

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

Date of decision: 14th September, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 1945/2021 & CRL M.A. 12357/2021**

MOHD AYYUB

..... Petitioner

Through: Mr. Salman Khurshid, Sr. Advocate
with Mr. Bilal Anwar Khan and
Ms. Anshu Kapoor, Mr. Aman
Khullar, Ms. Aadya Mishra and Ms.
Sommya Chaturvedi, Advocates

Versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. S. V. Raju, ASG with Mr. Amit
Prasad, SPP for the State along with
Mr. Anshuman Raghuvanshi and
Mr. Ayodhya Prasad, Advocates and
DCP Rajesh Deo, Legal and Crime
Branch and Insp. Gurmeet Singh,
Crime Branch

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The Petitioner seeks bail in FIR No.60/2020 dated 25.02.2020 registered at PS Dayalpur for offences under Sections 186/353/332/323/147/148/149/336/427/302 of the Indian Penal Code, 1860 (hereinafter, "IPC") and Sections 3/4 of the Prevention of Damage to Public Property Act, 1984 (hereinafter, "PDPP Act").
2. The FIR relates to the violence that took place in the National Capital Territory of Delhi in the month of February 2020.

3. The brief facts leading to the instant Bail Application are that a protest against the Citizenship (Amendment) Act, 2019 (hereinafter, “CAA”) had been taking place for 1.5 months prior to the incident at Khajuri Square to Loni Circle at Wazirabad Road, Chand Bagh near 25 Futa Service Road by the Muslim community.

4. It is stated in the instant FIR that the Complainant, i.e. Constable Sunil Kumar, was on duty with the deceased, HC Ratan Lal, and others, namely Giri Chand, Ct. Mahavir, Ct. Jitender, HC Narender, HC Brijesh, W/HC Savitri, as well as DCP Shahdara District Amit Kumar and his staff.

5. It is stated that on 24.02.2020, at about 01:00 PM the protestors had mobilized near the Chand Bagh area and 25 Futa Road, and were moving towards the Main Wazirabad Road. When they assembled near Main Wazirabad Road, it is stated that the Complainant and other police officers present attempted to convince the protestors to not move towards the Main Wazirabad Road, however, it is stated that the protestors were carrying sticks, baseball sticks, iron rods and stones. It is stated that ACP Gokalpuri and DCP Shahdara warned the protestors via loudspeaker of a government vehicle that lack of adherence to legal warnings would necessitate strict action against the crowd. It is stated that some people amongst the crowd started pelting stones at the police officials, and beat them as well as other passersby with aforementioned weapons that had been hidden.

6. It is stated that the Complainant herein received an injury on his right elbow and right hand due to a huge stone. It is further stated that the crowd even snatched tear gas balls and lathis from the police, and started beating them with it. It is stated that ACP Gokalpuri, HC Ratan Lal and DCP Shahdara Amit Kumar were also beaten with sticks and stones, and as a

result, they fell down and suffered grievous head injuries.

7. The FIR states that post the incident, the protestors fled away and the injured were sent to a hospital, with the Complainant receiving treatment at Panchsheel Hospital, Yamuna Vihar, Delhi.

8. The Complainant then states that he was informed that HC Ratan Lal had succumbed to a bullet injury, and some other police officers as well as public persons had also suffered injuries. It is stated that the protestors had also set fire to the vehicle of DCP Shahdara and private vehicles of police officers, and also damaged public and private property.

9. It is stated that investigation is now completed and chargesheet has been filed against the Petitioner on 08.06.2020 wherein the Petitioner has been added. The chargesheet states that there is sufficient material to proceed against the Petitioner herein under Sections 186/353/332/323/109/144/147/148/149/153A/188/333/336/427/307/308/397/412/302/201/120-B/34 of the IPC, read with 3/4 of the PDPP Act. Thereafter, supplementary chargesheets have been filed on 30.06.2020, 20.08.2020, 17.11.2020 and 30.12.2020.

10. Mr. Salman Khurshid, learned Senior Counsel for the Petitioner, has submitted that the Petitioner herein is a businessman who runs a readymade shop near his residence at Gali No.3, Chand Bagh, and that he has been falsely and maliciously implicated in the instant FIR. He has stated that the Petitioner was arrested on 11.03.2020 and has been languishing behind bars since then. He has further stated that as four supplementary chargesheets have been filed and that investigation has been completed, the Petitioner should be enlarged on bail.

11. It has been submitted that the first Bail Application moved by the

Petitioner herein before this Hon'ble Court had been withdrawn with the liberty to file a fresh petition. Then, another Bail Application was moved which was dismissed as withdrawn with the Petitioner being granted the liberty to approach the Trial Court before approaching this Hon'ble Court. It has been submitted that the Ld. Trial Court dismissed the Bail Application *vide* Order dated 06.05.2021. Mr. Khurshid has also brought to the attention of the Court that two co-accused Mansoor and Danish have been enlarged on bail by this Hon'ble Court *vide* Orders dated 24.05.2021 and 16.02.2021 respectively, and therefore, on the grounds of parity, the Petitioner herein should also be granted bail.

12. Mr. Khurshid, the learned Senior Counsel for the Petitioner, has submitted that the CCTV footage as well as the video footage only showcase that the Petitioner was barehanded and only a bystander as the mob had intruded the *gali* wherein the Petitioner resides, i.e. Gali No. 3. The learned Senior Counsel has relied upon the bail order in the aforementioned Danish's case to support the contention that as the instant matter is similarly situated as Danish had also been seen not possessing any arms or conducting any illegal activity, the Petitioner herein also deserves bail.

13. Mr. Khurshid has also submitted that the Petitioner is the sole bread earner of the family, and that he has two minor sons and a wife. The learned Senior Counsel has informed this Court that the Call Detail Record (CDR) of the Petitioner which has been supplied by the prosecution does not correspond to the place of the alleged incident. He has submitted that between 13:37:57 to 13:54:31, the location in the CDR showcases that the Petitioner was at A-11, Yamuna Vihar, Brijpuri, Main Wazirabad Road, Delhi, and the reason for the same was that the elder son of the Petitioner

had to be picked up from his school located at Main Wazirabad Road (Opp. Yamuna Vihar, B-Block). He has submitted that no other CDR entry indicates the presence of the Petitioner at the Scene of Crime (SOC), and that there is no entry before 13:37:57 or after 13:54:31. It has been submitted that the Petitioner did not join the mob, and that the reason he had left the house for his shop was due to a call of a customer around 11:30 AM. However, on getting news about the protests, the Petitioner allegedly did not open the shop and instead decided to pick up his eldest son from the school, only to return back to his house thereafter.

14. It has been submitted by the learned Senior Counsel for the Petitioner that the youngest son of the Petitioner has an acute infectious disease as a result of which he is dependent on a different diet as he cannot ingest regular food. Furthermore, the father of the Petitioner has allegedly passed away on 30.08.2020 due to shock, hypertension, stress and other ailments.

15. Mr. Khurshid has also submitted that the Petitioner had been arrested while he was at work and that no recovery had been made from the Petitioner which could connect him to the charges in the FIR.

16. On the aspect of statements made by police witnesses, the learned Senior Counsel for the Petitioner has submitted that the FIR was registered on 25.02.2020 and the name of the Petitioner appeared in the same by way of a supplementary statement of the Complainant on 27.02.2020. He has submitted that the name of the Petitioner appearing after a few days is clearly an afterthought, and that it is a mystery because the Petitioner was not present at the SOC which can be discerned from the CDR present in the chargesheet. It has further been submitted that along with Beat Ct. Sunil (the Complainant), HC Sunil and Ct. Gyan also made supplementary statements

on 27.02.2020. Furthermore, the supplementary statements made by the Beat Constables on 10.03.2020 identify the Petitioner and that this alleged identification is against the guidelines laid down by the Supreme Court.

17. The learned Senior Counsel for the Petitioner has also argued that statements made by the public witnesses, i.e. Nazmul Hassan, Toukir Alam and Salman @ Guddu under Sections 161 and 164 Cr.P.C. cannot be taken into account as they are not eye witnesses to the alleged incident. Furthermore, it has been submitted that none of the three public witnesses have stated that the Petitioner herein was present at the SOC.

18. It has been argued by Mr. Khurshid, the learned Senior Counsel for the Petitioner that the disclosure statement of the Petitioner is false, fabricated and illegal. He has submitted that the Petitioner is only educated till class 8th, and he was made to sign some plain papers which later turned out to be disclosure statements attributed to him. Mr. Khurshid has contended that as per Section 162(1) of the Cr.P.C., no statement that is given to a police official is to be signed by the person who is making that statement. As these statements suffer from gross illegalities, the learned Senior Counsel has submitted that they cannot be considered as substantive piece of evidence. Furthermore, it has been submitted that the statement is also inadmissible as per Sections 25 and 26 of the Indian Evidence Act which pertains to confessions made to police officers or while in police custody. They are also in the teeth of the doctrine of self-incrimination which is stipulated under Article 20(3) of the Constitution of India.

19. The learned Senior Counsel has then argued that Sections 149, 120-B or 34 of the Indian Penal Code cannot be attracted here as there is nothing on record to suggest that the Petitioner has acted with a “common object”.

Mr. Khurshid has relied upon Amrika Bai v. State of Chhattisgarh, (2019) 4 SCC 620 to submit that the Supreme Court had held that mere presence of an individual in an unlawful assembly cannot render a person liable unless there is a common object as has been set out in Section 141 IPC. He has further stated that the ingredients of criminal conspiracy under Section 120-A IPC are also not made out as there is no prior meeting of mind of any of the accused with the Petitioner or any agreement to commit an illegal act.

20. It has been brought to the notice of this Court by the learned Senior Counsel for the Petitioner that no Test Identification Parade (TIP) has been carried out by the concerned Investigation Officer (IO) at the instance of the Ld. Metropolitan Magistrate, despite the Applicant being in judicial custody for the past one year.

21. Mr. Khurshid has submitted that the Petitioner is a peace-loving and law-abiding citizen who has clean antecedents. Further, his right to fair trial is being seriously jeopardised as he has been in custody for more than a year. It has also been submitted that the basic principle of Criminal Jurisprudence is that a person is innocent until and unless they are proven guilty, and that therefore, the continued incarceration of the Petitioner is tantamount to punishment before trial.

22. Mr. Amit Prasad, learned SPP for the State, has painstakingly taken this Court through the videos pertaining to the topography of the area where the incidents had occurred. Mr. Prasad brought to the attention of the Court three videos that had been found during the course of investigation which depict the scene of crime - Vishal Chaudhry Video (1.48 minutes) shot from Gym Body Fit Garage, Skyride Video (1.37 minutes) and Yamuna Vihar Video (40 seconds), and has submitted that the three videos shed a light on

how the assault on the police personnel was pre-meditated. The learned SPP has further taken this Court through all the available CCTV footage displaying timestamps and respective *galis* (lanes) wherein the accused have been caught on camera. He has further pointed out the timestamps which showcase the dislocation and deactivation of the CCTV cameras and has submitted that the same has been done in a synchronised and planned manner.

23. Mr. Prasad has submitted to this Court that the Petitioner herein, who was wearing a grey shirt and black pants, was identified on GNCTD Camera ID No.70331722 installed at E2 56 Chand Bagh at 12:00:39PM wherein he was seen going towards the SOC. The Petitioner was further seen on Camera ID No.7033172 installed at F 71 *Gali* No.3 at 12:00:07 PM.

24. The learned ASG Shri SV Raju, opposing the Bail Application herein, has submitted that the instant case is regarding the brutal assault on police officials wherein HC Ratan Lal succumbed to his injuries, and DCP Shahdara Amit Sharma and ACP Gokalpuri suffered grievous injuries along with more than 50 police officials also getting injured.

25. It has been submitted that the death of HC Ratan Lal was the first death in the North-East Delhi riots, and that the Trial Court has been dealing with the riot cases since then. It has also been submitted that the Trial Court has been apprised of the matter and has already dismissed the bail application of the Petitioner herein, and that the order of rejection of bail does not contain any legal infirmities.

26. The learned ASG has iterated that on 23.02.2020, the protestors who were convened at Wazirabad Main Road, Chand Bagh, unauthorizedly came onto the road and blocked the same. He submitted that in response to the

same, the local police had issued a proclamation under Section 144 of the Cr.P.C. in order to bring the law and order under control. He further submitted that the protestors held a meeting on the night of 23.02.2020 at Chand Bagh to finalise a plan for 24.02.2020 as the President of the United States, Donald Trump, was coming to New Delhi. This meeting was subsequently attended by several of the accused persons.

27. The learned ASG has submitted that on the morning on 24.02.2020, CCTV cameras which had been installed by GNCTD for security in the area were systematically disconnected or damaged or dislocated right from 08:00:41 AM to 12:50:57 PM. He argued before the Court that the protest at Chand Bagh continued despite the proclamation of Section 144 Cr.P.C. orders. As a consequence, police officials had been deployed for law and order arrangements. The learned ASG averred that between 12:30 PM and 1:00 PM, at the behest of the organisers of the protest, a crowd carrying various weapons such as *dandas*, *lathis*, baseball bats, iron rods, and stones convened at the main Wazirabad Road, and refused to pay heed to the orders of the senior officers and police force. The crowd soon got out of control and started pelting stones at the police officers and resultantly, more than fifty police personnel suffered injuries and HC Ratan Lal was shot dead. It was further submitted by the learned ASG that the protestors turned violent, burnt private and public vehicles, as well as other properties in the vicinity, including a petrol pump and a car showroom.

28. It was then submitted by the learned ASG that absence of an accused from a video does not translate into absence of the accused from the scene of crime. He has stated that identification of an accused in videography was a Herculean task, and therefore, if an accused has been identified, that would

be a positive point. Additionally, he relied upon Masalti and Ors. v. State of Uttar Pradesh, (1964) 8 SCR 133, and submitted that by way of application of Section 149 IPC, the Petitioner herein would be deemed to be a member of the unlawful assembly and, therefore, would be equally and squarely liable for the crime committed. Furthermore, it has been submitted that the statements of the witnesses and CDR have revealed that the Petitioner would instigate the public and was in close contact with the organisers as well as miscreants at the Chand Bagh protest site. It has been submitted that the Petitioner played an important role and was also among the organisers who had participated in the first meeting which was held by DS Bindra and others. Additionally, the Petitioner's brother Mohd. Yunus has also been arrested as a rioter.

29. The learned ASG has also contended that the addition of the offence under Section 302 IPC meant that ordinarily bail should not be granted. He has argued that it was not a case of a simple offence; if it was a grievous offence which was specially punishable with death, then bail could not be granted. On the issue of the parameters of bail, the learned ASG has submitted that in Gurcharan Singh v. State (Delhi Administration), (1978) 1 SCC 118, the Supreme Court has reiterated that the principle underlying Section 437 is towards grant of bail *except* in cases where there appears to be reasonable grounds for believing that the accused is guilty of an offence punishable with death or imprisonment for life, and also when there are other valid reasons to justify refusal of bail. He has argued that the overriding considerations in granting bail are, *inter alia*, the nature and gravity of the circumstances in which the offence is committed. The learned ASG has submitted that in P. Chidambaram v. Directorate of Enforcement, (2020) 13

SCC 791, the Supreme Court had held that in addition to the triple test or tripod test, gravity of the offence had to be considered while making a decision on grant of bail. Further, one of the circumstances to consider the gravity of offence would be the term of sentence that is prescribed for the offence which the accused is said to have committed. The learned ASG has argued that as the instant case pertains to the offence of murdering of a police officer and that Section 302 IPC has been invoked, the matter lies within the four corners of the gravest of grave offences, and therefore, the accused cannot be entitled to bail.

30. Mr. Raju, the learned ASG, has then contended that conspiracy had been established on 23 February, 2020, and that the offence was pre-planned. He has submitted that meetings were held 1-2 days prior to the alleged incident wherein the protestors were motivated to gather at the site of the alleged incident on 24.02.2020 in order to instigate violence, and therefore, there was a meeting of minds due to which Section 149 and Section 120B of the IPC were made out. Furthermore, secret codes had been used, and the Petitioner herein was fully involved.

31. It was also submitted by the learned ASG that there was only a small contingent of police officers present, and they were trying to protect themselves from the frontal attack by the crowd as they were heavily outnumbered. He argued that had it been a simple protest, the crowd would not have been required to come with sticks, weapons etc. Furthermore, if sticks and other weapons were to be utilised for self-defence, then the damage and dislocation of CCTVs defeated the case because such an action would only lead to the inference that the accused wished to destroy the evidence or to ensure that the evidence did not surface.

32. The Court has heard the learned ASG Shri SV Raju with Mr. Amit Prasad, learned SPP for the State, and Mr. Salman Khurshid, learned Senior Counsel for the Petitioner. The Court has also perused the material on record.

33. A perusal of the chargesheet indicates that the Petitioner is a resident of Chand Bagh and has participated actively in the protest against the Citizenship (Amendment) Act, 2019 (CAA), and the National Register of Citizens (NRC). The charge-sheet states that the Petitioner had disclosed the names and roles of other accused in his disclosure statement. The statements of the witnesses, both independent and police witnesses, under Sections 161 and 164 Cr.P.C. showcase that the Petitioner instigated the public to employ violent methods and that he provided logistics to the protestors.

34. It is further stated in the charge-sheet that the Petitioner played an important role since the commencement of the Chand Bagh protest and that he was among the organisers who participated in the first meeting held by DS Bindra and others. The charge-sheet also states that an analysis of the Petitioner's mobile number has revealed that he was present at the Scene of Crime during the time of the incident. Furthermore, as per the chargesheet, his identity has been confirmed by the statements of Ct. Gyan, HC Sunil and Ct. Sunil on 10.03.2020.

35. A perusal of the video footage reveals that the Petitioner was seen on the GNCTD Camera ID No.7033161 installed at E2 56 Chand Bagh at 12:00:59PM wherein he was seen going towards the SOC. The Petitioner was further seen on Camera ID No.7033172 installed at F 71 Gali No.3 at 12:00:07 PM wherein he was seen walking quickly.

36. In the instant case, the issue which arises for consideration is whether

when an offence of murder is committed by an unlawful assembly, then should each person in the unlawful assembly be denied the benefit of bail regardless of his role in the unlawful assembly or the object of the unlawful assembly. In order to understand the contention of the learned ASG, it is useful to refer to Section 149 IPC which reads as follows:

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.- If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”
(emphasis supplied)

37. The Supreme Court has consistently held that in order to convict an accused with the aid of Section 149, a clear finding needs to be given by the Court regarding the nature of unlawful common object. Furthermore, if any such finding is absent or if there is no overt act on behalf of the accused, the mere fact that the accused was armed would not be sufficient to prove common object.

38. In Kuldip Yadav and Ors. v. State of Bihar, (2011) 5 SCC 324, the Supreme Court has categorically stated:

“39. It is not the intention of the legislature in enacting Section 149 to render every member of unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to attract Section 149, it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly and it must be

within the knowledge of other members as one likely to be committed in prosecution of the common object. If the members of the assembly knew or were of the likelihood of a particular offence being committed in prosecution of the common object, they would be liable for the same under Section 149.”

(emphasis supplied)

39. In Sherey and Ors. v. State of U.P., (1991) Supp (2) SCC 437, the Supreme Court, while considering a matter on merits after the conclusion of the trial and deciding whether Section 149 of the IPC could be applied to hold an accused constructively liable on the basis of omnibus allegations made by witnesses and on the basis of their mere presence at the spot/scene of crime, had observed as follows:

“4. We have carefully gone through the evidence. We have no doubt that all the eye-witnesses were present. Nothing significant has been elicited in their cross-examination. However, the eye-witnesses simply named these appellants and identified them. So, the question is whether it is safe to convict all the appellants. In a case of this nature, the evidence of the witnesses has to be subjected to a close scrutiny in the light of their former statements. The earliest report namely the FIR has to be examined carefully. No doubt in their present deposition they have described the arms carried by the respective accused but we have to see the version given in the earliest report. In that report PW 1 after mentioning about the earlier proceedings has given a fairly detailed account of the present occurrence. He has mentioned the names of the witnesses and also the names of the three deceased persons. Then he proceeded to give a long list of names of the accused and it is generally stated that all of them were exhorting and surrounded the PWs and the other Hindus and attacked them. But to some extent specific

overt acts are attributed to appellants 1, 4, 5, 7, 8, 10, 17, 22 and 25. It is mentioned therein that these nine accused were armed with deadly weapons and were seen assaulting the deceased Ram Narain and others. Now in the present deposition he improved his version and stated that in addition to these nine accused, five more persons also attacked the deceased and others. In view of this variation we think that it is safe to convict only such of the appellants who are consistently mentioned as having participated in the attack from the stage of earliest report. With regards the rest PW 1 mentioned in an omnibus way that they were armed with lathis. He did not attribute any overt act to any one of them. Further, the medical evidence rules out any lathis having been used. The doctor found only incised injuries on the dead bodies and on the injured PWs. Therefore, it is difficult to accept the prosecution case that the other appellants were members of the unlawful assembly with the object of committing the offences with which they are charged. **We feel it highly unsafe to apply Section 149 IPC and make everyone of them constructively liable. But so far as the above nine accused are concerned the prosecution version is consistent namely that they were armed with lethal weapons like swords and axes and attacked the deceased and others. This strong circumstance against them establishes their presence as well as their membership of the unlawful assembly. The learned counsel appearing for the State vehemently contended that the fact that the Muslims as a body came to the scene of occurrence would show that they were members of an unlawful assembly with the common object of committing various offences including that of murder. Therefore all of them should be made constructively liable. But when there is a general allegation against a large number of persons the Court naturally hesitates to convict all of them on such vague evidence. Therefore we have to**

find some reasonable circumstance which lends assurance...”
(emphasis supplied)

40. It is, therefore, noted that the applicability of Section 149 IPC, specifically read with Section 302, cannot be done on the basis of vague evidence and general allegations. When there is a crowd involved, at the juncture of grant or denial of bail, the Court must hesitate before arriving at the conclusion that every member of the unlawful assembly inhabits a common intention to accomplish the unlawful common object. There cannot be an umbrella assumption of guilt on behalf of every accused by the Court, and every decision must be taken based on a careful consideration of the facts and circumstances in the matter therein. This principle, therefore, gains utmost importance when the Court considers the question of grant or denial of bail.

41. With regard to the submission that if there appears to be reasonable grounds that the accused has committed an offence which is punishable with death or life imprisonment, then there is a bar imposed by Section 437(1) Cr.P.C on granting of bail, this Court states that the case of Gurcharan Singh (supra) also acknowledges that it is the Court which has the last say on whether there exists any reasonable grounds for believing that the accused is guilty of committing the said offence. Furthermore, there is no blanket bar as such which is imposed on the Court on granting of bail in such cases and that the Court can exercise discretion in releasing the accused, as long as reasons are recorded which clearly disclose how the discretion has been exercised. Additionally, in the case of the Prabhakar Tiwari v. State of U.P., (2020) SCC Online 75, the Supreme Court has held that despite the alleged offence being grave and serious, and there being

several criminal cases pending against the accused, these factors by themselves cannot be the basis for the refusal of prayer for bail. In GurcharanSingh (supra), the Supreme Court observed as under :

“24. Section 439(1), Cr.P.C. of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), Cr.P.C. against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment of life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1), Cr.P.C. of the new Code. The overriding considerations in granting of bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1), Cr.P.C. of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.”

42. The Petitioner was arrested on 11.03.2020 and has been in judicial custody since then. It has been 17 months since the arrest of the Petitioner.

Bail jurisprudence attempts to bridge the gap between the personal liberty of an accused and ensuring social security remains intact. It is the intricate balance between the securing the personal liberty of an individual and ensuring that this liberty does not lead to an eventual disturbance of public order. It is egregious and against the principles enshrined in our Constitution to allow an accused to remain languishing behind bars during the pendency of the trial. Therefore, 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 grants or rejects bail.

43. 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 had 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.”

44. It is the Constitutional duty of the Court to ensure that there is no arbitrary deprivation of personal liberty in the face of excess of State power. Bail is the rule and jail is the exception, and Courts must exercise their jurisdiction to uphold the tenets of personal liberty, subject to rightful regulation of the same by validly enacted legislation. The Supreme Court has time and again held that Courts need to be alive to both ends of the spectrum, i.e. the duty of the Courts to ensure proper enforcement of criminal law, and the duty of the Courts to ensure that the law does not become a tool for targeted harassment.

45. As has been stated above, the Petitioner herein has been in custody for 17 months and was added by way of chargesheet dated 08.06.2020. A

perusal of the material on record has revealed to the Court that the video footage wherein the Petitioner is seen does not indicate whether the Petitioner was a part of the unlawful assembly at the SOC. Furthermore, the fact that the Petitioner was seen on Camera ID No.7033172 installed at F 71 Gali No.3 is also of no consequence at this juncture as the Petitioner is a resident of Gali No. 3. Additionally, the video footage in Camera ID 7033161, wherein it is alleged that the Petitioner is seen going towards the SOC, cannot be taken into account at this juncture to establish that the petitioner participated in the incident. The CDR in the instant case of the Petitioner is inconclusive as the Petitioner is a resident of the local area, i.e. Gali No. 3. The CDR which places the Petitioner in the vicinity of the SOC post the alleged incident does not definitively establish whether the Petitioner was a part of the unlawful assembly, and will be discerned during the course of the trial.

46. Whether the identification of the Petitioner by Ct. Gyan, HC Sunil and Ct. Sunil in statements under Section 161 Cr.P.C dated 10.03.2020, is enough to connect the Petitioner herein to the case is a matter of trial. While the veracity of the statements of the public witnesses and police officials is not to be delved into at this juncture and is a matter of trial, this Court is of the opinion that the same is not sufficient to justify the continued incarceration of the Petitioner herein. Additionally, merely being one of the organisers of the protest as well as being in touch with others who participated in the protest is also not sufficient enough to justify the contention that the Petitioner was involved in the pre-planning of the alleged incident. This Court has already opined that the right to protest and express dissent is a right which occupies a fundamental stature in a democratic

polity, and therefore, the fact that the Petitioner was part of the protest is not a sufficient ground to refuse bail to him.

47. The disclosure statement of the Petitioner cannot be taken in account and is inadmissible as it falls outside the ambit of Section 162Cr.P.C. and Sections 25 and 26 of the Indian Evidence Act. Furthermore, some of the co-accused of the Petitioner have been enlarged on bail *vide* Bail Appln. 1360/2021 dated 24.05.2021, and Bail Appln. 3550/2021 dated 16.02.2021, and Bail Appln. Nos. 2411/2021, 774/2021, 1882/2021, 2487/2021 and 2275/2021 dated 03.09.2021.

48. 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.

49. Accordingly, this Court is inclined to grant bail to the Petitioner in FIR No. 60/2020 dated 25.02.2020 registered at PS Dayalpur for offences under Sections 186/353/332/323/147/148/149/336/427/302 of the IPC, read with 3/4 of the PDPP Act, on the following conditions:

- a) The Petitioner shall furnish a personal bond in the sum of ₹35,000/- 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 Tuesday and Friday 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. F-66, Gali No. 3, Chand Bagh, Delhi. 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.

50. 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.

51. Accordingly, the bail application is disposed of along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J.

SEPTEMBER 14, 2021

Rahul