30 a.m. a mob of 200 to 300 people came to our house. They were carrying their hands iron rods, sticks, country-made pistols, revolvers, kerosene oil and white powder etc. They threw kerosene oil soaked burning clothes into our house. They also threw white powder. They shouted from outside to us to come out from the house but no*

one went out. The mob then broke the wall of house and came inside the house and they shot at all the family members, gave them blows and threw them down and burnt them. They looted the house and set it on fire after looting. Then they started searching for me. I ran from there. I took shelter in a dilapidated building near soap factory in Kabir Nagar. That very day at 9.00 p.m. I went to the house of my friend there. From there on 9.11.84 I went to Suchkhand Nanaksar camp Indrapuri. There I stayed for 2 months.

5. I recognize many persons from that mob:-

- (i) Dhanbir Singh s/o Chajju Singh*
- (ii) Rattan Singh s/o Chajju Singh*
- (iii) Om Singh*
- (iv) Virender Singh s/o Dhanbir Singh*
- (v) Rajinder Singh s/o Dhanbir Singh*
- (vi) Rajpaul Singh s/o Rattan Singh*
- (vii) Ashok Kumar s/o Om Singh*
- (viii) Jagdish s/o Ram Nath*
- (ix) Vijay Singh s/o Om Singh*
- (x) Brahm Singh*
- (xi) Kailash Jain*

These people had broken into our house and had brought the mob inside.

6. On 12.11.84 I went to register the report. Then S.I. Tulsi Dass went to call those people and brought them to the police station. At that time also Virender Singh was armed with a revolver. I told S.I. but he did not pay any attention. The S.I. forcibly made me write that I had no grievance against them and they did not care to take action against them.”

13. As per the charge sheet submitted by the SIT, Sh. S.L. Chopra, Secretary, Jain – Agarwal Committee, which looked into the riot cases of October-November 1984 vide letter dated 04.03.1991 addressed to the Administrator, conveyed the recommendation of the Committee for registration and investigation of case on the basis of the affidavit of Sh. Sardool Singh and the Delhi Administration Home Police-II Department) vide letter dated 15.05.1991 conveyed to the Commissioner of Police, Delhi, the acceptance of the recommendation of the Committee by the Lt. Governor, Delhi and accordingly FIR No. 137/1991 was registered under Sections 147/148/302/427/436/395/397 of the Indian Penal Code, 1860 dated 16.05.1991 PS Shahdara and during the investigation of the case by the Riot Cell, Delhi Police the complainant Sh. Sardool Singh could not be traced out and the case was sent as untraced on 06.01.1993 which was accepted by the learned ACMM and thereafter on the constitution of the Special Investigation Team by the Government of India, Ministry of Home Affairs vide its order No. 13018/13/2014-Delhi-1 (NC) dated 12.02.2015 for investigation / re-investigation of the cases of 1984 riots, as per the charge sheet all efforts were made out to trace out the complainant and

a public notice was issued on 2nd / 3rd March, 2017 in leading newspapers and thereafter the SIT was able to trace out the complainant living at house No. A-33/F-2, Dilshad Garden, Delhi after changing his name as Anil Kumar and during the course of the investigation, the complainant Sh. Sardool Singh in his statement under Section 161 of the Code of Criminal Procedure, 1973 stated in his statement about the murders of his seven family members including his father Nattha Singh, mother Surjeet Kaur, brother Kashmira Singh and four sisters namely Bimal Kaur, Kamaljeet Kaur, Nirmal Kaur and Urmil Kaur apart from other allegations against the other accused persons.

**STATEMENT UNDER SECTION 164 OF THE CODE OF
CRIMINAL PROCEDURE, 1973 OF THE COMPLAINANT
SARDOOL SINGH**

14. In his statement under Section 164 of the Code of Criminal Procedure, 1973 dated 13.07.2017 of the complainant Sh. Sardool Singh, he stated to the effect that

“it was 5.30 AM on 02.11.1984 and crowd of around 300-400 persons came to her colony No. 14A, Chhaju Ram, Guru Nanak Bapur. I saw all these persons, one of the boy was named

- (1) Virender Singh son of Dhanbir Singh;*
- (2) Rajinder Singh, son of Dhanbir Singh;*
- (3) Kailash Chand; “applicant herein”- fathers’ name I do not recall;*
- (4) Ashok Kumar, mother’s name Mankori*
- (5) Rajpaul Singh son of Rattan Singh @ Hari Om;*

(6) Vijay Singh son of Om Singh; and

(7) Brahm Singh- fathers' name I do not recall.

*I had given the names of 11 persons before the Ranganath Misra Commission of Inquiry but now I do not recall all the names. These persons were part of that crowd and they were killing the innocent persons and were throwing them in all directions after cutting them and amongst these persons, one was Jagdish Vashisht whose father's name was perhaps Sh. Ram Nath. The house of Virender was near our house. He was sitting on his roof and was firing at persons passing by. Rajender had in front of me fired with a Katta on my mother. Kailash Chand (the applicant herein) was abusing my mother and all of us and was saying **"in kutto ko yaha se nikalo"**. I have seen all of them. One person among this crowd named Kali Charan assaulted my brother on his ear drum with a lathi and my brother shrieked and fell down. Virender fired at my sister Vimala also. On seeing all this, my father came out and shouted that they should kill him too. All these persons killed my father also. All persons of the crowd were killing and assaulting. I climbed above the kitchen and was watching in hiding and after that I ran away. I hid in one place and cut my hair and saved myself. The matter is quite old so I do not recall properly and I have stated what I remember."*

15. Through this statement, the complainant states to the effect that the applicant Kailash Chand Jain had abused everyone including his mother and had shouted **"IN KUTTO KO YAHA SE NIKALO"**.

SUBMISSIONS OF SIT IN CHARGESHEET

16. The charge sheet filed indicates that four accused persons (1) Rattan Singh s/o Chhaju Singh (2) Om Singh s/o Chhaju Singh (3) Ghanveer Singh s/o Chhaju Singh and (4) Brahm Singh have expired and the applicant was amongst the remaining eight accused persons, who were summoned and interrogated by the SIT and it was alleged that the applicant alongwith other co-accused persons i.e. 11 accused persons i.e. (1) Rattan Singh s/o Chhaju Singh (2) Om Singh s/o Chhaju Singh (3) Ghanveer Singh s/o Chhaju Singh (4) Rajpal Singh s/o Rattan Singh (5) Ashok Kumar s/o Inder Singh (6) Vijay Singh s/o Om Singh (7) Virender Singh s/o Ghanveer Singh (8) Rajender Singh s/o Ghanveer Singh (9) Jagdish Vashisht @ Jagdish Prasad Sharma s/o Ram Narayan (10) Brahm Singh (11) Kali Charan and other more person in criminal conspiracy with one another armed with deadly weapons like iron rods, sticks, double barrel gun countrymade pistols, revolvers, kerosene oil and white powder etc. committed the offences of rioting, dacoity, murder, mischief by fire, destruction of property and evidence, causing death of family members of the complainant Sh. Sardool Singh and the mob had looted and burnt down his house and they had burnt / disposed the dead bodies of the victim and no dead body could be found and it was alleged in the charge sheet that thus these accused persons were active members of an unlawful assembly and thus the charge sheet sought that the Court takes cognizance of the offences and issue process against them in accordance with law so that the prosecution could commence at the earliest.

ANALYSIS

17. Significantly in his statement under Section 161 of the Code of Criminal Procedure, 1973 dated 03.07.2017 during the course of re-investigation also, the complainant had alleged that he recognized the applicant Kailash Chand Jain as he was a member of the political party and had contested the elections and was influencing persons of the locality and alleged against him that the applicant Kailash Chand Jain had abused his mother and whilst abusing her, had asked her to bring out her family members whilst the mob was assaulting his family members and others and that on 02.11.1984 at about 5.30 a.m. he was sleeping and his sister Vimala came and told him that there was a large crowd outside the house, which was setting things on fire and he, the complainant went on to the roof from where he saw 300-400 persons, who were collected and he saw his neighbor Virender Singh firing from the roof of his house from a gun and saw Rajinder Singh @ Raje was standing in front of the house of the complainant and firing at persons in which his mother Surjit Kaur was also fired at and that the person named Kali Charan had assaulted Kashmira Singh, the brother of the complainant with a lathi on his head and he had fallen down and his sister Nirmal Kaur came out and she was fired at and the accused Kailash Chand Jain (i.e. the applicant herein) was abusing his mother and asked her to bring them out i.e. 'dogs' and he, the complainant was watching all this for 5-6 minutes in hiding and that he could identify the persons whom he had named whom he recognized and that he had taken a knife from his house and had gone through the roofs of the house and had gone to a plot which had a

boundary wall and sat there and had cut his hair and saved himself.

18. The co-accused Kali Charan, Jagdish Prasad and Ashok Kumar are on bail, have been granted bail vide order dated 01.03.2018 of the learned Additional Sessions Court-04 (Shahdara), Karkardooma, Delhi. The allegations against these persons are apparently far more serious than those against the applicant. Another co-accused Vijay Singh has been granted bail on 06.03.2018 by the said Court. The premise on which the application of the applicant Kailash Chand Jain was rejected vide order dated 06.03.2018 by the learned Additional Sessions Court-04 (Shahdara), Karkardooma, Delhi to the effect that the case of the applicant was distinguishable from others **in as much as the charge sheet had been filed against them is erroneous, in as much as the charge sheet placed on record as admitted on behalf of the State indicates clearly that the said charge sheet has also been filed against the applicant.** The role attributed to the co-accused Kali Charan is that he assaulted the brother of the complainant named Kashmira Singh with a lathi on his ear drum as a consequence of which he shrieked and fell down, whereas the role attributed to the applicant Kailash Chand Jain is to the effect that he was abusing the mother of the complainant and incited the mob calling upon the mob "IN KUTTO KO YAHA SE NIKALO". The other two accused Jagdish Prasad and Ashok Kumar as per the statement under Section 161 of the Code of Criminal Procedure, 1973 were also involved in the assaults as members of the mob.

19. It was contended by the State that the release of the applicant on anticipatory bail would hamper the trial as witnesses would be

intimidated.

20. It is thus essential to advert to the verdict of this Court in *Sajjan Kumar Vs. The State (through CBI)* dated 26.02.2010 in bail application 306/2010, and in bail applications no. 306/2010, 308/2010 and 309/2010 in similar criminal complaints wherein in para 30 thereof observed to the effect:-

“30. I do not find much force in the contentions of learned senior counsel that in case petitioners are enlarged on bail it will hamper fair trial and witnesses may not depose against the petitioners due to the fear and threat. Admittedly all along for the last 25 years petitioners have remained at large as they were not in custody. CBI conducted investigation almost for about five years. During this period, CBI did not deem it fit to arrest any of the petitioners. In spite of petitioners being at large, witnesses came forward and made statements before the CBI. There is no specific allegation against the petitioners of having threatened or influenced any of the witnesses, so as to refrain any of them from making statement against them. Besides this, it is evident from the facts narrated herein above that after the unfortunate and appalling incident the relatives or the family members of victims were not left alone to fend for themselves as members of various Commission/Committees including eminent jurists had been visiting the affected areas and even met the families of the victims residing in camps and interacted, counselled, encouraged, offered support to them right from the beginning.

31. Indeed, it is true, that offence with which petitioners have been charged by the CBI is of grave nature and ordinarily in such cases courts would be slow in admitting the accused on anticipatory bail, in the face of statements of eye witnesses. However, in

the peculiar facts and circumstances of this case and for the reasons as mentioned in the preceding paras hereinabove, I am of the view that it would not be justifiable to detain the petitioners in custody, after lapse of 25 years of incident.”

21. Taking into account the factum that the charge sheet was filed by the investigating agency without arrest of the applicant despite the factum of existence of the affidavit of the complainant dated 19.09.1985 before the Justice Ranganath Misra Commission of Inquiry and despite the factum that the applicant was named in the statement under Section 164 of the Code of Criminal Procedure, 1973 dated 03.07.2017, it is apparent as laid down vide the verdict of the Hon'ble Apex Court in *Dataram Singh Vs. State of Uttar Pradesh and Ors. Decided on 06.02.2018* in Criminal Appeal No. 227/2018 that the applicant was not arrested during the entire period of investigation when that person perhaps had the best opportunity to tamper with the evidence or influence witnesses and where the investigating officer did not find it necessary to arrest an accused person during the investigation, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed.

22. **The charge sheet in the instant case however indicates that the applicant has joined the investigation and was summoned and interrogated by the SIT.**

23. Rather, it was the complainant Sh. Sardool Singh who could not be traced out initially during investigation by the investigating agency and there is nothing to indicate that the applicant was hiding from the investigating officer.

24. Furthermore it is essential to observe that almost 38 years have elapsed from the date of incident, with the specific role alleged against the applicant being to the extent of his inciting the mob and abusing the mother of the complainant.

CONCLUSION

25. It is apparent thus that the applicant is entitled to be released on bail on the grounds of parity with the co-accused Kali Charan already granted bail vide order dated 01.03.2018 of the learned Additional Sessions Court-04 (Shahdara), Karkardooma, Delhi and thus the present applicant in the event of arrest is allowed to be released on bail subject to the applicant furnishing a personal bond in the sum of Rs.75,000/- with one surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that;

- (i) *he shall not leave the country without the permission of the learned Trial Court;*
- (ii) *he shall not intimidate the complainant and the witnesses in any manner;*
- (iii) *he shall not tamper with the evidence;*
- (iv) *he shall not commit any offence whatsoever; and*
- (v) *he shall diligently appear before the trial court.*

26. Nothing stated hereinabove shall however amount to an expression of opinion on the merits or demerits of the case.

27. The Bail Application No. 537/2018 is disposed of accordingly.

ANU MALHOTRA, J

April 10th 2018/mk