

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

Date of decision: 23rd AUGUST, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 1932/2021**

RAJ SINGH

..... Petitioner

Through

Mr. G.P. Thareja, Advocate along
with Mr. Satyam Thareja, Mr. Harshit
Thareja and Mr. Prateek Singh
Kundu, Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through

Mr. Saleem Ahmed, Special Public
Prosecutor for the State

AND

+ **BAIL APPLN. 1948/2021**

RAJ SINGH

.....Petitioner

Through

Mr. G.P. Thareja, Advocate along
with Mr. Satyam Thareja, Mr. Harshit
Thareja and Mr. Prateek Singh
Kundu, Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through

Mr. Saleem Ahmed, Special Public
Prosecutor for the State

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. BAIL APPLN. 1932/2021 has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.75/2020 dated 02.03.2020 registered at Police Station Shastri Park for offences punishable

under Sections 147/148/149/380/452/436/427 IPC.

2. BAIL APPLN. 1948/2021 has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.74/2020 dated 02.03.2020 registered at Police Station Shastri Park for offences punishable under Sections 147/148/149/323/380/452/395/436/427 IPC.

3. The aforementioned FIRs relate to the violence that took place in the National Capital Territory of Delhi in the month of February, 2020. The Complainant in FIR No. 74/2020 had recorded her grievance that on 25.02.2020 at 8:00 PM, a group of people started raising slogans and set the house of the Complainant on fire. It is stated that the Complainant left her house and ran away with her five children. It is stated that the complainant could not see the face of anyone in the group.

4. It is stated in the application that the investigation in FIR No. 74/2020 is complete. The charge-sheet has been filed on 01.09.2020. Supplementary charge-sheet has been filed on 04.01.2021. It is stated that the Petitioner herein was formally added as an accused in the supplementary charge-sheet. On the basis of the investigation conducted in FIR No. 74/2020, it is stated in the charge-sheet that there is sufficient material to proceed against the Petitioner herein under Sections 147/148/149/323/380/427/436/452/395 IPC.

5. In FIR No. 75/2020, the Complainant has stated that on 25.02.2020, at around 7:45 PM, 20-25 people holding sticks, rods, bricks and stones in their hands broke his door and forcefully entered his house. It is stated that when the complainant objected to the forced entry by the accused persons in his house, he was beaten by the mob and was dragged outside his house. It is stated that the complainant fell down and injured his head. It is stated that

the wife and children of the complainant were also forced to leave the house. It is stated that the mob spilled oil, put the clothes of the Complainant on the bed and lit it on fire. It is stated that the mob also threw some burning clothes into other rooms. It is stated that the wife and children of the Complainant put out the fire after the mob left. It is stated the Complainant and his family left for *Kacchi Khajuri* on 26.02.2020. It is stated that when the wife of the complainant returned on 01.03.2020 she saw that the cupboard had been opened and the items kept in the cupboard were missing.

6. It is stated that the investigation in FIR No. 75/2020 is complete, and that the prosecution filed the charge-sheet on 12.07.2020, followed by a supplementary charge-sheet on 05.01.2021. It is stated that the Petitioner herein was formally added as an accused in the supplementary charge-sheet. On the basis of the investigation conducted in FIR No. 75/2020, it was stated in the charge-sheet that there is sufficient material to proceed against the accused i.e. the Petitioner herein under Sections 147/148/149/323/380/427/436/452/395 IPC.

7. A perusal of the charge-sheet reveals that a video footage was seized from one Abdul Nadir who had made a video on his mobile phone of the rioters holding *lathis* and *dandas* in their hands. It is further revealed that during the investigation, it was found that cameras were installed at the house of one Mohd. Safi, and the investigating agency called for the DVR of this CCTV system.

8. The Petitioner was identified in the aforementioned videos with a *danda* in his hand by one Mohammad Hasan, who had visited the Police Station with his wife in order to get an update in his case. The Petitioner had also been identified on 05.09.2020 by one Naushad. It is stated that the

video had been recorded at 12:00 PM on the day of incident, i.e. 25.02.2020, however, the incident had took place at 07:45 PM.

9. It has been stated in the supplementary charge-sheet that the mobile CDR of the Petitioner places him near the location of the violence as well as shows that the Petitioner had been talking to the co-accused at the relevant time.

10. It is further stated that on being informed about being identified in the video, the Petitioner approached the Sessions Court by filing an application under Section 438 Cr.P.C for grant of anticipatory bail and the same was dismissed *vide* Order dated 08.07.2020. Thereafter, the Petitioner approached this Court by filing an application under Section 438 Cr.P.C, being Bail Application No. 2665/1010, for grant of anticipatory bail. This court *vide* an order dated 25.09.2020 dismissed the said application. Subsequently, the Petitioner surrendered before the Duty Metropolitan Magistrate at Mandoli Jail Complex Court in the presence of his Advocate on 08.10.2020.

11. It is stated that subsequent to his arrest, the Petitioner approached the Trial Court by filing an application seeking regular bail and the same was rejected *vide* Order dated 26.04.2021. The Petitioner has now approached this Court by filing the instant bail applications seeking regular bail.

12. Heard Mr. G.P. Thareja, learned counsel for the Petitioner, Mr. Saleem Ahmed, learned SPP for the State, and perused the material on record.

13. The learned Counsel for the Petitioner submits that the Petitioner is the only surviving male member in the family, and he has to take care of his mother, wife, two children, as well as the family of his deceased brother.

Further, it has been submitted that during the period of COVID-19 pandemic the Petitioner's presence is imperative as his family has been left alone without any support. The learned Counsel for the petitioner contends that the petitioner is in custody for the past nine months. He states that the custody of the Petitioner is no longer required as the investigation has concluded. The learned counsel for the petitioner further submits that the only evidence which is being relied on by the prosecution is a video footage which showcases the presence of the Petitioner at 12:00 PM on 25.02.2020, whereas the incidents took place at 07:45 and 08:00 PM on 25.02.2020. He therefore states that the presence of the accused at the place of incident seven hours before the incident took place cannot link the petitioner to the incident. It has been submitted by the learned Counsel for the Petitioner that the mobile CDR which places the Petitioner within the area wherein the incident had taken place cannot be relied upon as the residence of the Petitioner is within the perimeter of the tower location i.e. in Old Village Garhi Mendu. Furthermore, it has been submitted by the learned counsel for the petitioner that as per the Consolidated Site Plan, the houses of the Complainants are at locations which are far from the location where the Petitioner has been identified in the video. It has been submitted that the disclosure statement of the co-accused, which names the Petitioner, cannot be relied upon at all. The learned counsel for the petitioner further contends that the possession of a *danda* in the hands of the Petitioner does not amount to committing an offence. It has been argued by the learned Counsel for the petitioner that the co-accused Deepak s/o Satvir and Deepak s/o Kailash Bhati have already been released on bail by the Sessions Court *vide* Orders dated 18.09.2020 and 03.05.2021 respectively, and, therefore, the Petitioner

should also be granted bail on the ground of parity.

14. *Per contra*, Mr. Saleem Ahmed, the learned SPP appearing for the State, submits that the custody of the Petitioner is pertinent in wake of the offences under which FIRs No. 74/2020 and 75/2020 have been registered. He submits that there is a strong likelihood of the Petitioner fleeing from justice and tampering with the evidence. The learned SPP has further contended that the offences under which the Petitioner is being proceeded against are heinous in nature, and therefore, the petitioner should not be granted bail.

15. A perusal of the Status Report dated 06.07.2021 reveals that on the basis of the aforementioned CCTV footage and mobile phone videos, accused Mohit Nagar had been identified and arrested on 14.03.2020, along with accused Deepak s/o Satyavir. The Status Report reveals that upon interrogation, accused Mohit Nagar and Deepak s/o Satyavir disclosed the names of five more persons who were also a part of the unlawful mob, including the Petitioner herein. The Status Report further reveals that post the recording of the disclosure statement of the aforementioned co-accused, various efforts were made to arrest the Petitioner. It is stated that the petitioner was absconding. It is stated that it was only after the dismissal of the anticipatory bail of the Petitioner by the Sessions Court and by this Court that the Petitioner was arrested on 08.10.2020. It has also been stated in the Status Report that on interrogation, the Petitioner disclosed the involvement of the co-accused Deepak s/o Kailash Bhati who was then arrested on 27.10.2020 after the dismissal of the anticipatory bail by the Sessions Court.

16. The Status Report states that the Petitioner refused to participate in the judicial Test Identification Parade (TIP) on 16.10.2020 before the Trial

Court. The Status Report submits that during the PC remand one *danda* had been recovered and the same had been identified by the witnesses as the weapon used in committing the crime.

17. It is stated in the Status Report that the CDR of the mobile phone number which is registered in the name of the Petitioner was found to be at the Scene of Crime. The Status Report states that at the time of the occurrence of the incident, various calls had been made from the said mobile phone number to the co-accused who was found to be the leader of the unlawful mob. The Status Report submits that the during the identification of the Scene of Crime by the Petitioner, he had been identified by the Complainant in FIR No. 75/2020.

18. The material on record shows that the Petitioner was not named in the original charge-sheet and his name was added only in the supplementary charge sheet on the basis of the disclosure statement of the co-accused. Whether the disclosure statements and the identification of the Petitioner by the Complainant in FIR No. 75/2020 is enough to connect him to the case is a matter of trial.

19. With regard to the argument that the Petitioner is entitled to be releasee on bail on the ground of parity, this Court has perused the Orders granting bail to co-accused Deepak S/o Satvir and Deepak S/o Kailash Bhatti. In the Order dated 18.09.2020, granting bail to Deepak S/o Satvir, the Sessions Court had observed that Deepak S/o Satvir was not seen in the video footage, and he was identified for the first time on 02.06.2020 when he was arrested and the Complainants were called to the spot where they identified him for the first time. Furthermore, the Sessions Court stated that whether identification was enough to connect the Applicant therein would

be a matter of trial as the Complainants had been made to identify the accused persons as per their own convenience by the police. The order also noted that identification of the Applicant therein by the Beat Constable was a weak evidence.

20. In the Order dated 03.05.2021 granting bail to Deepak S/o Kailash Bhatti, the Sessions Court had observed that the Applicant therein had not been visible in any CCTV footage and that it was a matter of record that the Complainants in both FIRs No.74/2020 and 75/2020 did not identify the Applicant therein in their initial statement and only named/identified the Applicant therein via supplementary statements recorded in the matter, that too after seeing the CCTV footage. The Sessions Court further remarked that whether identification was sufficient to connect the Applicant therein to the case was a matter of trial and that no plausible reasoning had been provided by the Prosecution regarding the delay of recording of statements of various other public witnesses, thereby casting a doubt on the story of the prosecution as has been held by the Supreme Court. It was additionally observed by the Sessions Court in that case of Deepak S/o Kailash Bhatti stood on better footing than that of co-accused Ajay Goswami who had been enlarged on bail despite being captured on the CCTV footage.

21. The material on record also reveals that the Petitioner was apprehended by the investigating agency on the basis of his presence in the videos, whose legitimacy is a matter of trial, and on the basis of disclosure statements of the co-accused who have already been enlarged on bail. It is trite law that an accused cannot be kept in custody for an extended period of time solely on the basis of disclosure statements of co-accused. Furthermore, Complainants in both FIR No. 74/2020 and FIR No. 75/2020 did not

specifically name or identify the Petitioner in their initial complaints made to the police.

22. The Supreme Court has time and again held that bail is the rule and jail is the exception. Rejection of bail, therefore, becomes a restriction on the personal liberty of an individual guaranteed under Article 21 of the Constitution of India. Furthermore, the most sacrosanct principle of criminal jurisprudence is that every individual is presumed to be innocent until proven guilty.

23. This Court, *vide* order dated 29.05.2020 in BAIL APPLN. No. 945/2020 titled as Firoz Khan v. State of Delhi, observed as under:

"...Granting of bail at this early stage may send an adverse message in the society and such crimes should not be allowed to happen in the national capital.".

(Emphasis supplied)

this Court is of the view that that cannot be the basis for denying bail, if the Court is otherwise convinced that no purpose in aid of investigation and prosecution will be served by keeping the accused in judicial custody. Prison is primarily for punishing convicts; not for detaining undertrials in order to send any 'message' to society. The remit of the Court is to dispense justice in accordance with law, not to send messages to society. It is this sentiment, whereby the State demands that undertrials be kept in prison inordinately without any purpose, that leads to overcrowding of jails; and leaves undertrials with the inevitable impressionable that they are being punished even before trial and therefore being treated unfairly by the system. If at the end of the protracted trial, the prosecution is unable to bring home guilt, the State cannot give back the accused the years of valuable life lost in prison. On the other hand, the accused would of course be made to undergo his sentence after it has been awarded, after

trial."

24. Therefore, bail jurisprudence is essentially an intricate balance between securing the personal liberty of an individual and ensuring that this liberty does not lead to an eventual disturbance of public order. The Court, while deciding an application for grant of bail, must traverse this intricate path very carefully and thus take multiple factors into consideration before arriving at a reasoned order whereby it either grants or rejects bail.

25. In Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, the Supreme Court laid down the parameters for granting or refusing the grant of bail which are as under:

*"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, behavior, 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."*

In Mahipal v. Rajesh Kumar, (2020) 2 SCC 118, the Supreme Court has observed as under:

"12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the

severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter of trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow and ought to be guided by the principles set out for the exercise of the power to set aside bail”.

26. It is stated that the Petitioner surrendered in the presence of his Advocate before the Duty Metropolitan Magistrate at Mandoli Jail Court Complex on 08.10.2020. The Petitioner has already spent around nine months in custody and the investigation has been concluded and the charge-sheet as well as the supplementary charge-sheet having been filed.

27. Additionally, the FIRs were filed after the lapse of a considerable period of time since the date of the incident. The authenticity of the video footage is not to be delved into at this point and is a matter of trial. The Court cannot ignore the fact that the petitioner was seen about seven hours before the actual incident took place. The trial in the matter is likely to take a long time and this Court is of the opinion that it would not be prudent to incarcerate the Petitioner for an undefined period of time at this stage. The Petitioner has roots in society and, therefore, there is no danger of him

absconding and fleeing. Furthermore, the co-accused of the Petitioner in the FIRs stated herein have been enlarged on bail.

28. In view of the facts and circumstances of the cases, without commenting on the merits of the matter, this Court is of the opinion that the Petitioner cannot be made to languish behind bars for a longer period of time, and that the veracity of the allegations levelled against him can be tested during trial.

29. Accordingly, this Court is inclined to grant bail to the Petitioner in FIR No. 75/2020 dated 02.03.2020 registered at Police Station Shastri Park for offences punishable under Sections 147/148/149/380/452/436/427 IPC and FIR No.74/2020 dated 02.03.2020 registered at Police Station Shastri Park for offences punishable under Sections 147/148/149/323/380/452/395/436/427 IPC on the following conditions:

- a) The petitioner shall furnish a personal bond in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of the Trial Court/Duty Magistrate.
- b) The petitioner shall not leave NCT of Delhi without prior permission of this Court.
- c) The petitioner shall report to the concerned Police Station every day at 10:30 AM and should be released after completing the formalities within half an hour.
- d) The petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- e) The petitioner has given his address in the memo of parties as House No. 147 Village Old Garhi Mendu, Bhajanpura, Delhi – 110053, the petitioner is directed to continue to reside at the

same address. In case there is any change in the address, the petitioner is directed to intimate the same to the IO.

- f) The petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses.
- g) Violation of any of these conditions will result in the cancellation of the bail given to the petitioner.

29. It is made clear that the observations made in this Order are only for the purpose of grant of bail and cannot be taken into consideration during the trial.

30. Accordingly, the bail applications are disposed of along with the pending applications, if any.

AUGUST 23, 2021
Rahul

SUBRAMONIUM PRASAD, J.

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