

IN THE COURT OF SH. AMITABH RAWAT,
ADDITIONAL SESSIONS JUDGE-03
(SHAHDARA), KARKARDOOMA COURT, DELHI

Bail Application No. 2646-2020

FIR No. 93/2020

PS-Welcome

U/S. 143/144/147/148/149/323/307/186/332/353 IPC

& Section 27 of Arms Act

State Vs. Shoaib

06.02.2021

ORDER

1. Vide this order, I shall dispose off an application filed u/s. 439 Cr.P.C. for grant of regular bail moved on behalf of applicant/accused Shoaib.

2. Arguments were heard on behalf of accused by Sh. A.A. Khan, Ld. Counsel for applicant/accused and for prosecution by Sh. Saleem Ahmed, Ld. Prosecutor. I have perused the record including the charge-sheet.

3. Ld. Counsel for the applicant/accused Shoaib had submitted that the previous bail applications of accused were dismissed on 31.08.2020, 08.09.2020 and 17.10.2020. Co-accused Shamim was shown in the CCTV footage having danda in his hands while the present accused Shoaib was also seen having palta in his hands. The role of both the accused are similar, hence, the present accused is entitled for parity of accused Shamim, who was granted bail by the court of Ms. Shuchi Laler, Ld. Judge on Duty, PO-MACT/SHD/KKD Courts, Delhi on 18.05.2020. Other co-accused persons

namely Junaid Khan and Asif have also granted bail in this case.

It was further submitted that the name of accused is not in the FIR and the TIP of accused has not been conducted. Accused was not pronouncing any religious slogans. There is no recovery of alleged palta from the accused. Accused sells Biryani and he was using the alleged palta in preparing Biryani.

It was further submitted that accused has been falsely implicated in this case and he is in JC since 06.03.2020. Admittedly, on the day of alleged incident, the location of the accused was shown at A-7/24 in Gali No.1, Kabir Nagar, Delhi where he is running a Biryani shop/dhaba. It was further submitted that applicant is having clean antecedents and is ready to abide all the terms and conditions as imposed by this court.

It was, thus, prayed that bail be granted.

4. (a) On the other other hand, Ld. Special PP for State had vehemently opposed the bail application stating that the present case was registered on the statement of complainant ASI Dharambir Singh, who stated that on 25.02.2020 he was deployed at 100 foota road near Shiv Mandir regarding protest of one community against the CAA. Also, people of another community came there protesting in favour of CAA. They came in front of each other and started pelting stones on each other. During stone pelting, firing also took place and due to this stone pelting and firing several people and police personnel got injured.

(b) During investigation, statements of witnesses were recorded and CCTV footage was analyzed and many accused were identified by the CCTV footage and were arrested. The CCTV related to case has been collected and on the instance of CCTV footage accused Shoaib was arrested. In the CCTV footage, the accused was present in the street and holding one palta in his hands. He was shouting and pelting stones on the other group. He was also identified by complainant ASI Dharambir on the spot who was deployed at the scene of occurrence on 25.02.2020. Charge-sheet has been filed.

(c) Ld. Special Prosecutor had further submitted that previous applications of bail of accused have been dismissed earlier.

(d) It was further submitted that as per Section 149 of The Indian Penal Code, every member of unlawful assembly is guilty of offence committed by every member of unlawful assembly in prosecution of common object.

5. (a) The present case was registered on the statement of ASI Dharamvir Singh of P.S. Welcome who was present at Shiv Mandir, Babarpur on 25.02.2020 when people had gathered there to protest against Citizenship Amendment Act (CAA). They mostly comprised of Muslim people and were raising slogan and creating tension in the area. He informed the concerned SHO who reached the spot and tried to pacify the crowd.

However, the crowd was very aggressive and was having danda and stones with them and proceeding towards Shiv Mandir, 100 Foota Road from Kabir Nagar and were ready for violence. There was another crowd of the other community present there. The unlawful assembly of the first community unanimously started pelting stones and hitting dandas on the other community and there was violence by both which led to injuries to several persons.

In the meantime, firing also took place causing gunshot injuries to Ravi Kaushik and Danish. Various MLCs are on record. Thus, in the present case, on 25.02.2020, there was riots by unlawful assembly at near Shiv Mandir, 100 Foota Road, leading to injuries by danda and by firing upon various people including several police officials. There was already promulgation under Section 144 Cr.P.C in the area of North-East, Delhi which was violated. The charge-sheet was filed against Shamshad, Shoaib(applicant), Junaid Khan, Gurmeet Singh, Gaurav, Vishal Verma, Samim, Mohd. Asif, Raj Kamal, Deepak Tomar, Vikram Singh, Shibu @ Sheer Miyan, Vikas Gupta and Anees Ahmad. Thus, the accused was part of the unlawful assembly which was gathered at the spot of the incident and committing rioting defying the instructions of the police officials and caused injuries by danda and firing upon police officials and other public persons.

Regarding the role of the present accused Shoaib, he is clearly visible in the footage with an aggressive posture and shouting and carrying palta in

his hands. The photographs of accused and of other accused persons are evident of the situation of their role in riots. Moreover, ASI Dharambir has also identified him. In the bail application itself, it is contended that palta is used by the applicant in preparing Biryani. The bail application of many co-accused persons, who are seen with an aggressive posture and rioting, have been dismissed.

Thus, the accused was part of the unlawful assembly which in prosecution of common object had committed the offence of rioting and firing gunshot injuries on the public persons and police officials and thus, every member of unlawful assembly is deemed to be guilty of offence committed by every member of that assembly in prosecution of common object of that assembly.

6. In view of the gravity of the offence and the material available against the accused Shoaib, no case for bail is made out. Accordingly, the present bail application of accused Shoaib under Section 439 Cr.P.C stands dismissed .

Application is accordingly disposed off.

Copy of this order be mailed to the counsel for applicant/accused, Ld. Special Prosecutor and Investigating Officer.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 06.02.2021