



2023:DHC:9081



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on : 15th December, 2023*
Judgment Delivered on: 18th December, 2023

+ BAIL APPLN. 958/2022

ARIF

..... Petitioner

Through: Mr.Sahim Malik, Advocate.

versus

STATE

..... Respondent

Through: Mr.Rajat Nair, SPP with Mr.Dhruv
Pande, Advocate for State.
Insp. Sanjay Gupta, Crime Branch.

+ BAIL APPLN. 1115/2023

ANISH QURESHI

..... Petitioner

Through: Mr.Tanveer Ahmed Mir and
Mr.Kartik Venu, Advocates.

versus

STATE OF NCT DELHI

..... Respondent

Through: Mr.Rajat Nair, SPP with Mr.Dhruv
Pande, Advocate for State.
Insp. Sanjay Gupta, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

1. By way of the present applications, the applicants seek regular bail in FIR No. 75/2020 dated 28th February, 2020 under Sections 302/149/147/148/436/120B/34 of the Indian Penal Code, 1860 (IPC) registered at Police Station Dayalpur. BAIL APPLN. 958/2022 has been filed

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on behalf of Arif and BAIL APPLN. 1115/2023 has been filed on behalf of Anish Qureshi.

2. Since these applications pertain to a common FIR and were heard together, they are being disposed of by a common judgment.

3. The present FIR has emerged out of riots and communal disharmony, which took place in certain parts of the North-East Delhi in the month of February, 2020 which resulted in the death of an innocent bystander.

4. The case set up by the prosecution is as under-

I. An information was received at Police Station Dayalpur from GTB Hospital at 11:15 P.M on 24th February, 2020 that one Rahul Solanki (hereinafter the deceased/victim) had received a gunshot injury at Shiv Vihar and was declared dead by the concerned doctor.

II. On 25th February, 2020 the post-mortem was conducted and body of the deceased was handed over to his father, Hari Singh Solanki and the deceased's brother, Rohit Solanki. The statements, under Section 161 of the Criminal Procedure Code, 1973 (Cr.P.C.) of Hari Singh Solanki and Rohit Solanki were recorded on 26th February, 2020. Thereafter, the present FIR was registered.

III. The investigation was initially conducted by the police officials of Police Station Dayalpur. Thereafter, on 7th March, 2020 the investigation was handed over to SIT, Crime Branch for further investigation.

IV. During the course of the investigation, the place of incident was visited and local enquiry was made. It revealed that on the date of the incident, the deceased along with his cousin, Anil Kumar had gone to purchase some grocery items in *Pal Dairy Wali Gali* when they noticed the

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presence of a large number of rioters present in the *gali* with rods, stones, pistols etc. In this commotion, one of the rioters fired upon Rahul Solanki, causing his death.

- V. The statement under Section 161 of the Cr.P.C. of Anil Kumar, an eye-witness to the death-causing incident, was taken on 8th March, 2020.
- VI. Applicants Arif and Anish Qureshi were arrested on 9th March, 2020.
- VII. Subsequently, the main Chargesheet was filed on 6th June, 2020.
- VIII. *Vide* order dated 6th March, 2023, charges have been framed against both the applicants under Sections 147/148/153A/380/427/436/450/302 read with Sections 149/188 of the IPC.
5. The bail applications of Arif and Anish Qureshi were dismissed by the learned Sessions Court *vide* orders dated 5th February, 2022 and 6th March, 2023, respectively.
6. Counsels appearing on behalf of Arif and Anish Qureshi have made the following submissions: -
 - i. There is no evidence on record to connect Arif or Anish Qureshi to the murder of the deceased.
 - ii. Rohit Solanki, brother of the deceased, who has identified Arif and Anish Qureshi to be at the place of the incident, based on a CCTV recording, was not an eye-witness to the death-causing incident.
 - iii. No judicial test identification parade was conducted of Arif and Anish Qureshi *qua* Anil Kumar, the eye-witness to the death-causing incident.
 - iv. A perusal of the statement under Section 161 of the Cr.P.C. of Ashok Kumar, public witness, does not show that the death of the deceased was caused by Arif or Anish Qureshi.
 - v. It is the prosecution's own case that one co-accused namely Mohd.

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- Mustaqueem shot the deceased. Hence, there cannot be a presumption of common object to commit murder *qua* the applicants herein, merely on account of them being present around the place of the incident. Reliance in this regard has been placed on the judgment of the Supreme Court in ***Kuldip Yadav and others v. State of Bihar***, (2011) 5 SCC 324.
- vi. Furthermore, the CDR location details cannot be relied upon as the applicants are residents of that area.
- vii. Both Arif and Anish Qureshi have been granted interim bail several times on various grounds by the learned Sessions Court and by this Court and have not misused the liberty.
- viii. The charges have already been framed and taking into account the number of witnesses, examination of witnesses shall take a considerable time.
7. *Per Contra*, learned SPP, appearing on behalf of the State, has made the following submissions:-
- i. Arif can be identified from the video footage of the CCTV cameras installed near the scene of the crime, carrying an iron rod and deliberately breaking CCTV cameras. Further, Anish Qureshi can be seen motivating the rioters.
- ii. Both of them have been identified by Rohit Solanki in his supplementary statement dated 8th March, 2020 under Section 161 of the Cr.P.C on the basis of the aforementioned CCTV camera video recordings.
- iii. It is submitted that a public witness, Ashok Kumar, had identified Arif and Anish Qureshi during the pointing-out procedure.
- iv. Furthermore, as per the CDR, Arif and Anish Qureshi were present at

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the scene of the crime at the time of the incident.

8. I have heard the counsels for the parties and perused the material on record.

9. In the present case, the prosecution has invoked Section 149 of the IPC read with Section 302 of the IPC to contend that the applicants, along with other members of the mob, had a common intention to commit the murder of the deceased.

10. At the outset, it is relevant to set out Section 149 of the IPC:-

“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.”

11. In so far as the applicants are concerned, the evidence on record, at best, suggests that the applicants were a part of the unlawful assembly. It is not the case of the prosecution that the applicants were armed with a dangerous weapon. In so far as the applicant Arif is concerned, the only additional incriminating allegation against him is that he broke the CCTV camera installed at the Pal Dairy.

12. In my considered view, merely because the applicants were part of an assembly, it cannot be assumed that the common object of the assembly was to commit a murder or that the applicants knew that a murder was likely to be committed. It is the prosecution's own case that the co-accused Mohd. Mustaqueem shot the deceased. In this regard, counsels for the applicants have correctly placed reliance on the judgment of the Supreme Court in

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Kuldip Yadav (Supra). Relevant paragraph of the said judgment has been set out below:-

“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 aware 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 IPC.”

13. In BAIL APPLN. 774/2021 titled **Mohd. Arif v. State** decided on 3rd September, 2021 and BAIL APPLN. 1518/2021 titled **Mohd. Tahir v. State** decided on 18th January, 2022, also pertaining to North-East Delhi riots, a Coordinate Bench has granted bails to applicants placed similarly to the applicants herein. Relevant observations from **Mohd. Arif** (Supra) have been set out herein below:-

“36. 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.”

14. Strong reliance has been placed on behalf of the prosecution on the judgment of the Coordinate Bench in BAIL APPLN. 791/2021 in **Sonu Saifi**

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v. *State* decided on 1st June, 2021, rejecting bail of a co-accused in the same FIR. However, the aforesaid judgment is distinguishable as in the said case, arms were recovered from the applicant therein, whereas no arms have been recovered from the applicants herein. Even otherwise, more than two years have elapsed since the said judgment in *Sonu Saifi* (Supra) was pronounced, and prosecution evidence is yet to commence.

15. Furthermore, reliance cannot be placed on the CDR location details as it is an admitted position that both the applicants and the deceased were residents of the same area. Furthermore, no judicial TIP was conducted of both the applicants herein.

16. Both the applicants have been in judicial custody since 9th March, 2020. The Chargesheet against the applicants was filed on 2nd June 2020. Thereafter, various Supplementary Chargesheets have been filed. Charges have been framed against the applicants. Till now the prosecution evidence is yet to commence. The prosecution has listed several witnesses and therefore the trial is likely to take a long while.

17. As per the Nominal Rolls on record, both the applicants have been earlier released on interim bail on multiple occasions and have not misused the said liberty. It is not the case of the prosecution that the applicants tried to influence witnesses while out on interim bail.

18. Both Anish Qureshi and Arif have already been granted bail in other cases pertaining to the North-East Delhi riots. Further, as per Anish Qureshi's Nominal Roll on record, there are some old FIRs, in which he has been granted bail.

19. Taking into account the fact that the trial is likely to take a long time, the applicants cannot be kept under incarceration for an indefinite period of

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time. Accordingly, considering the totality of the facts and circumstances and the period of incarceration already suffered by the applicants, this Court is inclined to grant bail to the applicants.

20. For the forgoing reasons, the applications are allowed and the applicants are directed to be released on furnishing a personal bond in the sum of Rs.35,000/- each with one surety of the like amount subject to the satisfaction of the Trial Court and further subject to the following conditions:

- i. The applicants shall not leave the country without the prior permission of the Court.
- ii. The applicants shall appear before the Trial Court as and when the matter is taken up for hearing.
- iii. The applicants shall join the investigation as and when called by the Investigating Officer (IO) concerned.
- iv. The applicants shall provide their latest/fresh mobile number(s) to the IO concerned, which shall be kept in working condition at all times and shall not switch it off or change the mobile number(s) without prior intimation to the IO concerned.
- v. The applicants shall provide their permanent address to the Trial Court. The applicants shall intimate the Court by way of an affidavit and to the IO regarding any change in their residential address.
- vi. The applicants shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses or tamper with the evidence of the case.

21. Needless to state that any observations made herein are purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the case.

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22. Accordingly, the applications are disposed of.

DECEMBER 18, 2023

at/rt

AMIT BANSAL, J.

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BAIL APPLN. 958/2022 & connected matter

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