



2024:DHC:8454



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

% **Date of order: 4th November, 2024**

+ **BAIL APPLN. 2218/2023**

MOHD. WASIM @ BABLUPetitioner

Through: Mr. Deepak Kohli, Mohd. Shariq,
Mohd Anas and Mr. Amit Kharbanda,
Advocates.

versus

STATE NCT OF DELHI & ANR.Respondents

Through: Mr. Ashish Dutta, SPP with Mr
Mayank, Advocate, Inst Mr. Gurmeet
Singh.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The applicant/petitioner has approached this Court *inter alia* seeking grant of regular bail under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C" hereinafter) [now Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS" hereinafter)] in FIR No. 60/2020 dated 26th February, 2020 registered at Police Station – Dayalpur for the offences punishable under Sections 186/353/332/333/323/109/144/147/148/ 149/ 153A/188/336/427/307/302/308/397/412/201/120B/34 of the Indian Penal Code, 1860 ("IPC" hereinafter) read with Sections 3 and 4 of the Prevention



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of Damage to Public Property Act, 1984 (“PDPP Act” hereinafter) and Sections 25/27/54/59 of the Arms Act, 1959 (“Arms Act” hereinafter).

2. The brief facts that led to the filing of the present application are as follow:

(a) On 24th February, 2020, a communal riot erupted in North-East Delhi as people were demonstrating a protest against the Citizenship (Amendment) Act, 2019 (“CAA” hereinafter), on the 25-foot service road near Chand Bagh on Wazirabad Road, Delhi.

(b) As stated in the impugned FIR, all the furious protestors proceeded to the Wazirabad Main Road, Delhi with weapons such as baseball sticks, iron rods and stones with a common intention to kill the police personnel on duty. Pursuant to the same, the police officials warned the protestors that a legal action will be taken against them in case of further disobedience, however, in rage and in furtherance of their common intention, all the protestors started pelting stones at the police officials with sticks, baseballs and iron rods.

(c) As a result of the aforesaid attack by the protestors, one police official, namely, i.e., Head Constable (“HC” hereinafter) Ratan Lal fell and sustained grievous injuries on his heads due to heavy stone pelting and subsequently, he succumbed to his injuries.

(d) Pursuant to the aforesaid, the present FIR was lodged against the present petitioner and it has been stated therein that he attacked the police officials by throwing petroleum bombs, which led to the



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unfortunate demise of the HC Ratan Lal on duty. In view of the same, the petitioner was arrested on 28th September, 2022.

(e) Therefore, the instant petitioner has approached this Court seeking the relief of regular bail.

3. Learned counsel for the petitioner submitted that the present FIR is nothing but a gross abuse of process of law as the petitioner herein has been falsely implicated in the present case as he has not committed any offence as alleged therein.

4. It is submitted that the petitioner was not a part of the abovementioned riot that took place on 24th February, 2020 in view of the fact that he came outside his home only to check upon his brother while the mob was allegedly gathered at the site of occurrence, which is near to his residence.

5. It is also submitted that the CCTV footage reflects that the petitioner was walking alone on the 25-foot service road as the same is at a distance of 50 meters away from his home and the said footage reflects that he was not carrying any weapon along with him.

6. It is further submitted that the petitioner is entitled to be released on bail as 20 out of 28 accused persons have already been granted bail by the Predecessor Bench of this Court as well as by the concerned learned Sessions Court. The details of the said orders granting bail to the aforesaid accused persons have been appended as Annexures E to Q to the instant petition.

7. It is submitted that a resident of the petitioner's vicinity, who is the prime witness of the prosecution, namely, Mr. Nazmul Hasan @ Nazam,



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identified most of the accused persons as mentioned in the instant FIR, however, failed to identify the petitioner herein and therefore, the petitioner has not committed any offence as alleged in the instant FIR.

8. It is submitted that no Test Identification Parade (“TIP” hereinafter) was initiated against the petitioner after his arrest and he was implicated in the instant case merely on the statement made by one police official namely, HC Chetrapal Singh.

9. It is submitted that the petitioner is currently 35 years old and belongs to a respectable family, however, his minor daughter, aged about 9 months, has passed away on 3rd December, 2022, therefore, it is submitted that his family is in shock and requires the financial and emotional aid of the petitioner. It is also submitted that he has no criminal antecedents and he has been arrested in the instant case only on the ground of suspicion.

10. It is submitted that the petitioner has been languishing in judicial custody for the last 25 months and the trial is still at the stage of framing of charges. It is further submitted that there are more than 150 witnesses in the main chargesheet and the trial will take several years to complete

11. It is submitted that the petitioner undertakes to abide by all the terms and conditions of this Court in case he is released on bail.

12. Therefore, in view of the foregoing submissions, it is prayed that that the reliefs may be granted as prayed for.

13. *Per Contra*, learned SPP appearing on behalf of the respondent-State submitted that the petitioner herein has been rightly arrested in the instant



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matter as he actively participated in the communal riots that took place on the date of 24th February, 2020.

14. It is submitted that the petitioner has been identified through the CCTV footage which was recorded on the aforesaid date at the scene of the crime where he was identified with physical characteristics such as long hair while wearing a blue shirt. Furthermore, it is submitted that as per his call detail records, his location was also found to be at the place of occurrence of the incident, i.e., main Wazirabad road, Chand Bagh, Delhi, on the said date.

15. It is submitted that the present petition is liable to be dismissed in view of the fact that the petitioner is responsible for the commission of the offences as mentioned in the aforesaid FIR.

16. It is submitted that as per the statement made by HC Chetrapal Singh, the petitioner has committed a serious offence of attacking the police personnel by throwing petrol bombs from the terrace of a shop namely, '*Sky Ride E Rikshaw Shop*'. Furthermore, it is submitted that the petitioner deliberately absconded and evaded his arrest, and therefore, he was also declared as a proclaimed offender on 5th March, 2021.

17. It is also submitted that the petitioner herein threw petrol bombs while targeting the police on duty, due to which, HC Chetrapal Singh sustained grievous injuries and is still under treatment as he is bed ridden.

18. It is submitted that the petitioner was part of the unlawful assembly on the date and time of the incident and is liable for the offence committed under Section 302 of the IPC as due to the aforesaid attack by the unlawful

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assembly, a public servant, i.e., HC Ratan Lal, was murdered while he was discharging his official duties.

19. It is submitted that the illegal acts of the petitioner are anti-national in nature which has disturbed the peace and harmony of the area and has challenged the rule of law, therefore, he is not liable to be released on bail and shall be provided with a stringent punishment.

20. It is further submitted that in case the petitioner is released on bail, he may threaten the prosecution witnesses and try tampering with the material evidence of the trial. Moreover, it is submitted that the present offences are grave in nature and thus, the severity and gravity of the offences should not be overlooked in any manner.

21. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be dismissed and the petitioner herein may be denied the relief of regular bail.

22. Heard learned counsel for the parties and perused the material available on record.

23. In view of the foregoing submissions, the point of adjudication before this Court is whether the petitioner herein is entitled to be released on regular bail or not.

24. In the instant case, the petitioner has been apprehended since 28th September, 2020 for being involved in the communal riots which took place on 24th February, 2020 against the promulgation of the CAA. It has been alleged that a number of accused/protestors, who were carrying baseball sticks, iron rods and stones, attacked the police officials on duty at the area



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and blocked the Wazirabad road near Chand Bagh, Delhi. Due to the aforesaid attacks on the police officials which were caused by throwing petrol bombs and pelting stones, one HC Ratan Lal sustained fatal injuries, including one gunshot injury and was subsequently declared dead.

25. Therefore, the instant FIR against the petitioner was registered on the basis of the statement made on 4th May, 2020 by one HC Chetrapal Singh. It has been alleged in the abovementioned complaint that due to the illegal acts of the petitioner and the mob, he also sustained grievous injuries and is bedridden for the same.

26. At this stage, it is imperative to state that this Court is well cognizant of the fact that while dealing with the instant petition under Section 483 of the BNSS, it needs to bear in mind the larger interest of the State while also categorically acknowledging the rights of the accused, i.e., the petitioner herein, who has been named in the FIR for the abovementioned offences and has been languishing in judicial custody since 28th September, 2020.

27. Moreover, it is pertinent to note that while dealing with an application seeking bail, the Courts must consider the fundamental postulate that “*bail is a rule and jail is an exception*”. The aforesaid principle has been emphasized by the Hon’ble Supreme Court as well as various High Courts time and again such as in ***Gurbaksh Singh Sibbiav. State of Punjab, (1980) 2 SCC 565*** and ***P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791***.

28. Moreover, the Hon’ble Supreme Court in ***Sanjay Chandra v. CBI, (2012) 1 SCC 40***, categorically noted that a series of factors need to be



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considered while deciding a case for bail and an accused shall not be denied the said relief merely on the ground of seriousness of accusations which are against the sentiments of the general public at large as the same needs to be corroborated with other material factors.

29. Therefore, a variety of factors need to be considered while granting bail to an accused, such as the stage of the trial, the gravity of offences, the possibility of tampering or destroying evidence, likelihood of absconding as well as the nature and conduct of the accused is custody.

30. Adverting to the merits of the instant application, in the present case, the petitioner has been charged with the offences punishable under Sections 3 and 4 of the PDPP Act for causing damage to public property by use of fire and explosive substances. Moreover, the petitioner has also been charged under the various offences as mentioned in the penal code as well as under the Arms Act for causing firearm injuries to HC Ratan Lal.

31. It is also observed that the respondent State has argued that the petitioner has committed anti-national acts by causing a ruckus at the illegal protest site, i.e., Chand Bagh. Therefore, serious offences under Section 149 of the IPC which deals with the commission of offence by a member of an unlawful assembly, specifically read with Section 302 of the IPC which pertains to the punishment for murder, have also been charged against him.

32. At this juncture, it is pertinent to state that the Hon'ble Supreme Court has consistently held in a catena of judgments, including the judgment in *Sherey and Ors. v. State of U.P.*, (1991) Supp (2) SCC 437 wherein it was held that conviction under Section 149 of the IPC read with Section 302 of



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this IPC is only applicable when a common intention to accomplish the unlawful objective of the accused is established and in order to convict an accused under Section 149 of the IPC, his role in the unlawful assembly needs to be given utmost importance. Therefore, it was observed that a mere finding that he was present therein would not be sufficient to prove that the accused acted with a common intention to commit a crime, i.e., cause communal violence herein, unless the same is supported with credible evidence.

33. Keeping in mind the aforesaid observations, it is duly noted that abovementioned principle is crucial for determining the question of grant or denial of a bail and the Courts should refrain from coming to a conclusion merely on an assumption that every member of an unlawful assembly inhabits a common criminal intention.

34. Furthermore, the petitioner herein has urged that he was not involved in the commission of any of the offences as mentioned in the instant FIR as the CCTV footage reflects that he was walking without any weapon and he was outside to check upon his brother at the site of occurrence which is near to his home. Moreover, it has been contended that the prime witness of prosecution, who has identified other accused persons, has failed to identify the instant petitioner.

35. At this stage, it is pertinent to mention that this Court, while determining the grant or refusal of a bail, need not assess the evidence on record to establish the conviction of the accused, i.e., the petitioner herein,



whereas, for ascertaining the grant of bail, it only needs to decide whether his continuous custody serves any fruitful purpose.

36. In light of the same, this Court observes that the ground taken by the petitioner *qua* not being involved in the riot as he was merely walking on the road is a matter of trial. Moreover, the fact that the prime witness of the prosecution failed to identify the petitioner herein lies in the favour of the petitioner and the same may be established by him before the concerned Court.

37. Furthermore, the jurisprudence for deciding the grant or denial of bail has been settled in a catena of judgments. It has been settled that if a Court, after perusing the facts and circumstances of each case, finds a *prima facie* case for grant of bail, it may allow an application under Section 483 of the BNSS and release an accused even in non-bailable offences, subject to imposition of certain conditions necessary for further adjudication of a matter.

38. Additionally, it is pertinent to note that the petitioner herein has taken the plea of parity. It has been contended that out of a total of 28 accused persons, 20 have already been granted bail by the Predecessor Bench of this Court as well as by the concerned learned Sessions Court *vide* orders which have been annexed at Annexures E to Q to the instant petition.

39. On the contrary, the learned SPP for the State has contended that the petitioner may be denied the relief of bail as he was declared a proclaimed offender in view of the fact that he absconded to evade his arrest after the alleged incident. However, it is pertinent to mention herein that three other



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accused persons in the instant case, namely, Ravish Fatima, Mohd. Khalid and Mohd. Ayaz, who were also declared as proclaimed offenders, have already been enlarged on regular bail.

40. Moreover, it is noted that the chargesheet in the instant matter has already been filed and the investigating agency has collected the material evidence, i.e., the CCTV footage. It is also noted that the instant matter is at a stage of framing of charges consisting of more than 150 witnesses.

41. It is further observed by this Court that the petitioner is a 35 year old sole-bread winner of his family, having no criminal antecedents and is behind the bars since 28th September, 2020. It is also observed that due to his continued incarceration period, not only the petitioner but his family has suffered largely as his minor daughter, aged about 9 months, passed away due to lack of treatment.

42. Furthermore, this Court is of the considered opinion that it is the duty of the judicial pillars of this Country that an accused is not unnecessarily deprived of his personal liberty as enshrined under Article 21 of the Constitution of India. Undoubtedly, *bail is a rule and jail is an exception*, therefore, it is imperative to state that in case a Court finds sufficient grounds to enlarge an accused on bail, it must exercise its powers discretionarily and uphold the ends of justice to an accused languishing in jail while ensuring the proper enforcement of procedural law as envisaged in the provisions of the BNSS.

43. Keeping in view of the above facts and circumstances as well as the stage of trial in the instant case, this Court finds that the instant petitioner



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cannot be made to languish behind the bars for an indefinite period and in the interest of justice, he may be granted the relief of bail.

44. Therefore, without delving into the merits of the case, this Court is inclined to allow the present petition seeking regular bail in FIR No. 60/2020 dated 26th February, 2020 for the offences punishable under Sections 186/353/332/333/323/109/144/147/148/149/153A/188/336/427/307/302/308/397/412/201/120B/34 of the IPC read with Sections 3 and 4 of the PDPP Act and Sections 25/27/54/59 of the Arms Act, registered at Police Station- Dayalpur.

45. Accordingly, the petitioner is directed to be released on regular bail, on furnishing a personal bond in the sum of Rs. 50,000/- with one surety in the like amount, subject to the satisfaction of the Court concerned and subject to the following conditions of bail:

- (i) The petitioner shall surrender his passport before the Court Concerned and he shall under no circumstances leave India without prior permission of the Court concerned.
- (ii) The petitioner shall appear before the Court concerned as and when required.
- (iii) The petitioner shall not tamper with the evidence during the trial.
- (iv) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.



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- (v) The petitioner shall provide his mobile number(s) and keep it operational at all times.
- (vi) The petitioner shall not commit any offence whatsoever during the period of his bail; and,
- (vii) In case of change of residential address and/or mobile number, the same shall be intimated to the Court concerned by way of an affidavit.
- (viii) The petitioner shall mark his presence before the Investigating Officer on every 15th day of every calendar month.

46. It is further imperative to clarify that the observations so recorded hereinabove are only for the purpose of deciding the present bail application and shall not affect the merits of the instant case.

47. Furthermore, it is made clear that in case of breach of any of the aforementioned bail conditions, the prosecution shall be at liberty to move an application before this Court seeking cancellation of bail.

48. Accordingly, in the aforesaid terms and conditions, the present petition alongwith pending applications, if any, stands disposed of.

49. Copy of this order be uploaded on the website forthwith and be sent to concerned Jail Superintendent for compliance.

CHANDRA DHARI SINGH, J

NOVEMBER 4, 2024

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