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

+ **W.P.(CRL) 1199/2022, CRL.M.A. 10220/2022**

SITENDER AND OTHERS

..... Petitioners

Through: Mr. Amit Sharma, Ms. Kshma Sharma, Ms. Shivani Sharma, Ms. Anjali and Ms. Latika Vashisht, Advocates.

versus

STATE OF NCT OF DELHI AND OTHERS

..... Respondents

Through: Ms. Nandita Rao, ASC for State with SI Kunal Kishore, PS: Roop Nagar.
Mr. Harsh Sharma, Advocate for R5 to 7.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

30.04.2024

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1. This Writ petition has been filed under Article 226/227 of the Constitution of India read with Section 482 Cr.P.C. for quashing of FIR No.339/2021 dated 29.08.2021 under Sections 323/147/149 IPC registered at PS: Roop Nagar, Delhi.

2. Learned counsel for the Petitioners draws the attention of the Court to order dated 11.11.2022, wherein while issuing notice and asking the State to file status report, Court had recorded the statement of the counsel for the Petitioners that no offence for rioting was disclosed since Petitioners No. 2 and 3 were complainants who had made the complaint to the police officials. However, both Petitioners and Respondent No.5 to 7 have been wrongly and falsely implicated as accused in the present FIR. Court also recorded that the Petitioners and Respondents No. 5 to 7 were students who were aspiring for



civil services at the relevant time. Learned ASC for the State had submitted that Charge Sheet had been filed but cognizance was yet to be taken by the Trial Court. It was also submitted that the peculiar facts and circumstances did require consideration on merits even at the stage of cognizance. In these facts and circumstances, Court had directed forwarding of the copy of the order to the Trial Court for information and to look into the factual position at the stage of cognizance, in accordance with law.

3. Learned counsel for the Petitioners hands over copies of the order sheets passed by the Trial Court from time to time, which are taken on record. Order sheets reflect that on 01.09.2022 notice was issued to the first Investigating Officer (IO)/Complainant returnable on 15.10.2022. On the adjourned date, Court noted that no credible explanation has been given by both the IOs for invoking serious provisions of rioting. Final opportunity was granted to the IOs to submit explanation in writing, failing which order will be passed on merits. On 20.03.2023, Trial Court summoned Kapil Kanojiya, the sole eye-witness to the alleged incident, noting that it would be in the fitness of things to hear the eye-witness before proceeding further. On 09.11.2023, Kapil Kanojiya appeared before the Court and narrated the alleged incident, which as per the Court's observation was not entirely in line with the police case. He also affirmed that police came to record his statement a year later, without any reason for the delay. Kapil Kanojiya was discharged by the Court on the same day. Final opportunity was granted to both the IOs to explain the circumstances in which the subject FIR came to be registered, making it clear that no further opportunity shall be granted in this regard. Notice was issued to one of the IOs who was absenting, returnable on 24.02.2024.



4. On the adjourned date, as order sheet shows, IOs did not appear and adjournment was sought by learned APP for going through the files. Fresh summons were issued by the Court to both the IOs for 02.04.2024. The IOs were again absent on 02.04.2024 and the Trial Court has adjourned the matter for 27.05.2024.

5. Conjoint reading of the order sheets lends support to the contention of the Petitioners that the matter is being adjourned before the Trial Court due to non-appearance of the concerned IOs. Till date, State has been unable to furnish clarification/explanation before the Trial Court as sought, for invoking serious provisions of rioting and needless to state Petitioners and Respondents No.5 to 7, who are students with careers to pursue and were aspiring for civil services at the relevant time, are suffering. Learned ASC for the State assures the Court that the concerned IOs shall appear before the Trial Court on the next date, i.e. 27.05.2024, without awaiting service of summons.

6. Taking the assurance on record and without adverting to the merits of the case, present petition is disposed of, requesting the Trial Court to ensure that the matter is taken up on 27.05.2024 and heard. No unnecessary adjournments shall be granted. It is open to the Trial Court to hear the parties including the IOs/APP for the State and pass appropriate order, in accordance with law.

7. Pending application also stands disposed of.

JYOTI SINGH, J

APRIL 30, 2024/DU