



2024:DHC:8455



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

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

+ **BAIL APPLN. 3744/2023**

MOHD. JALALUDDIN

.....Petitioner

Through: **Mr. Kartik Venu, Mr. R Jude Rohit
and Ms. Kratika Singhal, Advocates.**

versus

STATE (NCT OF DELHI)

.....Respondent

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 offences punishable under Sections 186/353/332/333/323/109/144/147/148/149/153A/188/336/427/307/302/308/201/120B/34 of the Indian Penal Code, 1860 ("IPC" hereinafter) read with Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984 ("PDPP Act" hereinafter).

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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 where 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.
- (b) As stated in the impugned FIR, all the furious protestors proceeded to 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, the concerned police officials, 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. The petitioner was arrested on 11th March, 2020.
- (d) Pursuant to the aforesaid, the present FIR was lodged against the rioters including the petitioner herein. Subsequently, a chargesheet dated 8th June, 2020 was filed and the role assigned to the petitioner is that he was found rioting in the above stated unlawful assembly.





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(e) Thereafter, the petitioner approached the Predecessor Bench of this Court seeking the relief of regular bail but the same was withdrawn *vide* order dated 17th January, 2022 with liberty to approach the concerned learned Sessions Court upon framing of charges.

(f) Since the matter is pending for framing of charges, the present petition has been filed seeking regular bail.

3. Learned counsel for the petitioner submitted that the present FIR is nothing but an abuse of process of law as the petitioner herein has been falsely implicated in the present case and 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 as before his arrest, the petitioner was working in the business of property dealing as a property broker having spent his whole life in the Chand Bagh area.

5. It is further submitted that the petitioner is entitled to be released on bail on grounds of parity as 21 out of 28 accused persons have already been granted bail by the Predecessor Bench of this Court as well as by the concerned Sessions Court.

6. It is submitted that the present FIR has been registered against the petitioner on the basis of the complaint received from Constable Sunil, however, the petitioner is not involved in the commission of any serious offence as alleged therein.

7. It is further submitted that the instant matter is pending since 26th October, 2020 and the trial is at the stage of arguments on charge. It is

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submitted that due to the aforesaid, the petitioner has suffered pre-trial incarceration for a period of 3 years and 7 months and in the meanwhile, seven supplementary chargesheets have been filed.

8. It is submitted that the instant matter will take a significant time to be completed due to paucity of resources and heavy pendency of cases pertaining to the North-East Delhi Riots that took place in the year 2020 as the prosecution has cited more than 270 witnesses across nine chargesheets against a total of 28 accused persons.

9. Learned counsel appearing on behalf of the petitioner placed reliance upon the judgments of the Hon'ble Supreme Court in *Vivek Kumar v. State of U.P.*, (2000) 9 SCC 443; *Bal Krishna Pandey v. State of U.P.*, (2003) 12 SCC 186; *Dipak Shubhashchandra Mehta v. CBI*, (2012) 4 SCC 134 and *Union of India v. KA Najeeb*, (2021) 3 SCC 713, and submitted that the petitioner cannot be left to be incarcerated in jail indefinitely as continuous detention of the present petitioner without a speedy trial is detrimental to his Fundamental Right of life and liberty under Article 21 of the Constitution of India.

10. It is submitted that the petitioner is liable to be enlarged on bail as the matter is pending at the stage of framing of charge for a period of 3 years and there is no progress in trial, therefore, his continued incarceration constitutes as a change in circumstance.

11. It is also submitted that the petitioner herein has been falsely implicated as the chargesheet indicates vague allegations against him which are insufficient to justify his continuous incarceration. Moreover, it is





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submitted that the alleged sighting of the petitioner in the CCTV footage in one location cannot be used to implicate him as a part of the unlawful assembly which was occurring at another location.

12. It is further submitted that the petitioner has been misidentified in the aforesaid footage as there is no mention of how he has been purportedly identified and by whom he was identified.

13. It is submitted that the petitioner is currently 36 years old and has no criminal antecedents. It is further submitted that the investigation *qua* the petitioner herein stands complete, therefore, no useful purpose will be served by keeping him in continuous incarceration.

14. 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.

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

16. *Per Contra*, learned SPP appearing on behalf of the respondent-State submitted that the petitioner herein has been rightly arrested in the instant matter as he actively participated in the communal riots that took place on 24th February, 2020.

17. It is submitted that the identity of the petitioner was duly established on the basis of the statements made by HC Sunil, Constable Sunil and Constable Gyan as their statements indicate the role of the present petitioner that he was a part of the illegal mob.





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18. 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.

19. It is submitted that as per the video recorded by one of the public witnesses namely, Mr. Vishal Choudhary, the petitioner, who was wearing blue colour kurta and black jacket, is seen pelting stones at the police personnel. Furthermore, he is also seen leading an unlawful assembly. It is submitted that the statement of the aforesaid public witness, i.e., Mr. Vishal Choudhary, also corroborates the same.

20. It is submitted that the illegal acts of the petitioner are anti-national in nature which have 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.

21. It is further submitted that in case the petitioner is released on bail, he may threaten the prosecution witnesses and tamper 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. It is also submitted that the conduct of the petitioner shows that if the petitioner is released on bail, there is a likelihood of the petitioner repeating the said offence.

22. 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.

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

24. 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.

25. In the instant case, the petitioner has been apprehended since 11th March, 2020 for being involved in the communal riots which took place on 24th February, 2020 against the promulgation of the CAA.

26. It has been alleged in the FIR that a number of accused/protestors, who were carrying baseball sticks, iron rods and stones, attacked the police officials on duty in the area 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.

27. Therefore, on the basis of the statement made on behalf of Constable Sunil, the present FIR was registered against the petitioner under several offences punishable in the penal code, as well as under PDPP Act as he was identified in the CCTV footage of the date of the incident.

28. 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

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herein, who has been named in the FIR for the abovementioned offences and has been languishing in judicial custody since 11th March, 2020.

29. 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***.

30. 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 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.

31. 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 in custody.

32. 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





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under the various offences under the penal code for the unfortunate demise of the HC Ratan Lal.

33. At this juncture, it is noted that the matter has been fixed for arguments on charge and is pending since 26th October, 2020. As a result of the same, the petitioner herein has undergone pre-trial incarceration for a period of 3 years and 7 months.

34. It is further observed that despite a long passage of time, the trial has not even been initiated and more than 270 witnesses have been cited by the prosecution. Therefore, this Court finds that there is a delay in the initiation of trial while the petitioner has been languishing in jail since 11th March, 2020.

35. It is needless to say that the determination of his guilt or innocence is taking a large amount of time to be completed. In view of the same, it is observed that the petitioner cannot be made to incarcerate in jail for an indefinite period as doing so will hamper with his Fundamental Right enshrined under Article 21 of the Constitution of India.

36. It is pertinent to state that the Hon'ble Supreme Court has consistently reiterated the aforesaid principle in a catena of judgments, including the cases of *Union of India v. KA Najeed*, (2021) 3 SCC 713, and *Angela Harish Sontakke v. State of Maharashtra*, (2021) 3 SCC 723, wherein the Hon'ble Court observed that once it has been established that an accused had suffered pre-trial incarceration and the timely trial of his case is not possible, the Courts may bear the same in mind and enlarge such persons on bail as a





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gross delay in completion of a trial constitutes as a violation of the right to speedy justice under Article 21 of the Constitution of India.

37. Therefore, this Court is required to balance the interest of the State while simultaneously acknowledging the rights of the accused persons. Thus, this Court categorically finds that the present case is a case of violation of the under trial rights of the petitioner.

38. 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.

39. In light of the same, this Court is of the view that the ground taken by the petitioner *qua* his non-involvement in any of the offences as mentioned in the instant FIR, is a matter of trial. Moreover, there is a material delay in the initiation of the same and a timely disposal of the case pertaining to more than 270 witnesses across 9 chargesheets is not possible.

40. 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.





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41. It is worthy to note here that the petitioner herein has taken the plea of parity. It has been argued that out of a total of 28 accused persons, 21 have already been granted bail by the Predecessor Bench of this Court as well as by the concerned Sessions Court.

42. Moreover, it is noted that seven supplementary chargesheets have been filed in the instant matter and the investigation *qua* the present petitioner stands complete. It is also noted that the instant matter is at a stage of arguments on charge consisting of more than 270 witnesses across 9 chargesheets.

43. It is further observed by this Court that the petitioner is a 36 year old having no criminal antecedents and is behind bars since 11th March, 2020. Furthermore, the petitioner has suffered pre-trial incarceration for a period spanning of about 3 years and 7 months. It is also observed that 21 out of 28 accused persons pertaining to the same case have already been enlarged on bail, including several proclaimed offenders.

44. 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 if a Court finds sufficient grounds to enlarge an accused on bail, it must exercise its powers discretionarily and uphold the principles of justice for an accused languishing in jail while ensuring the proper enforcement of procedural law as envisaged in the provisions of the BNSS.

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45. 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 petitioner cannot be made to languish behind bars for an indefinite period and in the interest of justice, he is entitled to the relief of bail.

46. 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 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.

47. 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.





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- (iv) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.
- (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.

48. 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.

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

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

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

CHANDRA DHARI SINGH, J

NOVEMBER 4, 2024Rk/sm/mk *Click here to check corrigendum, if any*

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