

Bail Application No.1460/2020

State V/s Khalid Saifi

FIR No.101/2020

U/s 109/114/147/148/149/153-A/186/212/353/395/427/435/436/452/

454/505/34/120-B IPC r/w Sections 3/4 PDPP Act & Sections 25/27 Arms Act

PS: Khajuri Khas (Crime Branch)

04.11.2020

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri Manoj Chaudhary, Ld. Special PP for the State alongwith IO, Inspector Sunil Kumar and ACP Pankaj.

Ms.Rebecca John, Ld.Senior Advocate alongwith Shri Bhavook Chauhan, Shri Rajat Kumar, Shri Harsh Bora, Ms.Pravita Kashyap, Shri Tushar Yadav and Shri Syed Atif, Ld. Counsels for accused Khalid Saifi/applicant.

ORDER

I have heard arguments advanced at bar by both the sides and perused the report filed in the matter, the main chargesheet and the supplementary chargesheet.

2. The FIR in the present case was registered on the statement of Constable Sangram Singh, wherein he stated that when he was on duty alongwith other staff on main Karawal Nagar Road, near Chand Bagh Pulia on 24.02.2020, at about 2.00 PM, a large crowd gathered on the road and started pelting stones. He went into a nearby parking lot to save himself, but the mob broken open the shutter of the parking lot and thrashed all the persons present inside. They set the vehicles lying parked there on fire. The motorcycle of the complainant was also burnt by the rioters. He somehow managed to save his life from the rioters. After registration of FIR, further investigation of the case was transferred to Crime Branch by the order of senior officers on 28.02.2020.

3. During the course of investigation, on inspection of the building of principal accused Tahir Hussain and the adjoining area, a lot of debris, stones, bricks, broken bottles, some glass bottles with liquid, bullets and burnt articles were found lying scattered on the main Karawal Nagar Road. It was found that the building of principal accused Tahir Hussain was used by the rioters/miscreants/accused persons for brick batting, stone pelting, pelting of petrol bombs and acid bombs. A lot of stones, bricks, glass bottles containing petrol with neck stuffed with clothes and other material, including catapults were found lying on the third floor and on the rooftop of principal accused Tahir Hussain's house.

4. The learned counsel for the applicant has very vehemently argued that the applicant, who is aged about 39 years and a businessman by profession has been falsely implicated in the matter by the investigating agency. He was initially arrested on 26.02.2020 in case FIR No.44/2020, PS Jagatpuri. Thereafter, he was formally arrested on 21.03.2020 in case FIR No.59/2020 (investigated by Special Cell) and thereafter on 06.06.2020 he was formally arrested in the present case. The applicant was not physically present at the scene of crime (SOC) on the date of alleged incident and that is the reason he is neither visible in any CCTV footage/viral video nor any of the witnesses have specifically named him to be part/member of the riotous mob. The applicant has been roped in the matter merely on the basis of his own disclosure statement and the disclosure statement of co-accused Tahir Hussain. It is argued that no recovery of any sort has been effected from the applicant in the matter.

5. It is further argued that the sole allegation against the applicant is that his CDR analysis revealed that he had been in regular touch with co-accused Tahir Hussain and several other persons like Umar Khalid, Meeran Haider, Asif Tanha, Danish, Ishrat Jahan, Bilal Lamba and Salim etc., since the inception of anti-Citizenship Amendment Act (CAA) protest(s) in Delhi (who are stated to be accused in case FIR No.59/2020, being investigated by Special Cell of Delhi

Police). It is further argued that even if for the sake of arguments it is assumed that the CDR analysis of the applicant revealed that he had got in touch with co-accused Tahir Hussain and Umar Khalid in the evening of 08.01.2020, that does not in any way establish that any meeting took place between them and at the most, it only goes on to show that these persons were in the same area of Shaheen Bagh on 08.01.2020 without any criminal conspiracy with each other. In continuation of the aforesaid, it is argued that the alleged contacts and connections of the applicant with other persons such as Meeran Haider etc. (who are accused in case FIR No.59/2020, being investigated by Special Cell) are not relevant in the present matter as they are not accused in the matter and those allegations are subject matter of a different FIR, which cannot be a ground to deny bail to the applicant in the instant matter. It is argued that for the alleged offence of “*criminal conspiracy*”, applicant is already facing trial by way of being falsely roped in case FIR No.59/2020 (being investigated by Special Cell of Delhi Police) and thus, the applicant cannot be prosecuted for the alleged offence twice, which is in total violation of Article 20 (2) of the Constitution of India under the doctrine of “*Double Jeopardy*”. It is argued that there is no other independent or legally admissible evidence of criminal conspiracy available against the applicant.

6. The learned counsel for the applicant has referred to the following judgments on the proposition mentioned against the citation(s):

| <i>S.No.</i> | <i>Judgment & Citation</i> | <i>Proposition laid down</i> |
|--------------|---|---|
| 1. | <i>Indra Dalal v State of Haryana, (2015) 11 SCC 31</i> | Disclosure statements are inadmissible in evidence unless they lead to recovery pursuant to the disclosure, and cannot be relied upon to deny bail to an accused. |
| 2. | <i>Rajesh Sharma V/s Directorate of Revenue Intelligence, 2018 SCC OnLine Del 12372</i> | Disclosure statements are not to be relied upon to deny bail to an accused. |
| 3. | <i>Geedarwa alias Faiaz alias Md. Faiaz alias Mohammad</i> | Disclosure statements not a ground to deny bail. |

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| | <i>Faiyaz Alam v. State of Bihar, 2020 SCC OnLine Pat 395</i> | |
| 4. | <i>Avnish Jha v. State of Bihar, 2020 SCC OnLine Pat 699</i> | Disclosure statements not a ground to deny bail. |
| 5. | <i>Sanjay Chandra V/s CBI, (2012) 1 SCC 40</i> | Once the charge sheet has been filed, custody of the accused is no longer required for further investigation and the accused is entitled to bail. |
| 6. | <i>Navendu Babbar V/s State of GNCT of Delhi; Bail Application No.953/2020, decided on 18.06.2020</i> | Continuation of investigation not a valid ground to deny bail |
| 7. | <i>Devangana Kalita V/s State, 2020 SCC OnLine Del 1092</i> | Existence of multiple cases not a valid ground to deny bail. |
| 8. | <i>Prabhakar Tewari V/s State of UP, (2020) SCC OnLine 75</i> | Existence of multiple cases not a valid ground to deny bail |
| 9. | <i>Ashok Sagar V/s State, 2018 SCC OnLine Del 9548</i> | Principles regarding grant of bail i.e. incarceration, during trial, is not punitive, courts are not to presume that the accused would flee justice, mandate of Art. 21, nature of the offence committed necessarily has a limited role to play, etc. |
| 10. | <i>P. Chidambaram V/s Directorate of Enforcement, 2019 SCC OnLine SC 1549</i> | If Triple-test i.e., not being a flight risk, no chance of tampering with evidence, and no apprehension of influencing witnesses, is satisfied, bail should be granted. |
| 11. | <i>Deepa Bajwa V/s State & Ors. 2004 (77) DRJ 725</i> | Supplementary statements cannot be used to make up lacuna complaint. |
| 12. | <i>State (Govt of NCT of Delhi) V/s Nitin 2019 SCC OnLine Del 7239</i> | Supplementary statement recorded immediately after incident to be given greater credence. |

7. It is claimed that the applicant has clean past antecedents. He is the sole bread earner of his family, consisting of his wife, three minor children and widowed mother. The applicant has already been enlarged on bail in another case of rioting of similar nature, being case FIR No.44/2020, PS Jagatpuri by the Court

of Shri Amitabh Rawat, learned ASJ-03 (Shahdara). In the end, it is argued that the investigation in the matter is complete; chargesheet has already been filed; the applicant is no more required for any custodial interrogation and no useful purpose is going to be served by keeping him behind bars in the matter as the trial is likely to take long time.

8. Per contra, the learned Special PP for the State submits that the case is “*sensitive*” in nature, which involves the riots which took place at or around the house of main accused Tahir Hussain. During investigation, it has emerged that there was a “*deep-rooted conspiracy*” which triggered communal riots in Delhi. A web of conspirators, instigators and rioters has been identified and several of them have been arrested. It is further argued that the riots were not impromptu, but were conspired with the intent to create communal strife and to malign the image of the country under the garb of democratically opposing the Citizenship Amendment Act (in short “*CAA*”). The conspirators caused disruption by the dual scheme of spreading misinformation on CAA and causing “*Chakka-Jaam*” on main arterial roads, which ultimately triggered the communal riots. It is further argued that the accused persons in furtherance of criminal conspiracy committed the act of riots in the area of PS Khajuri Khas as well as PS Dayalapur and a “*sense of terror*” was created in the minds of general public. They not only mobilized the mob into a group of rioters by way of provoking their religious feelings, but also provided logistic support like lathis, dandas, stones, acids, knives, swords, fire arms, pistols etc., for committing riots in the area and to eliminate the members of other community. The “*common object*” of the accused persons was to cause maximum damage to the persons and property(ies) of other community. The principal accused Tahir Hussain, who was holding the post of “*Municipal Councillor*”, gathered persons from his community on the basis of religious sentiments, promoted enmity between two communities on the ground of religion and facilitated them to the rooftop of his building. The co-accused persons in the matter were very well known to him and some of them are his close relatives, due to which “*meeting of minds*” took place very quickly.

9. It is next argued that a total of fifteen persons have been arrested in the matter, including the applicant on the basis of his identification by public witness Rahul Kasana. The learned Special PP has taken me through the statement of PW Rahul Kasana, dated 27.09.2020, recorded U/s 161 Cr.P.C to contend that this witness had categorically seen the applicant meeting co-accused Tahir Hussain and Umar Khalid in the evening of 08.01.2020 at Shaheen Bagh, which duly corroborates the disclosure statement of applicant.

10. It is further argued that the CDR analysis of mobile phone number of the applicant categorically revealed that he was in regular touch/contact with main conspirator Tahir Hussain and Umar Khalid and the CDR location of all of them have been found to be at Shaheen Bagh in the evening of 08.01.2020.

11. It is next argued that the applicant was part of large-scale conspiracy hatched by principal accused Tahir Hussain with other anti-social elements, which has been investigated by Special Cell of Delhi Police in case FIR No.59/2020. It is submitted that regular bail applications of as many as four co-accused persons namely Gulfam @ VIP, Riyasat Ali, Rashid Saifi and Irshad Ahmed have already been dismissed by this Court vide orders dated 21.08.2020, 28.08.2020, 01.09.2020 and 08.10.2020 and the instant bail application also deserves dismissal.

12. In the end, it is argued that although the chargesheet in the matter has been filed, yet the investigation of the case is still in progress; many persons who were part of the “*riotous mob*” need to be identified and arrested; the “*conspiracy angle*” behind such a large-scale riot needs to be unearthed; and there is every chance that if released on bail, the applicant may threaten the witnesses, who are residents of the same locality and as such, the dismissal of the instant bail application has been prayed for.

13. The learned Special PP has referred to the following judgments:

| S.No. | Particulars of judgments |
|--------------|---|
| 1. | <i>State V/s Jaspal Singh Gill; 1984 AIR 1503 (Date of Decision 25.06.1984)</i> |
| 2. | <i>Nirmal Singh Kahlon V/s State of Punjab & Ors. (2009) 1 SCC 441: (DOD: 22.10.2008)</i> |
| 3. | <i>State of Maharashtra V/s Kamal Ahmed Mohd. Wakil Ansari & Ors.; Crl.Appeal No.445/2013, (DOD: 14.03.2013)</i> |
| 4. | <i>CBI V/s V. Vijay Sai Reddy; Crl.Appeal No.729/2013 (DOD: 09.05.2013)</i> |
| 5. | <i>Rajiv @ Monu V/s State of NCT of Delhi; Crl.Appeal No.192/2017 (DOD: 08.10.2018)</i> |

14. I have given my thoughtful consideration to the arguments advanced at bar.

15. It is a matter of record that it has nowhere been the case of prosecution that the applicant was physically present at the scene of crime (SOC) on the date of incident. It is further a matter of record that the applicant is not visible in any CCTV footage/viral video(s) pertaining to the scene of crime on the date of incident. There is no identification of the applicant either through independent public witness or any police witness of he being present at the scene of crime on the date of incident. Even the CDR location of the mobile phone of applicant has not been found at the scene of crime on the date of incident. The applicant has merely been roped in the matter on basis of his own disclosure statement and fourth disclosure statement of co-accused Tahir Hussain. Even no recovery of any sort has been effected from the applicant pursuant to his disclosure statement. The argument of learned Special PP that applicant had been in regular contact/touch with co-accused Tahir Hussain and Umar Khalid over mobile phone and the same is evident from the fact their CDR location on 08.01.2020 has been found to be at Shaheen Bagh is hardly of any consequences, as *prima facie* that does not in any

way go on to establish the criminal conspiracy alleged against the applicant in the matter. Even the statement of PW Rahul Kasana recorded U/s 161 Cr.P.C in the matter merely talks of some meeting between the applicant, co-accused Tahir Hussain and Umar Khalid on 08.01.2020, however, the same does not disclose about the subject matter of such meeting. Be that as it may, it is relevant to note here that said PW Rahul Kasana is also a witness in case FIR No.59/2020, in which case also the “*criminal conspiracy*” angle is being investigated by Special Cell of Delhi Police. In the said case the statement under Section 161 Cr.P.C of PW Rahul Kasana was recorded on 21.05.2020, on which date he did not utter a single word against the applicant qua “*criminal conspiracy*” and now all of a sudden, he vide his statement recorded under Section 161 Cr.P.C in the matter on 27.09.2020 blew the trumpet of “*criminal conspiracy*” against the applicant. This *prima facie* does not appeal to the senses. This Court is aware of the fact that besides the present matter, the applicant is also an accused in case FIR No.59/2020 (being investigated by Special Cell) and case FIR No.44/2020, PS Jagatpuri. In case FIR No.44/2020, PS Jagatpuri, he has already been enlarged on bail by the Court of Shri Amitabh Rawat, learned ASJ (Shahdara) vide order dated 11.09.2020. As regards case FIR No.59/2020, it is noted that same is a different case and the present bail application has to be decided in the context of the present FIR and the investigation so concluded.

16. I have considered the judgments referred by the learned counsel for the applicant on the proposition set out against the citations. The judgments duly apply to the facts of the present case. I may not like to quote all the judgments except for the judgment in “*Devangna Kalita*” (supra), wherein, the Hon’ble High Court has been pleased to grant bail to Devangna Kalita in the case of murder and rioting, primarily on the ground that the material against her was the disclosure statement of co-accused Shahrukh recorded in the case of larger conspiracy and her presence at SOC. The case of applicant herein is at a better footing than the case of Devangna Kalita (supra). After all, the disclosure statement of co-accused Tahir

Hussain, recorded on 11.03.2020 did not lead to any recovery of fact, except for the recording of disclosure statement of applicant. The other piece of evidence which is sought to be used against the applicant is 71 seconds' call made by accused Tahir Hussain to the applicant in the intervening night of 24/25.02.2020, i.e, after the incident in this case had already taken place. Accused Tahir Hussain is an accused in ten (10) other cases of this cluster of Chand Bagh puliya, i.e, at or around his house, but in no other case the applicant has been made co-accused, even on the strength of material sought to be read against him in this matter. I do not find any rationale in the act of police in involving the applicant in this solitary case for the offence of conspiracy. If principal accused Tahir Hussain was moved or actuated by the applicant in meeting dated 08.01.2020, then the applicant should have been made co-accused in ten other cases also which is not the case. The police has unnecessarily brought in the material of FIR No.59/2020 (investigated by Special Cell) in this matter

17. I do not find substance in the argument of learned Special PP that since bail applications of as many as four co-accused persons namely Gulfam @ VIP, Riyasat Ali, Rashid Saifi and Irshad Ahmed have already been dismissed by this Court vide various orders, so the applicant is also not entitled for bail. From the perusal of chargesheet, it is clearly evident that the role assigned to applicant in the matter is categorically different and distinct from the role attributed to aforesaid co-accused persons, as firstly it has nowhere been the case of prosecution that applicant was physically present at the scene of crime (SOC) on the date of incident; secondly the applicant has nowhere been captured in any CCTV footage/viral video; and thirdly neither any independent witness nor any police witness has identified the applicant to be present at the scene of crime. Prima facie, the applicant appears to have been roped in the matter merely on the basis of his own disclosure statement and disclosure statement of co-accused Tahir Hussain. The statement of PW Rahul Kasana is yet to be tested on the touchstone of evidence.

18. I have also considered the judgments relied upon by the learned Special PP. The said judgments to the extent they lay down preposition of law are fairly clear, however, the same do not advance the claim of State any further because of insufficiency of material on record against the applicant. The applicant cannot be permitted to remain behind bars in this case on the basis of such a sketchy material against him.

19. *At this stage*, I have restrained myself from analyzing the statement of PW Rahul Kasana, dated 27.09.2020 as the date of recording of statement itself speaks volumes about the credibility thereof. I find absolutely no substance in the argument of learned Special PP that in a case of criminal conspiracy, the disclosure statement of co-accused can be read against another co-accused, merely on the ground that pursuant thereto the CDRs of co-accused were unearthed which led to the recovery of fact of meeting dated 08.01.2020. The sole evidence of this so called conspiracy is a statement of PW Rahul Kasana, wherein he stated on 27.09.2020 that he was standing outside a building in the area of Shaheen Bagh, where he had dropped principal accused Tahir Hussain and thereafter he saw applicant and Umar Khalid going into the same building. I fail to understand from the aforesaid statement how a lofty claim of conspiracy can be inferred. In my humble opinion, chargesheeting the applicant in this case on the basis of such an insignificant material is total non-application of mind by the police which goes to the extent of vindictiveness. I have deliberately not touched the material sought to be relied upon by the police against the applicant in case FIR No.59/2020 (investigated by Special Cell).

20. The investigation in the matter is complete and chargesheet has already been filed. The trial in the matter is likely to take long time. The applicant cannot be made to incarcerate in jail for infinity merely on account of the fact that other persons who were part of the riotous mob have to be identified and arrested in the matter.

21. Considering the facts and circumstances of the case in totality, applicant Khalid Saifi is admitted to bail on his furnishing a Personal Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one surety in the like amount to the satisfaction of Ld.CMM/Ld.Illaka MM/Ld.Duty MM, subject to the condition that he shall not tamper with the evidence or influence any witness in any manner; he shall maintain peace and harmony in the locality and that he shall appear before the Court on each and every date of hearing to attend the proceedings in accordance with the terms of Bail Bond, which would be executed by him; he shall furnish his mobile number to SHO, PS Khajuri Khas upon his release from the jail and will ensure the same to be in working condition and further he shall also get installed "*Aarogya Setu App*" in his mobile phone.

22. The application stands disposed off.

23. It is hereby clarified that anything stated hereinabove shall not be construed as expressing any opinion on the final merits of the case, as the case is at "*pre-cognizance/pre-committal stage*".

24. A copy of this order be sent to Superintendent Jail concerned as also to the learned counsel(s) for the applicant through electronic mode.

(VINOD YADAV)
ASJ-03 (NE)/KKD COURTS/04.11.2020