

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

Date of decision: 27th September, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 2349/2021**

MOHD SALEEM KHAN

..... Petitioner

Through:

Mr. Salman Khurshid, Sr. Advocate
with Mr. Aadil Singh Boparai,
Ms. Anshu Kapoor, Mr. Aman
Khullar, Ms. Aadya Mishra and
Ms. Sommya Chaturvedi, Advocates

versus

STATE OF 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/188/333/336/427/307/308/302/201/120-B/34 of the IPC, read with 3/4 of the PDPP Act. Thereafter, supplementary chargesheets were 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 was arrested on 11.03.2020, and has falsely been implicated in FIR No. 60/2020 and that there is nothing on record which shows that the Petitioner was a part of a mob or present at the Scene of Crime. It has been submitted to the Court that the co-accused of the Petitioner, Mohd. Mansoor, has been granted bail *vide* Order dated 24.05.2021 by this Hon'ble Court. It has been submitted that Mansoor had allegedly been identified at the Scene of Crime, pelting stones at the police officials. It has been submitted that the Petitioner herein should be granted bail on parity as there is no evidence/video footage/material on record which places the Petitioner at the SOC.

11. The learned Senior Counsel has submitted that the death of HC Ratan Lal took place due to a gunshot/firearm wound, and that neither any weapon/firearm has been recovered from the Petitioner nor has it been alleged that the Petitioner has used any weapon/firearm. He has submitted that there are no video recordings or audio recordings which show that the Petitioner incited any individual to damage public property or resort to violence.

12. Mr. Khurshid has argued that the statements recorded under Section 164 Cr.P.C. of Nazmul-ul Hasan, Toukir Alam and Salman @ Guddu, are exaggerations which are meant to fill up the lacunae in the investigation process, and that they have been recorded after an inordinate delay of over three months from the date of registration of the FIR. He has submitted that the prosecution has failed to explain this delay, and that this delay highlights the attempt of the prosecution to level baseless allegations against the Petitioner to cover up their failure to secure any material against the Petitioner. It has also been submitted that a bare reading of the statements under Section 161 and 164 Cr.P.C. reveals that they are almost identical and that, therefore, the investigation being conducted against the Petitioner herein is *mala fide* in nature.

13. It has been submitted by Mr. Khurshid that the CCTV footages which have been relied upon by the prosecution places the Petitioner at the street where the office of the Petitioner is located. It is stated that this street is approximately 400-600 metres away from the Main Wazirabad Road wherein the violence had erupted on 24.02.2020. It has been submitted by the learned Senior Counsel for the Petitioner that there exists no evidence which places the Petitioner at the SOC and that he was at his office during

the period when the alleged incident took place.

14. Mr. Khurshid has informed the Court that the Petitioner had duly appeared before the Investigating Officer when the investigation of the case was taking place, and that there had been no attempt on behalf of the Petitioner to evade the process of law from the date of registration of the FIR on 25.02.2020 till the time of his arrest on 11.03.2020. It has also been submitted that the Petitioner suffers from co-morbidities and has a history of heart issues.

15. The learned Senior Counsel for the Petitioner has also submitted that the Petitioner is already being investigated and stands chargesheeted in FIR No. 59/2020 registered at PS Crime Branch and is being investigated by the Special Cell, Delhi Police. It has been submitted that the Petitioner cannot be vexed twice and prosecuted for the same offences by registration of multiple FIRs as the allegations in FIR No. 59/2020 at PS Crime Branch and FIR No. 60/2020 at PS Dayalpur are overlapping and relate to the same cause of action. Furthermore, the allegations in both the cases are proximate and has common accused persons.

16. 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.

17. Mr. Prasad has submitted to this Court that the Petitioner herein, who was wearing a white shirt, black coat and black pants, was identified on GNCTD Camera ID No.7033172 installed at F 71 Chand Bagh at 12:07:10PM wherein he is seen turning away the CCTV camera with the aid of a wiper. The Petitioner was further identified on Camera ID No.7033161 installed at E2 56 Chand Bagh at 11:48:24 PM where he can be seen inciting and provoking the public to join the protest. Mr. Prasad contends that the CCTV cameras were made un-functional and their directions were changed only to facilitate the mob to reach the Scene of Crime. He contends that the incident was a well planned conspiracy and the petitioner was a part of that conspiracy which is evident from the fact that the petitioner turned the CCTV camera away from the *gully*.

18. The learned SPP for the State has submitted that the Petitioner is one of the main conspirators who played a vital role in instigating the protestors at the the Chand Bagh protest site. It has been stated that he is a garments exporter and he is an influential person in the community. It has been stated that there are police witnesses and independent witnesses who have identified the Petitioner, and the independent witnesses have revealed in their statements under Section 164 Cr.P.C. that he was one of the organisers of the protest site and instigated the crowd. It has been submitted to the Court that the CDR of the Petitioner has revealed that he was in touch with

the other co-accused.

19. 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.

20. 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.

21. 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, including the Petitioner herein, 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 also attended by several of the accused persons.

22. 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.

23. 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.

24. 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.

25. 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, it has been submitted that the Petitioner herein, along with his associates and residents of Chand Bagh had planned to block the road and assault the police in case they tried to intervene. It has been stated that the Petitioner, along with others also visited the protest site carrying sticks, iron rods, petrol bombs, acid, stones, arms etc, and that hate speeches were being delivered since the morning of 24.02.2020.

26. 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.

27. 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.

28. A perusal of the chargesheet indicates that the Petitioner is a resident of Chand Bagh who has a garments' export business. It states that the

Petitioner is a socially active person. The chargesheet states that messages had been circulated in the Muslim community that the Citizenship (Amendment) Act, 2019, was promulgated in order to strip off Muslims of their Indian citizenship. During the protest, DS Bindra, an advocate, started a community kitchen due to which a crowd would assemble, and that this crowd included the Petitioner herein, along with Salman Siddiqui, Dr. Rizwan, Salim Munna and others. The chargesheet states that Bindra instigated the Petitioner and others to oppose the Act and stressed that people should take to the streets to show their dissent. The chargesheet states that as a consequence, the Petitioner and his associates got tents, banners etc. It is stated in the chargesheet that on the day of the alleged incident, the Petitioner and his associates planned to block the road, and to assault the police in case they attempted to intervene.

29. A perusal of the video footage on record reveals that the Petitioner herein, who was wearing a white shirt, black coat and black pants, was identified on GNCTD Camera ID No.7033172 installed at F 71 Chand Bagh at 12:07:10 PM wherein he is seen turning away the CCTV camera with the aid of a wiper. The Petitioner was further identified on Camera ID No.7033161 installed at E2 56 Chand Bagh at 11:48:24 PM where he can be seen inciting and provoking the public to join the protest.

30. In the instant case, the issue which arises for consideration is whether a case for criminal conspiracy for an allegation of murder, i.e. Section 120B IPC read with Section 302, is made out against the Petitioner. In order to delve into the issue, it would be appropriate to reproduce Sections 120A and 120B IPC at this juncture:

“120A. Definition of criminal conspiracy. –When two

or more persons agree to do, or cause to be done, -

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.-It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

“Section 120B. Punishment of criminal conspiracy. –

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to the criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

31. For a criminal conspiracy to be established, there must be in existence two or more persons who agree to do, or cause to be done, an illegal act or an act which is not illegal by illegal means. The Explanation to Section 120A categorically notes that whether or not the illegal act is the ultimate object of the agreement, or is incidental to it, is completely immaterial. In Pratapbhai Hamirbhai Solanki v. State of Gujarat, (2013) 1 SCC 613, the Supreme Court had observed as follows:

“23. In the said case it has been highlighted that in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.” (emphasis supplied)

32. In Ram Narayan Popli v. CBI, (2003) 3 SCC 641, the Supreme Court, while dealing with the question of conspiracy, laid down as follows:

“342. ...The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime is

designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. For an offence punishable under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.”

(emphasis supplied)

33. Therefore, in order to contend the application of criminal conspiracy under Section 120-B and for an indictable offence to be accomplished, there is no requirement for an overt act to be done in furtherance of the conspiracy. It is the common design which gains utmost importance, and the conspiracy is held to be continued and renewed with regard to all its members wherever and whenever any member of the conspiracy acts in furtherance of this common design. There is also emphasis which is placed on the encouragement and support which co-conspirators render to such

enterprises because in the absence of the same, accomplishing such a common design would otherwise be impossible. Furthermore, in order to discern the complicity of the accused, one needs to examine the circumstances before, during and after the occurrence.

34. 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) SCCOnline 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 Gurcharan Singh (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.”

35. 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.

36. 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.”

37. 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.

38. 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. While the Petitioner has clearly been identified in both Camera ID Nos. 7033172 and

7033161 wherein he is seen dislocating a CCTV camera and inciting the crowd, respectively. The fact that the petitioner was part of the conspiracy or not can be ascertained only after evidence is led. Even though Section 120-B IPC is *prima facie* applicable in the instant case and the usage of a wiper to turn away the CCTV camera implies that the Petitioner may have been in the know-how of the impending riots, the extent to which the charge can be added against the Petitioner cannot be deconstructed by this Court at this point and is a matter of trial. This Court is of the opinion that this footage in itself is not sufficient to prolong the incarceration of the Petitioner.

39. The veracity and the definitiveness statements of the police witnesses and the independent witnesses is not to be delved into by the Court at this juncture and are also a matter of trial. It is to be noted that no video recordings or audio recordings have been placed on record which can verify the contention that the Petitioner was embroiled in disseminating hate speech. The CDR of the Petitioner which reveals that the Petitioner was in touch with other co-accused is of no consequence at this point and its veracity is to be seen during trial. Furthermore, the co-accused of the Petitioner have been enlarged on bail *vide* Bail Appln. 1360/2021 dated 24.05.2021, Bail Appln. 3550/2021 dated 16.02.2021, Bail Appln. Nos. 2444/2021 and 1945/2021 dated 14.09.2021, and Bail Appln. Nos. 1882/2021, 2487/2021, 2775/2021, 2411/2021 and 774/2021 dated 03.09.2021.

40. 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.

41. 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 Sections 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 Wednesday 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-75, 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.

42. 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.

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

SUBRAMONIUM PRASAD, J.

SEPTEMBER 27, 2021

Rahul

