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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3001/2024**
IRSHAD ALI

.....Petitioner

Through: Mr. Salman Khurshid, Sr. Adv. with
Mr. Bilal Anwar Khan, Mr. Anshu
Kapoor, Adv.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Ashish Dutta, SPP with Mr.
Mridul Arora, Adv.
Insp. Mr. Gurmeet Singh, PS Crime
Branch

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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21.11.2024

1. The present petition has been filed by the petitioner seeking regular bail in FIR No.60/2020 dated 25.02.2020 under Sections 186/353/332/333/323/109/144/147/148/149/153A/188/336/427/307/308/397/412/302/201/120B/34 of the Indian Penal Code, 1860 [IPC] read with Sections 3/4 of the Prevention of Damage to Public Property Act, 1984 [PDPP] and Sections 25/27/54/59 of the Arms Act, 1959 at PS.: Dayalpur, Delhi.
2. As per the FIR, a communal riot erupted in the North-East, Delhi on 24.02.2020 during protests against the implementation of the Citizenship Amendment Act, 2019 and the petitioner (amongst other rioters) was carrying a wooden stick (Danda) with which he attacked many policemen in a life-threatening manner. Further, it is stated that the petitioner (amongst



other rioters) ransacked the nearby showrooms, shops, houses, vehicles etc and set them ablaze after looting them.

3. Mr. Khurshid, learned senior counsel for the petitioner states that the except for the allegations of the respondent, there is nothing which is identifying the petitioner with the allegations of the offence. No TIP has been conducted and out of 28 accused persons, 16 accused persons are enlarged on bail.

4. He also relies on the recent judgment of this court in a connected matter (arising from the same FIR) in *Mohd. Jalaluddin vs. State (NCT of Delhi)*, BAIL APPLN. 3744/2023 dated 04.11.2024 wherein bail was granted to the accused person. The operative portion reads as under:

“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.

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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.

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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 is custody.

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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.

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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.

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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.”

5. Mr. Dutta, learned SPP has shown me a video wherein he states that the petitioner was found at 2 ½ kms away from his residence along with a Danda in his hands. He further states that the petitioner in the present case had no reason to be 2 ½ kms away from his residence and therefore was



actively participating in the rioting.

6. I have heard learned counsels for the parties.

7. In the present case, the fact remains that the petitioner is in custody since 07.12.2020. The case is at the stage of framing of charges and there are about 270 witnesses to be examined. Four years have passed and the trial is yet to commence.

8. The petitioner has been in custody for a substantially long period of time and as per the judgment of *Mohd. Jalaluddin (supra)*, it is the bounden duty of the courts to ensure that no person is deprived of personal liberty under Article 21 of the Constitution of India, 1950.

9. The same is even more important when there is no likelihood of the evidence being concluded and the case being disposed of in a timely manner. With examination of 270 witnesses remaining, the same does not seem to be a possibility in the near future.

10. As regards the identity of the petitioner is concerned, the same is disputed by the counsel for the petitioner. No TIP was conducted and except for the statement of beat constable, there is no other independent corroborating evidence identifying the petitioner as being the petitioner in the video.

11. The question whether the petitioner was the person as shown in the video, can only effectively be determined once the trial has concluded and the Court has had an opportunity to consider the evidence.

12. Hence, the petition is allowed. The petitioner is directed to be released subject to the following conditions:

- i. The petitioner shall furnish a personal bond in the sum of Rs. 50,000/- with one surety each of the like amount to the satisfaction of the



concerned court.

- ii. The petitioner shall appear before the Court as and when the matter is taken up for hearing;
 - iii. In case the petitioner change his addresses, he will inform the IO concerned and this Court also;
 - iv. The petitioner shall not leave the country during the bail period without permission from the competent court and surrender his passports, if any, to the I.O.;
 - v. The petitioner shall provide his mobile number to the Investigating Officer (IO) concerned, which shall be kept in working condition at all times. The petitioner shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;
 - vi. The petitioner shall not indulge in any criminal activity during the bail period;
 - vii. The petitioner shall not tamper with the evidence of the case.
13. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present petition.

JASMEET SINGH, J

NOVEMBER 21, 2024/sp