



2023:DHC:9081



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

% ***Judgment Reserved on : 15th December, 2023***
Judgment Delivered on: 18th December, 2023

+ BAIL APPLN. 958/2022

ARIF

..... Petitioner

Through: Mr.Sahim Malik, Advocate.

versus

STATE

..... Respondent

Through: Mr.Rajat Nair, SPP with Mr.Dhruv Pande, Advocate for State.
Insp. Sanjay Gupta, Crime Branch.

+ BAIL APPLN. 1115/2023

ANISH QURESHI

..... Petitioner

Through: Mr.Tanveer Ahmed Mir and
Mr.Kartik Venu, Advocates.

versus

STATE OF NCT DELHI

..... Respondent

Through: Mr.Rajat Nair, SPP with Mr.Dhruv Pande, Advocate for State.
Insp. Sanjay Gupta, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

1. By way of the present applications, the applicants seek regular bail in FIR No. 75/2020 dated 28th February, 2020 under Sections 302/149/147/148/436/120B/34 of the Indian Penal Code, 1860 (IPC) registered at Police Station Dayalpur. BAIL APPLN. 958/2022 has been filed

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on behalf of Arif and BAIL APPLN. 1115/2023 has been filed on behalf of Anish Qureshi.

2. Since these applications pertain to a common FIR and were heard together, they are being disposed of by a common judgment.

3. The present FIR has emerged out of riots and communal disharmony, which took place in certain parts of the North-East Delhi in the month of February, 2020 which resulted in the death of an innocent bystander.

4. The case set up by the prosecution is as under-

I. An information was received at Police Station Dayalpur from GTB Hospital at 11:15 P.M on 24th February, 2020 that one Rahul Solanki (hereinafter the deceased/victim) had received a gunshot injury at Shiv Vihar and was declared dead by the concerned doctor.

II. On 25th February, 2020 the post-mortem was conducted and body of the deceased was handed over to his father, Hari Singh Solanki and the deceased's brother, Rohit Solanki. The statements, under Section 161 of the Criminal Procedure Code, 1973 (Cr.P.C.) of Hari Singh Solanki and Rohit Solanki were recorded on 26th February, 2020. Thereafter, the present FIR was registered.

III. The investigation was initially conducted by the police officials of Police Station Dayalpur. Thereafter, on 7th March, 2020 the investigation was handed over to SIT, Crime Branch for further investigation.

IV. During the course of the investigation, the place of incident was visited and local enquiry was made. It revealed that on the date of the incident, the deceased along with his cousin, Anil Kumar had gone to purchase some grocery items in *Pal Dairy Wali Gali* when they noticed the

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presence of a large number of rioters present in the *gali* with rods, stones, pistols etc. In this commotion, one of the rioters fired upon Rahul Solanki, causing his death.

- V. The statement under Section 161 of the Cr.P.C. of Anil Kumar, an eye-witness to the death-causing incident, was taken on 8th March, 2020.
 - VI. Applicants Arif and Anish Qureshi were arrested on 9th March, 2020.
 - VII. Subsequently, the main Chargesheet was filed on 6th June, 2020.
 - VIII. *Vide* order dated 6th March, 2023, charges have been framed against both the applicants under Sections 147/148/153A/380/427/436/450/302 read with Sections 149/188 of the IPC.
5. The bail applications of Arif and Anish Qureshi were dismissed by the learned Sessions Court *vide* orders dated 5th February, 2022 and 6th March, 2023, respectively.
 6. Counsels appearing on behalf of Arif and Anish Qureshi have made the following submissions: -
 - i. There is no evidence on record to connect Arif or Anish Qureshi to the murder of the deceased.
 - ii. Rohit Solanki, brother of the deceased, who has identified Arif and Anish Qureshi to be at the place of the incident, based on a CCTV recording, was not an eye-witness to the death-causing incident.
 - iii. No judicial test identification parade was conducted of Arif and Anish Qureshi *qua* Anil Kumar, the eye-witness to the death-causing incident.
 - iv. A perusal of the statement under Section 161 of the Cr.P.C. of Ashok Kumar, public witness, does not show that the death of the deceased was caused by Arif or Anish Qureshi.
 - v. It is the prosecution's own case that one co-accused namely Mohd.

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- Mustaqueem shot the deceased. Hence, there cannot be a presumption of common object to commit murder *qua* the applicants herein, merely on account of them being present around the place of the incident. Reliance in this regard has been placed on the judgment of the Supreme Court in *Kuldip Yadav and others v. State of Bihar*, (2011) 5 SCC 324.
- vi. Furthermore, the CDR location details cannot be relied upon as the applicants are residents of that area.
 - vii. Both Arif and Anish Qureshi have been granted interim bail several times on various grounds by the learned Sessions Court and by this Court and have not misused the liberty.
 - viii. The charges have already been framed and taking into account the number of witnesses, examination of witnesses shall take a considerable time.
7. *Per Contra*, learned SPP, appearing on behalf of the State, has made the following submissions:-
- i. Arif can be identified from the video footage of the CCTV cameras installed near the scene of the crime, carrying an iron rod and deliberately breaking CCTV cameras. Further, Anish Qureshi can be seen motivating the rioters.
 - ii. Both of them have been identified by Rohit Solanki in his supplementary statement dated 8th March, 2020 under Section 161 of the Cr.P.C on the basis of the aforementioned CCTV camera video recordings.
 - iii. It is submitted that a public witness, Ashok Kumar, had identified Arif and Anish Qureshi during the pointing-out procedure.
 - iv. Furthermore, as per the CDR, Arif and Anish Qureshi were present at

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the scene of the crime at the time of the incident.

8. I have heard the counsels for the parties and perused the material on record.

9. In the present case, the prosecution has invoked Section 149 of the IPC read with Section 302 of the IPC to contend that the applicants, along with other members of the mob, had a common intention to commit the murder of the deceased.

10. At the outset, it is relevant to set out Section 149 of the IPC:-

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object. — If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

11. In so far as the applicants are concerned, the evidence on record, at best, suggests that the applicants were a part of the unlawful assembly. It is not the case of the prosecution that the applicants were armed with a dangerous weapon. In so far as the applicant Arif is concerned, the only additional incriminating allegation against him is that he broke the CCTV camera installed at the Pal Dairy.

12. In my considered view, merely because the applicants were part of an assembly, it cannot be assumed that the common object of the assembly was to commit a murder or that the applicants knew that a murder was likely to be committed. It is the prosecution's own case that the co-accused Mohd. Mustaqueem shot the deceased. In this regard, counsels for the applicants have correctly placed reliance on the judgment of the Supreme Court in

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Kuldip Yadav (Supra). Relevant paragraph of the said judgment has been set out below:-

“39. It is not the intention of the legislature in enacting Section 149 to render every member of unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to attract Section 149, it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly and it must be within the knowledge of other members as one likely to be committed in prosecution of the common object. If the members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of the common object, they would be liable for the same under Section 149 IPC.”

13. In BAIL APPLN. 774/2021 titled **Mohd. Arif v. State** decided on 3rd September, 2021 and BAIL APPLN. 1518/2021 titled **Mohd. Tahir v. State** decided on 18th January, 2022, also pertaining to North-East Delhi riots, a Coordinate Bench has granted bails to applicants placed similarly to the applicants herein. Relevant observations from **Mohd. Arif** (Supra) have been set out herein below:-

“36. It is, therefore, noted that the applicability of Section 149 IPC, specifically read with Section 302, cannot be done on the basis of vague evidence and general allegations. When there is a crowd involved, at the juncture of grant or denial of bail, the Court must hesitate before arriving at the conclusion that every member of the unlawful assembly inhabits a common intention to accomplish the unlawful common object. There cannot be an umbrella assumption of guilt on behalf of every accused by the Court, and every decision must be taken based on a careful consideration of the facts and circumstances in the matter therein. This principle, therefore, gains utmost importance when the Court considers the question of grant or denial of bail.”

14. Strong reliance has been placed on behalf of the prosecution on the judgment of the Coordinate Bench in BAIL APPLN. 791/2021 in **Sonu Saifi**

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v. *State* decided on 1st June, 2021, rejecting bail of a co-accused in the same FIR. However, the aforesaid judgment is distinguishable as in the said case, arms were recovered from the applicant therein, whereas no arms have been recovered from the applicants herein. Even otherwise, more than two years have elapsed since the said judgment in *Sonu Saifi* (Supra) was pronounced, and prosecution evidence is yet to commence.

15. Furthermore, reliance cannot be placed on the CDR location details as it is an admitted position that both the applicants and the deceased were residents of the same area. Furthermore, no judicial TIP was conducted of both the applicants herein.

16. Both the applicants have been in judicial custody since 9th March, 2020. The Chargesheet against the applicants was filed on 2nd June 2020. Thereafter, various Supplementary Chargesheets have been filed. Charges have been framed against the applicants. Till now the prosecution evidence is yet to commence. The prosecution has listed several witnesses and therefore the trial is likely to take a long while.

17. As per the Nominal Rolls on record, both the applicants have been earlier released on interim bail on multiple occasions and have not misused the said liberty. It is not the case of the prosecution that the applicants tried to influence witnesses while out on interim bail.

18. Both Anish Qureshi and Arif have already been granted bail in other cases pertaining to the North-East Delhi riots. Further, as per Anish Qureshi's Nominal Roll on record, there are some old FIRs, in which he has been granted bail.

19. Taking into account the fact that the trial is likely to take a long time, the applicants cannot be kept under incarceration for an indefinite period of

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time. Accordingly, considering the totality of the facts and circumstances and the period of incarceration already suffered by the applicants, this Court is inclined to grant bail to the applicants.

20. For the forgoing reasons, the applications are allowed and the applicants are directed to be released on furnishing a personal bond in the sum of Rs.35,000/- each with one surety of the like amount subject to the satisfaction of the Trial Court and further subject to the following conditions:

- i. The applicants shall not leave the country without the prior permission of the Court.
- ii. The applicants shall appear before the Trial Court as and when the matter is taken up for hearing.
- iii. The applicants shall join the investigation as and when called by the Investigating Officer (IO) concerned.
- iv. The applicants shall provide their latest/fresh mobile number(s) to the IO concerned, which shall be kept in working condition at all times and shall not switch it off or change the mobile number(s) without prior intimation to the IO concerned.
- v. The applicants shall provide their permanent address to the Trial Court. The applicants shall intimate the Court by way of an affidavit and to the IO regarding any change in their residential address.
- vi. The applicants shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses or tamper with the evidence of the case.

21. Needless to state that any observations made herein are purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the case.

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22. Accordingly, the applications are disposed of.

DECEMBER 18, 2023

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AMIT BANSAL, J.

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

% **Judgment Reserved on : 7th December, 2023**
Judgment Delivered on: 18th December, 2023

+ BAIL APPLN. 2372/2023

MOHD.MUSTAQEEM Petitioner

Through: Ms.Tara Narula, Ms.Bija Harinig,
Ms.Priya Sahil and Ms.Shivangi
Sharma, Advocates.

versus

STATE (GOVT OF NCT) OF DELHI Respondent

Through: Mr.Rajat Nair, SPP with Mr.Dhruv
Pande, Advocate for State.
Insp. Sanjay Gupta, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

1. By way of the present application, the applicant seeks regular bail in FIR No. 75/2020 dated 28th February, 2020 under Sections 302/149/147/148/436/120B/34 of the Indian Penal Code, 1860 (IPC) registered at Police Station Dayalpur.
2. The present FIR has emerged out of riots and communal disharmony, which took place in certain parts of the North-East Delhi in the month of February, 2020 which resulted in the death of an innocent bystander.
3. The case set up by the prosecution is as under:-
 - I. An information was received at Police Station Dayalpur from GTB Hospital at 11:15 P.M. on 24th February, 2020 that one Rahul Solanki (hereinafter the deceased/victim) had received a gunshot injury at Shiv Vihar and was declared dead by the concerned doctor.

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- II. On 25th February, 2020, the post-mortem was conducted and body of the deceased was handed over to his father, Hari Singh Solanki and the deceased's brother, Rohit Solanki. The statements, under Section 161 of the Criminal Procedure Code, 1973 (Cr.P.C.) of Hari Singh Solanki and Rohit Solanki were recorded on 26th February, 2020. Thereafter, the present FIR was registered.
- III. The investigation was initially conducted by the police officials of Police Station Dayalpur. Thereafter, on 7th March, 2020 the investigation was handed over to SIT, Crime Branch for further investigation.
- IV. During the course of the investigation, the place of incident was visited and local enquiry was made. It revealed that on the date of the incident, the deceased along with his cousin, Anil Kumar, had gone to purchase some grocery items in *Pal Dairy Wali Gali* when they noticed the presence of a large number of rioters present in the *gali* with rods, stones, pistols, etc. In this commotion, the applicant herein fired upon Rahul Solanki, causing his death.
- V. The statement under Section 161 of the Cr.P.C. of Anil Kumar, an eye-witness to the death-causing incident, was taken on 8th March, 2020.
- VI. The applicant was not named in the initial FIR. He was arrested based on the information given by an informer pursuant to a reward by the investigating agency. The informer identified the applicant on the basis of the applicant's photograph. The applicant was arrayed as an accused *vide* Supplementary Chargesheet filed on 1st December, 2020.
- VII. *Vide* order dated 6th March, 2023, charges have been framed against the applicant under Sections 147/148/153A/380/427/436/450/302 read



with Sections 149/188 of the IPC and under Sections 25/27 of the Arms Act, 1959.

4. The bail applications of the applicant were dismissed by the learned Sessions Court *vide* orders dated 30th June, 2021 and 11th May, 2023.
5. Counsel appearing on behalf of the applicant has made the following submissions: -
 - i. The applicant was neither named in the original FIR nor chargesheeted in the main Chargesheet. He was arrayed as an accused only *vide* a Supplementary Chargesheet dated 1st December, 2020, filed after a period of more than 9 months from the date of registration of FIR.
 - ii. The applicant was identified by the witness Anil Kumar only based on the 10-second mobile phone video clip along with screen grabs. It is submitted that the statements of the said witness dated 8th March, 2020 and 2nd April, 2020 have been recorded in a belated manner, have material contradictions and the later statement is an improvement to the earlier one.
 - iii. The applicant was identified on the basis of photographs/screen grabs of the aforementioned video clip, however as per the FSL Report dated 14th February, 2023, the figure of the applicant has not matched with the figure shown in the photograph.
 - iv. The gun and bullets recovered from the applicant could not be matched with the bullet recovered from the victim's body as per the FSL Report dated 17th September, 2021.
 - v. The applicant refused to join the judicial TIP proceedings as his photograph was taken by the Investigating Officer (IO) and shown to the witnesses, hence compromising the authenticity of the procedure.

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- vi. CDR location cannot be a determinative factor as he is a resident of the area where the incident happened.
 - vii. The charges have already been framed and examination of witnesses shall take a considerable time. In view of the same, the applicant cannot be kept under incarceration for an indefinite period of time.
6. *Per Contra*, learned SPP, appearing on behalf of the State, has made the following submissions:-
- i. The applicant was part of the mob and was actively participating in rioting and looting. It is stated that he was seen carrying the pistol with which he allegedly killed the deceased.
 - ii. It is not the case of the prosecution that the applicant was identified by Anil Kumar solely on the basis of the aforementioned 10-second mobile phone video clip along with screen grabs. It is submitted that Anil Kumar has categorically identified the applicant and described him in detail in his statements dated 8th March, 2020 and 2nd April, 2020. The said video was merely used as an aid to pinpoint the applicant.
 - iii. Further, the applicant was identified by Anil Kumar during the pointing-out procedure held on 8th September, 2020.
 - iv. Additionally, the applicant refused to participate in the judicial TIP proceedings.
 - v. In respect of offences punishable by death or life imprisonment, as per Section 437(2) of the Cr.P.C, bail can be granted only if a positive finding is returned that as per material on record, there are reasonable grounds to believe that the accused has not committed the said offence. Therefore, a person charged of an offence punishable with death or life



imprisonment cannot be granted bail if *prima facie* material is available against him. Bail cannot be granted only on account of the long period of incarceration.

7. I have heard the counsels for the parties and perused the material on record.

8. In the present case, eye witness Anil Kumar, (cousin of the deceased) in his statement under Section 161 of the Cr.P.C on 8th March, 2020 has described the applicant as the person who had a helmet in his one hand and a pistol-like weapon in the other and who was wearing a blue t-shirt and had fired the bullet. The relevant portion of the transliterated statement is set out below:-

“Isi dauran ek bhari jism ka ladka jiske baye haath mein kaale rang ka helmet tha, dhahine haath mein pistol numa hathiyar tha, aur usne neeli t-shirt phena tha, mein ne mustafabad road ki taraf se gali ke andar ki ore daudta hua aya aur pal dairy ke godam ke saamne khade hokar, humari taraf goli chala di. Uske peeche uske saathi bhi the. Jo Goli seedhi aakar Rahul bhaiya ke gale mein samne ki taraf lagi aur goli lagte hi wo wahi, Narender ke ghar ke samne gir gaye va uske gale mein kaafi khoon nikalne laga.”

9. Subsequently, Anil Kumar in his next statement on 2nd April, 2020 identified the applicant in the photographs shown to him, as the heavy person wearing a helmet and blue t-shirt and who fired the shot. The relevant portion of the transliterated statement is set out below:-

“Photo No.1 mein jo mota tagda ladka hai jiska pet bhi nikla hai va neeli t-shirt va halka grey jeans phena hai va sir par helmet phena hai ussi ladke ne mere bhai Rahul Solanki par dinak 24.02.2020 ko goli chalai thi va us ladke ko mein ne kai baar arif chaabi wala jo gali No. 4-5, babu nagar mein kahin raheta hai ke saath baat karte hue dekha tha jo use janta va pehchanta hai.”...
“Mere bhai par goli chalan ke baad uss ladke ne ek baar helmet

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uttara tha jisse mein saamne aane par pehchan sakta hun.”

10. Further, the applicant was identified by Anil Kumar during the pointing out procedure held on 8th September, 2020. The relevant portion of the transliterated statement is set out below:-

“..... Uss din usne grey rang ki jeans pant va neeli - rang ki t-shirt phen rakhi thi तथा shuru mein helmet phen Rakha tha तथा Rahul ko goli maarne ke baad issne apna helmet Uttara tab humne uski shakal dekh li thi”

11. From the statements set out above, it appears that the applicant has been identified by the eyewitness Anil Kumar as the person who shot the bullet which killed the deceased. In light of these statements, it cannot be stated that the applicant has been identified only on the basis of the ten-second mobile phone video clip.

12. As regards the contention of the applicant of there being a discrepancy in the various statements made by the eye witness Anil Kumar and the inconclusiveness of the FSL Reports, the effect thereof can only be considered during the trial. The same cannot be considered at this stage and can be considered only at the stage of trial, on appreciation of evidence.

13. It is also pertinent to note that the applicant refused to participate in the judicial TIP.

14. On a prima facie view, there is material on record to show the involvement of the applicant in the alleged offences. I am in agreement with the submission of the learned SPP that the applicant cannot be granted bail only on account of long incarceration, as the applicant has been charged with offences punishable with death or imprisonment for life. Considering the aforesaid facts and circumstances in the present case and the fact that material

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witnesses are yet to be examined, this Court does not find any ground to grant bail to the applicant at this stage.

15. Accordingly, the present application is dismissed.

16. Needless to state, that any observations made herein are purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the case.

AMIT BANSAL, J.

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