

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

Date of decision: 14th September, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 2474/2021**

SADIQ@ SAHIL

..... Petitioner

Through: Mr. Dinesh Kumar Tiwari, Advocate.

versus

THE STATE, (GOVT. 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 the chargesheet dated 08.06.2020 has been filed against the Petitioner 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. Dinesh Kumar Tiwari, learned Counsel appearing for the Petitioner, has submitted that the Petitioner herein has been falsely implicated in the instant FIR, and that there exists no evidence which can prove the connection of the Petitioner to the incident beyond reasonable doubt. It is also submitted that the evidence is fabricated, and therefore, cannot be admissible and therefore the Petitioner cannot be convicted on the basis of the available material.

11. It has further been submitted to the Court by Mr. Tiwari that the Petitioner has been in judicial custody since 14.04.2020 and has not even received interim bail. The Court has been informed that the Petitioner is 22 years of age and is the sole bread earner of a family with aged parents.

12. The learned Counsel for the Petitioner states that the investigation has been completed and chargesheet has been filed, and therefore, the custody of

the Petitioner is no longer required for the purpose of investigation. Moreover, it has been submitted that keeping the Petitioner in custody with other hardened criminals will serve no fruitful purpose and will only be injurious to the health of the Petitioner.

13. On the aspect of evidence, Mr. Tiwari has argued that neither is there any electronic evidence like CCTV footage, video clip etc. against the Petitioner in the instant case, but also that the exact CDR location of the Petitioner has not been established by the prosecution and is inconclusive as the Petitioner is the resident of the area.

14. Mr. Tiwari has brought the attention of the Court to the bail order dated 16.02.2021 of this Hon'ble Court in Bail Appln. No. 3550/2020 wherein co-accused Mohd. Danish has been enlarged on bail, and has submitted that this bail order entitles the Petitioner herein to be released on parity.

15. It has been submitted that no public witnesses are present in the matter against the Petitioner and that the Petitioner has only been arrested on the basis of the disclosure statements of other co-accused.

16. Mr. Tiwari has contended before the Court that no incriminating material has been recovered from the Petitioner or at his instance. Furthermore, he has submitted that the Petitioner has no criminal history or previous convictions. It has also been stated that the Petitioner has no motive to commit a heinous offence.

17. The learned Counsel for the Petitioner has gone on to argue that Article 21 of the Constitution of India states that, "No person shall be deprived of his life or personal liberty except according to procedure established by law", and this includes the right to live with dignity.

Therefore, the continued incarceration of the Petitioner would violate his liberty and deprive him of his personal freedom.

18. Mr. Tiwari, the learned Counsel for the Petitioner, has stated before the Court that the Petitioner will not misuse the concession of liberty, will maintain good behaviour during the period of bail, and will appear before the Trial Court and co-operate in the expeditious disposal of the case. He has concluded his submissions on the note that the rule is to allow bail and that bail should not be the punishment in itself as the basic principle of criminal law dictates that an accused shall be presumed innocent till proven guilty.

19. 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.

20. Mr. Prasad has submitted to this Court that the Petitioner herein, who was wearing a yellow and white t-shirt, was identified on GNCTD Camera

ID No.7033161 installed at E2 56 Chand Bagh at 12:06:49 PM. He was further seen on Camera ID No. 7033182 installed at F 150 Chand Bagh at 12:13:20 PM with co-accused Imran Ansari, as well as on Camera No. 06 installed at Aman Motors at 13:10:40 PM with a *danda* in his hand, walking behind co-accused Imran Ansari. The learned SPP further submitted that the Petitioner was identified in the video taken by Vishal Chaudhry which places the Petitioner at the Scene of Crime at 00:34 seconds and 01:19 seconds with a *danda* in one hand and pelting stones at the police officials with his other hand.

21. 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.

22. 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.

23. 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.

24. The learned ASG has submitted that on the morning of 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.

25. 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.

26. 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.

27. 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.

28. 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. It has been submitted that the clothes which were worn by the Petitioner on the day of the alleged incident have been recovered and are similar to the ones seen in the CCTV footage. Additionally, it is stated that the identity of the Petitioner herein has been confirmed by statement of Ct. Sunil under Section 161 Cr.P.C. dated 27.02.2020 as well as the statement of HC Maninder under Section 161 Cr.P.C. dated 13.04.2020.

29. The Court has heard the learned ASG Shri SV Raju with Mr. Amit Prasad, learned SPP for the State, and Mr. Dinesh Kumar Tiwari, learned Counsel for the Petitioner. The Court has also perused the material on record.

30. A perusal of the material on record indicates that the Petitioner was added by way of chargesheet dated 08.06.2020 for offences under Sections 186/353/332/333/323/109/144/147/148/149/153A/188/336/427/307/308/302/201/120B/34 IPC, read with Sections 3 and 4 of PDPP Act. The Petitioner was arrested on 14.04.2020 and has been in judicial custody since then.

31. It is stated in chargesheet dated 08.06.2020 that the Petitioner was identified on various CCTV footages with co-accused Imran Ansari and holding a *danda* in his hand,. It is also stated that the Petitioner can be seen at the Scene of Crime, i.e. the protest site, holding the *danda* in one hand and pelting stones with his other hand. It is stated that the Petitioner was identified by Ct. Sunil and HC Maninder in their statements under Section 161 Cr.P.C. Further, the chargesheet states that the clothes which were worn by the Petitioner during the riots have been recovered and that they are similar to the ones seen in CCTV footages. The chargesheet also states that the mobile phone of the Petitioner was switched off on the day of the alleged incident, i.e. on 24.02.2020.

32. A perusal of the video footage reveals that the Petitioner herein, who was wearing a yellow and white t-shirt, can be seen on GNCTD Camera ID No.7033161 installed at E2 56 Chand Bagh at 12:06:49 PM. He was further seen on Camera ID No. 7033182 installed at F 150 Chand Bagh at 12:13:20 PM with co-accused Imran Ansari, as well as on Camera No. 06 installed at Aman Motors at 13:10:40 PM with a *danda* in his hand, walking behind co-accused Imran Ansari. The Petitioner can also been seen in the video taken by Vishal Chaudhry which places the Petitioner at the Scene of Crime at 00:34 seconds and 01:19 seconds with a *danda* in one hand and pelting stones at the police officials with his other hand.

33. 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)

34. 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.

35. In Kattukulangara Madhavan v. Majeed &Ors, (2017) 5 SCC 568, the Supreme Court has categorically stated:

“23. In the first place, the presence of an accused as part of an unlawful assembly, when not as a curious onlooker or a bystander, suggests his participation in the object of the assembly. When the prosecution establishes such presence, then it is the conduct of the accused that would determine whether he continued

to participate in the unlawful assembly with the intention to fulfil the object of the assembly, or not. It could well be that an accused had no intention to participate in the object of the assembly. For example, if the object of the assembly is to murder someone, it is possible that the accused as a particular member of the assembly had no knowledge of the intention of the other members whose object was to murder, unless of course the evidence to the contrary shows such knowledge. But having participated and gone along with the others, an inference whether inculpatory or exculpatory can be drawn from the conduct of such an accused. The following questions arise with regard to the conduct of such an accused:

- 1. What was the point of time at which he discovered that the assembly intended to kill the victim?*
- 2. Having discovered that, did he make any attempt to stop the assembly from pursuing the object?*
- 3. If he did, and failed, did he dissociate himself from the assembly by getting away?*

The answer to these questions would determine whether an accused shared the common object in the assembly. Without evidence that the accused had no knowledge of the unlawful object of the assembly or without evidence that after having gained knowledge, he attempted to prevent the assembly from accomplishing the unlawful object, and without evidence that after having failed to do so, the accused disassociated himself from the assembly, the mere participation of an accused in such an assembly would be inculpatory.” (emphasis supplied)

36. The Supreme Court has, therefore, held that the mere presence of an

accused in an unlawful assembly, when not as a curious onlooker or bystander, suggests that they were a part of the said assembly. When this presence is established by the prosecution, it is the conduct of the accused which must be examined in order to discern whether the accused continued to participate in the unlawful assembly for the achievement of the unlawful object, or not. Even in circumstances where the accused may not have the intention to participate in the object of the assembly, an inference whether exculpatory or inculpatory can be drawn from the conduct of the accused during their participation in that assembly. Furthermore, if there is no evidence which shows that the accused did not have knowledge of the unlawful object of the assembly, or that having gained knowledge of the same, he attempted to either prevent it or disassociate himself from the assembly, the mere participation of the accused in such an assembly would be deemed to be inculpatory.

37. In Lalji and Others v. State of U.P., (1989) 1 SCC 437, the Supreme Court had observed as follows:

“9. Section 149 makes every member of an unlawful assembly at the time of committing of the offence guilty of that offence. Thus this section created a specific and distinct offence. In other words, it created a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of the assembly. However, the vicarious liability of the members of the unlawful assembly extends only to the acts done in pursuance of the common objects of the unlawful assembly, or to such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. Once the case of a person falls within the ingredients of the

*section the question that he did nothing with his own hands would be immaterial. He cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he joined. It is not necessary that all the persons forming an unlawful assembly must do some overt act. **When the accused persons assembled together, armed with lathis, and were parties to the assault on the complainant party, the prosecution is not obliged to prove which specific overt act was done by which of the accused. This section makes a member of the unlawful assembly responsible as a principle for the acts of each, and all, merely because he is a member of an unlawful assembly. While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicarious criminal liability under Section 149. It must be noted that the basis of the constructive guilt under Section 149 is mere membership of the unlawful assembly, with the requisite common object or knowledge.*** (emphasis supplied)

38. It has, therefore, been held by the Supreme Court that once an individual is deemed to be a part of the unlawful assembly, it would not be open to the Courts to acquit some members on the ground that they themselves did not perform any violent act, or that there was no corroboration of their participation. Doing so would amount to forgetting the very nature and essence of the offence created by Section 149 IPC. Furthermore, the common object of the unlawful assembly could be

gathered from the nature of assembly, arms used by the members of the assembly, and the behaviour of the assembly at or before the scene of occurrence. It is an inference that is to be deduced from the facts and circumstances of the case, as has been stated in Lalji v. State of U.P. (supra).

39. 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. However, it is for the Courts to bear in mind that the judicial discretion in granting bail is to be exercised in a such a manner which ensures that the liberty of an individual is not unnecessarily and unduly abridged, and that at the same time, the cause of justice does not suffer. In Gurcharan Singh (supra), the Supreme Court observed as under :

“19. Section 437, Cr.P.C. deals, inter alia with two stages during the initial period of the investigation of a non-bailable offence. Even the officer incharge of the police station may, by recording his reasons in writing, release a person accused of or suspected of the commission of any non-bailable offence provided there are no reasonable grounds for believing that the accused has committed a non-bailable offence. Quick arrests by the police may be necessary when there are sufficient materials for the accusation or even for suspicion. When such an accused is produced before the Court, the Court has a discretion to grant bail in all non-bailable cases except those punishable with death or imprisonment for life if there appear to be

reasons to believe that he has been guilty of such offences. The Courts over-see the action of the police and exercise judicial discretion in granting bail always bearing in mind that the liberty of an individual is not unnecessarily and unduly abridged and at the same time the cause of justice does not suffer. After the Court releases a person on bail under sub-section (1) or sub-section (2) of Section 437, Cr.P.C. it may direct him to be arrested again when it considers necessary so to do. This will be also in exercise of its judicial discretion on valid grounds."

40. A perusal of the material on record has revealed to the Court that the Petitioner has been seen on multiple CCTV footage, carrying a *danda* with co-accused Imran Ansari. The clinching evidence that tilts this Court to prolong the incarceration of the Petitioner is his presence in the Vishal Chaudhry video wherein he is clearly identified at the Scene of Crime, holding a *danda* in one hand and pelting stones with his other hand at uniformed officials who at present around him, and are heavily and hopelessly outnumbered. This Court is of the opinion that the Vishal Chaudhary video reveals that the Petitioner is not merely a curious onlooker. The fact that he actively participated and pelted stones at the Police Officials at the Scene of Crime justifies the invocation of Section 149 IPC read with Section 302 IPC in the instant case.

41. In Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446, while dealing with individual liberty and cry of the society for justice, the Supreme Court has observed as under:

"18. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice

requires that law and order should prevail in a civilised milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organised society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires." (emphasis supplied)

42. This Court is of the opinion that the footage of the Petitioner at the Scene of Crime is quite egregious, and is therefore sufficient to keep the Petitioner in custody. Furthermore, the Petitioner does not satisfy the ingredients to claim bail on ground of parity with the other co-accused of the Petitioner who have been enlarged on bail *vide* BAIL APPLN. 1360/2021 dated 24.05.2021, BAIL APPLN. 3550/2021 dated 16.02.2021, BAIL APPLNs. 2411/2021, 774/2021, 1882/2021, 2487/2021 and 2775/2021 dated 03.09.2021 as, unlike the Petitioner herein, none of those co-accused, who have been granted bail were caught in an overt act which indicated their active participation in perpetrating the offences mentioned in FIR No. 60/2020.

43. 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 is not to be granted bail.

44. This bail application is, therefore, dismissed.

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

the trial.

46. Accordingly, the bail application is dismissed along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J.

SEPTEMBER 14, 2021

Rahul

