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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 04th August, 2020

+ **BAIL APPL. 1231/2020**

MOHD. ANWAR

..... Petitioner/Applicant

Through: Mr. Muhammad Arif, Advocate.

versus

THE STATE OF (NCT) DELHI

.... Respondent

Through: Mr. Amit Prasad, SPP and Mr. Tarang
Srivastava, APP for the State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

The applicant Mohd. Anwar is an accused in case FIR No.105/2020 dated 04.03.2020 registered under sections 147/148/149/427/436 of the Indian Penal Code, 1860 at PS: Dayalpur, Delhi. It must be mentioned at the outset that the applicant was first arrested in a different case bearing FIR No.111/2020 dated 04.03.2020; and was subsequently formally arrested in the present case. The applicant has been in judicial custody from the date of his arrest in the other case on 03.04.2020 till date.

2. The applicant is also accused in the following other cases:

S. No.	Date of FIR	FIR No.	Sections	Police Station
1.	04.03.2020	111/2020	147/148/149/427/436 IPC	Dayalpur
2.	04.03.2020	112/2020	147/148/149/427/436 IPC	Dayalpur
3.	04.03.2020	114/2020	147/148/149/427/436 IPC	Dayalpur
4.	04.03.2020	130/2020	147/148/149/427/436 IPC	Dayalpur

3. By way of the present application, the applicant seeks regular bail.

4. It is stated in the application that the applicant has already been granted bail in FIRs Nos.111/2020 and 112/2020 on 13.05.2020 and 19.05.2020 respectively, by the learned Sessions Court.

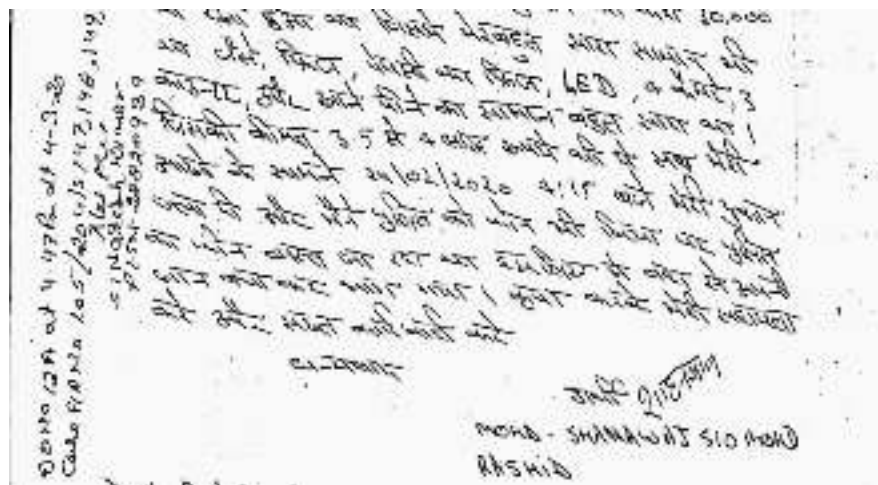
5. It is important to mention that the applicant is not named in the present FIR, which stands registered against unnamed accused persons.

6. The incident in respect of which the FIR came to be registered is alleged to have taken place on 24.02.2020, on which date, according to the police, a mob engaged in rioting and destruction of property in certain areas of North-East Delhi, during which the property of one Mohd. Shanawaz, being shop No.27, property No.A-126A, Mahalaxmi Enclave, Shiv Vihar Crossing, Delhi was burnt down, whereupon he filed a complaint with the police on 04.03.2020 i.e. around 10 days after the incident.

7. Notice in this bail application was issued on 16.06.2020. Status reports dated 03.07.2020, 20.07.2020 and 23.07.2020 were filed by the State. Medical status report dated 30.06.2020 and nominal rolls dated 30.06.2020 and 07.07.2020 have also been received from the Jail Superintendent.

8. As gathered from the contents of the FIR, the status reports and from submissions made in the matter, the stand of the State is the following:

- (i) that on 04.03.2020 complainant/Mohd. Shanawaz, who is stated to have a shop in Shiv Vihar, Delhi, made a written complaint to the Police Headquarters alleging *inter alia* that on 24.02.2020 at 4:15 pm a crowd of rioting persons burnt down his shop in front of his eyes; that he telephoned the police but since their phone-lines were busy, the complainant ran away from the spot to save his life. The relevant extract of complaint dated 04.03.2020 is as below:

A photograph of a handwritten document in Hindi, which is an extract from a complaint. The text is written in a cursive script. On the left side, there is a vertical line of text that appears to be a date and time: '24.02.2020 4:15 PM'. The main body of the text describes an incident where a shop was burnt down. At the bottom right, there is a signature and the name 'Mohd. Shanawaz' followed by 'Rashid'.

(extract from the record)

- (ii) that on the basis of the complaint a *rukka* was prepared on 04.03.2020, based on which the FIR came to be registered;
- (iii) that, according to the police, thereafter two other statements of the complainant were recorded. One was a supplementary statement dated 'nil' which, it was clarified during the course of the hearings, was recorded on 10.03.2020, in which the complainant says that Investigating Officer S.I. Rajeev Kumar visited and inspected the complainant's shop on 10.03.2020; and drew a site-plan of the scene of crime on the complainant's pointing-out; and that the complainant also accompanied the I.O. to look for the offenders but did not find anyone. It is further recorded in this statement that the complainant also gave to the I.O. photographs of his shop. The relevant portion of the statement is placed below:

Suplimentary Statement of MOHD SHANAWAJ S/O MOHD RASHID Add- A-528, G.NO.22 PHASE -10 SHIV VIHAR DELHI-94

U/S 161 CrPC

व्यान किया कि मैं अपनी पूर्व की मर्जी शिकायत की नाहिद करता हूँ। और आज आप मेरे नाम आए और मेरी दुकान का मुलाहजा किया और मेरी निशानदही पर आपने सक्शा मौका देया किया। आप मुझे साध लेकर मुल्जिमों की काफी तलाश की लेकिन कोई नहीं मिला और मैंने अपनी दुकान कि फोटोग्राफ आपको दिये जो आपने मेरा व्यान लिखा जो सुर लिया ठीक है।

(extract from the record)

(iv) that thereafter another statement of the complainant, being supplementary statement dated 10.04.2020 was recorded, in which he said that on 24.02.2020 around 4:00 pm a group of rioters came from Shiv Vihar side armed with sticks, iron rods and petrol bombs/petrol-filled bottles, entered his shop, caused breakage and set it on fire. The statement further records that today i.e. 10.04.2020, the I.O. visited the shop and showed the complainant certain photos and videos on the I.O.'s cellphone, in which the complainant identified two persons who were involved in setting his shop on fire; and that the complainant would be able to identify other persons also if confronted. The relevant extract of the statement is as under:

व्यान किया कि मैं अपनी पूरा में दी गई शिकायत को सही मानते हुए निम्न व्यान करता हूँ कि मैं दुकान no-27, prop wo A-126 Mahalaxmi Enclave शिव विहार तिराहा दिल्ली में पान बीड़ी चाय समोसे की दुकान चलाता हूँ। दिनांक 24/02/20 को मैं अपनी दुकान पर सुबह आ गया था। तो समय करीब 4:00 pm पर अचानक शिव विहार की तरफ से दंगाइयों की भीड़ आई जिसमें से काफी लोगों के हाथों में डंडे व लोहे की रॉड व पेट्रोल बम की बोतलें थीं और मेरी दुकान में घुस गई, मैं जैसे तेजे करके दुकान से बाहर आ गया। दंगाइयों ने मेरी दुकान में तोड़फोड़ मचा दी। और दुकान में आग लगा दी। जो आज आप मेरी दुकान पर आय और आपने मुझे आपने फोन में विडियो और फोटो दिखाय जो मेने दुकान में आग लगाने वाले दो व्यक्तियों को विडियो व फोटो में पहचान लिया है बाकि मौजूद व्यक्तियों को मैं सामने आने पर पहचान सकता हूँ। आपने मेरे से पूछा ताछ करके आज आपने मेरा बदला लिखा पढ़ सुन लिया जो ठीक है।

(extract from the record)

- (v) that in addition, a statement dated 05.03.2020 of Ct. Vikas from PS: Dayalpur was also recorded, in which the Constable says that on 24.02.2020, on instructions of his superiors, he went to Shiv Vihar Junction and Mahalaxmi Enclave to control the rioting going-on there; that a crowd of around 1500-2000 people had gathered there, many of whom were carrying sticks, iron rods and petrol-filled bottles; that the crowd became riotous and around 4:00 pm they started burning down shops and vehicles. The Constable further says that he, alongwith other members of the police staff, tried to reason with the crowd but without success. Most pertinently, the Constable says that in the crowd there were some boys from the local area; from amongst whom he recognizes two boys who were from Mustafabad, namely Firoz Khan s/o Munan Khan and Mohd. Anwar s/o Mohd. Zahid Hussain (i.e. the applicant); and that he can also recognize the other boys if confronted. The Constable says that these boys were carrying petrol-filled bottles, and committed arson in the shops in Mahalaxmi Enclave and ran away thereafter. The relevant extract of the statement is as below:

थाना व आउटर फोर्स को तैनात किया गया था। जहां पर करीब 1500-2000 लोगों की भीड़ इकट्ठी थी जिसमें से काफी लोगों के हाथों में डंडे व लोहे की रॉड व पेट्रोल की बॉटलें थी जो कि काफी उग्र हो रही थी। भीड़ में शामिल लोगों ने समय करीब 4:00 pm पर दुकान no 27 महालक्ष्मी इंकलेव व शिव विहार तिराहा व महालक्ष्मी इंकलेव के आस-पास की दुकानें भी जलाना शुरू कर दिया तथा रॉड पर खड़े हुए वाहनों को भी जलाना शुरू कर दिया। मैंने व अन्य स्टॉफ की मदद से उस भीड़ को काफी समझाने बुझाने की व अपने-अपने घर जाने की रिकवैन्ट की लेकिन भीड़ लगातार उग्र होती रही व नारे बाजी करती रही हालात लगातार बिगड़ रहे थे भीड़ में शामिल लोग दमकल की गाड़ियों को भी अन्दर नहीं आने दे रहे थे भीड़ में काफी शोर शराबा हो रहा था। उग्र भीड़ में सामिल कुछ लड़के थाने के area के भी थे जिनमें दो लड़के मुस्तफाबाद के थे जिनका नाम फिरोज खान S/O मुन्ना खान व Mohd आनवर S/O Mohd जाहिद हुसैन थे और बाकि मालूम लड़कों को मैं सामने आने पर पहचान सकता हूँ जो हाथ में पेट्रोल से भरी बॉटल लिए हुए थे जो महालक्ष्मी इंकलेव में बनी दुकानों में तोड़ फोड़ करके सारा सामान वहाँ फेंक दिया व सामन में पेट्रोल छिड़कर आग लगा दी थी और फिर वहाँ से भाग गए थे। और आज आपने मेरे से पूछा कि क्या बात बिया जो ठीक है।

(extract from the record)

- (vi) that the State further relies on 02 photos, which are stated to be snapshots/screen-grabs of purported CCTV footage of 24.02.2020 at about 4:02 pm from one Rajdhani Public School, in which, according to the State, the applicant Mohd. Anwar is clearly seen in a white shirt. Copies of the snapshots have been filed on record. While counsel for the applicant disputes that the boy in the white shirt is indeed the applicant, it is noticed that in any case the applicant does not appear to be carrying either a stick or an iron rod or a petrol-filled bottle and that the applicant's hands are empty;

(vii) that the State further relies upon call detail records (CDRs) for the period from 15.02.2020 to 27.02.2020 purporting to relate to the applicant's cellphone number 8882289495, to show that on the relevant date and time, i.e. 24.02.2020 at about 4.00 pm, the applicant's cellphone was in the Old Mustafabad area, where the rioting happened.

9. It is on the basis of the aforesaid material that the State alleges that the applicant was one of the persons involved in arson and rioting; for which he was arrested and has been kept in judicial custody ever since.

10. Nominal rolls dated 30.06.2020 and 07.07.2020 show that the applicant is implicated in 04 other cases as set-out in the table above, all of which arose from the episodes of rioting that happened in North-East Delhi in February 2020. The applicant's jail conduct is stated to be 'satisfactory'. The applicant is stated to be in judicial custody since 03.04.2020 i.e. for about 03 months as of 07.07.2020.

11. As per status report dated 20.07.2020, after completing investigation in the case, charge-sheet has been filed on 01.07.2020.

12. Notably, in status report dated 03.07.2020, the State also says:

"6. That notice U/s 91 CrPC were given to the residents/shopkeepers of the area to provide the CCTV Footage of the said incident, although most of the CCTV Camera's in the area were damaged and burnt by rioters. However, a video footage regarding the incident was found

in the mobile phone of accused itself.

* * * * *

“8. That it is pertinent to mention here that during the course of investigation of the riot cases registered at PS Dayalpur, one CCTV footage dated 24.02.2020 of Rajdhani Public School, Mahalaxmi Enclave, was seized in Case FIR No.111/2020 Dated 04.03.2020 U/s 147/148/149/427/436 IPC PS Dayalpur, Delhi, wherein the above said applicant was clearly seen actively participating and instigating others during the riots. In the said CCTV footage, above said applicant/accused was clearly seen instigating other people and **approaching towards the shop of the complainant at around 4:05 PM on 24.02.2020** and the complainant’s shop was damaged, looted and burnt at around 4:15 PM on 24.02.2020. The copy of the CCTV Footage is also enclosed as Annexure-B.

* * * * *

“11. That it is pertinent to mention here that at the time of arrest of accused Mohd. Anwar in case FIR No.111/2020, his mobile phone along with the Micro SD Card was recovered from his possession, which was taken into police possession through seizure memo on 02.04.2020. The said mobile and the Micro SD Card contained the videos of the incident, which were intentionally deleted by accused person Mohd. Anwar. The above said mobile phone has already **been sent to Forensic Science Laboratory, Rohini for the extraction of deleted data** of the mobile phone on 21.04.2020.”

(emphasis supplied)

13. In the above factual matrix, counsel for the applicant submits that *firstly*, there is no credible evidence to identify the applicant from

amongst the mob of rioters at the spot or at the complainant's shop on 24.02.2020. *Secondly*, counsel submits that investigation in the matter is complete and charge-sheet stands filed; that the applicant has been in custody for more than 03 months; and there is no reason to detain him any longer; and the applicant therefore deserves to be enlarged on regular bail.

14. Mr. Amit Prasad, learned SPP and Mr. Tarang Srivastava, learned APP on the other hand oppose grant of bail, submitting that the applicant's identity and presence stands confirmed by the snapshot/video-grabs of the CCTV footage from Rajdhani Public School as well as from the applicant's own cellphone; that the applicant's CDRs also confirm his location at the scene of the crime at the relevant time; that the complainant's statements also point to the involvement of the applicant; and that in his statement Ct. Vikas has in fact identified the applicant.

15. A brief conspectus of the fundamental principles of bail would be in place at this stage. Extracts from some of the most relevant and topical judgements on this point are set-out in the paragraphs that follow.

16. Outlining the considerations for grant or refusal of bail, in *Ash Mohammad vs. Shiv Raj Singh & Anr.*¹ the Supreme Court expressed itself as follows :

¹ (2012) 9 SCC 446

“8. In *Ram Govind Upadhyay v. Sudarshan Singh*², it has been opined that the grant of bail though involves exercise of discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. The heinous nature of the crime warrants more caution and there is greater chance of rejection of bail, though, however dependent on the factual matrix of the matter. In the said case the learned Judges referred to the decision in *Prahlad Singh Bhati v. NCT, Delhi* and stated as follows: (Ram Govind case, SCC p. 602, para 4)

“(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

“9. In *Chaman Lal v. State of U.P.*³ this Court while dealing with an application for bail has stated that certain factors are to be considered for grant of bail, they are: (SCC p. 525)

“... (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witness or

² (2002) 3 SCC 598

³ (2004) 7 SCC 525

apprehension of threat to the complainant, and (iii) prima facie satisfaction of the court in support of the charge.”

“10. In Masroor v. State of U.P.⁴, while giving emphasis to ascribing reasons for granting of bail, however, brief it may be, a two-Judge Bench observed that: (SCC p. 290, para 15)

“15. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case.”

“11. In Prasanta Kumar Sarkar v. Ashis Chatterjee⁵ it has been observed that (SCC p. 499, para 9) normally this Court does not interfere with an order passed by the High Court granting or rejecting the bail of the accused, however, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point.

“9. ... among other circumstances, the factors which are to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced;
and

(viii) danger, of course, of justice being thwarted by grant of bail.”

⁴ (2009) 14 SCC 286

⁵ (2010) 14 SCC 496

* * * * *

“20. Having said about the sanctity of liberty and the restrictions imposed by law and the necessity of collective security, we may proceed to state as to what is the connotative concept of bail. In Halsbury's Laws of England it has been stated thus:

“166. Effect of bail.—The effect of granting bail is not to set the defendant (accused) at liberty, but to release him from the custody of the law and to entrust him to the custody of his sureties, who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law, and he will then be imprisoned....”

“21. In *Sunil Fulchand Shah v. Union of India*⁶ Dr A.S. Anand, learned Chief Justice, in his concurring opinion, observed: (SCC pp. 429-30, para 24)

“24. ... Bail is well understood in criminal jurisprudence and Chapter 33 of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word ‘bail’ is surety.”

(emphasis supplied)

17. In *Ashok Sagar vs. State*⁷ the Delhi High Court has said this :

“35. Authorities on bail, and the jurisprudence relating thereto, are in overabundance, and it is hardly necessary to multiply references thereto. The principles governing exercise of judicial discretion in such cases, appear, however, to be well-settled. The following

⁶ (2000) 3 SCC 409

⁷ 2018 SCC OnLine Del 9548

principles may immediately be discerned, from the aforementioned authorities:

* * * * *

“(ii) While examining the issue, courts are not to presume that the accused would flee justice, were he to be released, and search for evidence indicating to the contrary. Logistically, every accused, who is released during trial, has the potentiality of fleeing. Were this potentiality to be allowed to influence the mind of the court, no accused would be entitled to bail.”

* * * * *

*“(iv) Given this legal position, the nature of the offence committed necessarily has a limited role to play, while examining the merits of an application for bail. This is for a simple reason that the application being examined by the court is not for suspension of sentence, but for release during trial. If the court were to allow itself to be unduly influenced by the nature of the charges against the accused, and the seriousness of the crime alleged to have been committed by him, it would result in obliterating the distinction between grant of bail and suspension of sentence. Inasmuch as the applicant, in a bail application, has yet to be found guilty of the offence with which he is charged, the significance of the nature of the offence stand substantially reduced, while examining the application for bail. Courts have to be alive to the legal position – underscored in the very first paragraph of *Dataram Singh (supra)* - that every accused is presumed to be innocent until proved guilty.”*

(emphasis supplied)

18. In a recent decision in *Sanjay Chandra vs. CBI*⁸ the Supreme Court has held that :

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to

⁸ (2012) 1 SCC 40

ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that **punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.**

“22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, **“necessity” is the operative test.** In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

“23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

“24. In the instant case, we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, **seriousness of the charge** is, no doubt, one of the relevant considerations while considering bail applications but **that is not the only test or the factor;** the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would

not be balancing the constitutional rights but rather “recalibrating the scales of justice”.”

* * * * *

“46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the **investigating agency has already completed investigation and the charge-sheet is already filed** before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.”

(emphasis supplied)

19. Most recently, in ***P. Chidambaram vs. CBI***⁹ the Supreme Court has held :

“22. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the ***nature of accusation*** and the ***severity of the punishment*** in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) ***reasonable apprehension of tampering with the witnesses*** or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the ***likelihood of his abscondence***; (iv) ***character behaviour and standing*** of the accused and the circumstances which are peculiar to the accused; (v) ***larger interest of the public or the State*** and similar other considerations (vide *Prahlad Singh Bhati v. NCT, Delhi*). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner.”

⁹ 2019 SCC OnLine SC 1380

* * * * *

“33. The appellant is not a “flight risk” and in view of the conditions imposed, there is no possibility of his abscondence from the trial. Statement of the prosecution that the appellant has influenced the witnesses and there is likelihood of his further influencing the witnesses cannot be the ground to deny bail to the appellant particularly, when there is no such whisper in the six remand applications filed by the prosecution. The charge sheet has been filed against the appellant and other co-accused on 18.10.2019. The appellant is in custody from 21.08.2019 for about two months. The co-accused were already granted bail. The appellant is said to be aged 74 years and is also said to be suffering from age related health problems. Considering the above factors and the facts and circumstances of the case, we are of the view that the appellant is entitled to be granted bail.”

(emphasis supplied)

20. Furthermore in ***P. Chidambaram vs. Directorate of Enforcement***¹⁰, the Supreme Court has explained the concept and application of ‘gravity’ of an offence in the following way :

“12. The gravity can only beget the length of sentence provided in law and by asserting that the offence is grave, the grant of bail cannot be thwarted. The respondent cannot contend as if the appellant should remain in custody till the trial is over.”

(emphasis supplied)

21. Another aspect which deserves attention is the effect that pre-trial detention has on an accused, especially on his right to brief and consult his lawyers and to prepare his defence, in order to afford to

¹⁰ 2019 SCC OnLine SC 1549

the accused a real and not merely chimerical right to fair trial, as guaranteed under Article 21 of the Constitution.

22. Commenting on the consequences of pre-trial detention, in ***Moti Ram vs. State of M.P.***¹¹ the Supreme Court said :

“14. The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.”

(emphasis supplied)

23. In ***Babu Singh vs. State of U.P.***¹² the Supreme Court observed :

“18. We must weigh the contrary factors to answer the test of reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be demoted. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.”

(emphasis supplied)

¹¹ (1978) 4 SCC 47

¹² (1978) 1 SCC 579

24. On a *prima-facie* appreciation of the factual matrix of the present case, the following position emerges :

- (a) The FIR in this case was registered on 04.03.2020 after 10 days of the alleged incident of 24.02.2020;
- (b) As per complaint dated 04.03.2020, complainant Mohd. Shanawaz says that although he *tried to call the police* on 24.02.2020 at 4:15 pm, the police phones were engaged and *he could not reach them*; by reason of which he ran away from the spot to save his life. Contrarily however, Ct. Vikas in his statement dated 05.03.2020 says that *he was present* at the spot and therefore identifies *inter alia* the applicant Mohd. Anwar as being one of the rioters. In fact in his statement of 05.03.2020 the Constable further says that he, *alongwith other members of the police staff*, tried to reason with the crowd but without success. These statements *ex-facie* contradict each other. Their evidentiary and probative value is of course to be considered during trial;
- (c) Ct. Vikas in his statement dated 05.03.2020 also states that there were about 1500-2000 people in the crowd that indulged in rioting and arson, from amongst whom he identified *only* two persons, namely Firoz Khan and Mohd. Anwar;
- (d) The offences alleged arise in the context of an ‘unlawful assembly’, which section 141 IPC defines as an assembly

of 05 or more persons. However, only 02 persons, namely Firoz Khan and Mohd. Anwar, have so far been named in the case. Whether at the trial the prosecution is able to bring home the offences premised on the applicant being part of an unlawful assembly, is another aspect which cannot be pre-judged against the applicant at this stage. It will be for the State to *first* show the presence of other persons, whether named or unnamed, *who were part of and involved in the offences as an unlawful assembly*. Until the State shows that, it cannot be presumed that the applicant was part of such assembly;

- (e) Even though the *applicant denies* that he is the person seen in the white shirt in the snapshots filed in the present proceedings, even assuming it is him, it appears that the applicant is neither carrying a wooden stick nor an iron rod nor a petrol-filled bottle and his hands appear to be empty;
- (f) The State says that since most CCTV cameras around the complainant's shop were damaged and burnt by rioters, CCTV footage dated 24.02.2020 is from one Rajdhani Public School in Mahalaxmi Enclave, which footage was seized in FIR No. 111/2020; and in which, according to the State, the applicant is clearly seen actively participating in and instigating others during the riots. Seeing the distance between Rajdhani Public School,

Mahalaxmi Enclave and the complainant's shop at property No. A-126A, Mahalaxmi Enclave on Google Maps, which identifies the school and property No. A-126 (though not A-126A), it appears that the shop and the school are about 400 metres and a 5-minute walk apart, *but on two different sides of a turn in the road*. While not prejudging the issue, it seems unlikely though that CCTV cameras installed at the school would be able to view the complainant's shop;

- (g) Insofar as the CDRs are concerned, with its status report dated 23.07.2020 the State has enclosed scanned as well true-typed copies of the applicant's CDRs, in which, the relevant point of time i.e. around 4:00 p.m on 24.02.2020 falls between two entries at 15:21:39 hours and 16:44:30 hours. At 15:21 hours the applicant's cellphone location is shown at "Nawab Marriage Home, Tirpal Factory, Main Brijpuri Road, Mustafabad, New Delhi" and at 16:44 hours it is shown at "Part of Khasra No. 53/9, Village Karawal Nagar, Old Mustafabad, Mohalla-Dilshad, Shahdara, Delhi-94". The complainant's shop is stated to at No.27, property No.A-126A, Mahalaxmi Enclave, Shiv Vihar Crossing. Without observing anything further at this stage, and going only by the State's own records, it remains to be proved whether the applicant's cellphone, and therefore the applicant, were in or around the complainant's shop. It is notable that the

CDRs relied upon by the State show the applicant's location *through the night of 24.02.2020*, i.e. between 00:10 hours and 09:08 hours on 25.02.2020, at "Part of Khasra No. 53/9, Village Karawal Nagar, Old Mustafabad, Mohalla-Dilshad, Shahdara, Delhi-94"; which could therefore well be the cell-tower that catches his cellphone location while he is at home. Furthermore, the applicant's cellphone location *throughout the period 15.02.2020 to 27.02.2020*, that is the period for which CDRs have been filed with status report dated 20.07.2020, *is found to be in the same area namely Mustafabad/Old Mustafabad*; and therefore *prima-facie* there is nothing sinister about the applicant being present in that area on 24.02.2020;

- (h) Investigation in the present FIR is complete and charge-sheet dated 01.07.2020 has already been filed; and
- (i) The applicant has already been admitted to bail by the learned Sessions Court in FIR No.111/2020 *vidé* order dated 13.05.2020 and in FIR No.112/2020 *vidé* order dated 19.05.2020.

25. Furthermore, it is pointed-out that co-accused Firoz Khan has already been admitted to regular bail by judgment dated 29.05.2020 in Bail Appl. No.945/2020.

26. Upon a conspectus of the facts and circumstances as discussed above, and applying the law and principles of bail as set-out in the afore-cited precedents, this court is persuaded to admit the applicant

to *regular bail* in case FIR No.105/2020, subject to the following conditions:

- (a) The applicant shall furnish a personal bond in the sum of Rs.50,000/- with 02 sureties of the like amount from blood-relatives, to the satisfaction of the Trial Court;
- (b) The applicant shall not leave the National Capital Region (NCR) without permission of the court and shall *ordinarily* reside in his place of residence as per prison records;
- (c) Till such time as cognisance is taken and the applicant is summonsed by the Trial Court, the applicant shall present himself on every alternate Saturday between 11 am and 11:30 am before the Investigating Officer, and in case the Investigating Officer is not available, then before the SHO PS : Dayalpur, New Delhi to mark his presence. It is made clear that the applicant shall not be kept waiting for longer than an hour at the police station for this purpose;
- (d) The applicant shall furnish to the Investigating Officer/SHO a cellphone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times ;
- (e) If the applicant has a passport, he shall surrender the same to the Trial Court;
- (f) The applicant shall not contact, nor visit, nor offer any inducement, threat or promise to the first informant/complainant or to any of the prosecution witnesses. The applicant shall not tamper with evidence or otherwise indulge in any act or omission that is unlawful

or that would prejudice the proceedings in the pending matter.

27. Nothing in this judgment is to be taken as an expression of opinion on the merits of the evidence in the matter. It is also clarified that the observations in this judgment shall have no bearing on the cases against other accused persons in any connected matters, which cases shall be considered on their own merits.

28. The bail application is allowed in the above terms; and the applicant is directed to be released subject to the above conditions, if not required in any other case.

29. The application stands disposed of in the above terms.

30. Other pending applications, if any, also stand disposed of.

31. A copy of this order be sent to the concerned Jail Superintendent.

ANUP JAIRAM BHAMBHANI, J.

04th August, 2020
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