

***IN THE COURT OF SH. VIRENDER BHAT: ASJ-03
NORTH-EAST DISTRICT: KARKARDOOMA COURTS: DELHI***

**Sessions Case No.462/21
FIR No.162/2020
PS Bhajanpura
U/s 147/148/149/436/380/457 IPC**

State

Versus

- 1 Bilal Ansaris/o Zamiruddin
r/o H.No.B-889, Gali no.13/3,
Subhash Mohalla, Bhajanpura, Delhi.**
- 2 Suhail @ Bholu
s/o Khalil Ahmed
r/o H.No.D-368, Gali no.6,
Noor-E-Ilahi, North Ghonda, Delhi.**
- 3 Imran s/o Mushir Riyaz
r/o H.No.D-73, Gali no.9,
Mohanpuri, Delhi.**
- 4 Gulfam s/o Akram
r/o H.No.D-945, Gali no.20,
North Ghonda, Delhi.**
- 5 Sameer Saifi @ Pummy
s/o Mohd.Yasin
r/o H.No.D-220, Gali no.4,
Noor-E-Ilahi, Ghonda, Delhi.**
- 6 Salman @Taseem@Bhondal
s/o Mohd.Iqbal
r/o H.no.14/88, Gali no.13/12,
Subhash Mohalla, North Ghonda,
Delhi.**

ORDER ON CHARGE:-

1. The above named accused have been charge-sheeted by the police for having committed offences u/s

147/148/149/380/436/457 IPC.

2. As per the case of the prosecution, following 5 complaints had been received in the PS with regards to the vandaliization and arson in Yamuna Vihar area:-

(i) *Complaint dt.28.02.2020 of Ganesh Kumar wherein he had stated that the rioters had broken open the shutter of his shop in the name of M/s Ganesh Store in gali no.10 of Noor-E-Ilahi, Chowk, Mohanpuri on 25.02.2020 and looted all the goods lying therein.*

(ii) *Complaint of Azhar Hussain wherein he had stated all the goods lying in his shop at A-131, Main Noor-E-Ilahi Road, North Ghonda, Delhi were looted by the rioters on 24.02.2020 and were burnt.*

(iii) *Complaint of Lokesh Kumar wherein he had stated that the rioters had damaged his shop under the name of M/s Deewans Surgi Panna at Shop no.3, Pandit Diwan Chand Memorial Public School Market, Yamuna Vihar Road, North Ghonda, Delhi and had attempted to burn the same.*

(iv) *Complaint of Gajender Kumar wherein he had mentioned that his shop bearing shop no.4 under the name of M/s D.S.Collection, Pandit Diwan Chand Memorial Public School Market, Yamuna Vihar Road, North Ghonda, Delhi was looted and completely burnt by the rioters during the riots.*

(v) *Complaint of Ansar Khan wherein he had stated that his confectionary shop no.6, Main Road no.66 Futa, Vijay Park, Maujpur, near Mother Dairy was looted and burnt down by the rioters on 25.02.2020.*

3 On the basis of the abovementioned 5 complaints, FIR was registered for the offence u/s 147/148/149/436/380/457 IPC and investigation was entrusted to ASI Narender. He recorded the statements u/s 161 Cr.PC of the complainants and prepared rough site plan showing all the incident spots. He also collected the photographs of the damaged/burnt properties from the

complainants. It came to be known to the IO on 05.03.2020 that ASI Satender had arrested accused Gulfam, Bilal Ansari, Imran and Suhail @ Bholu in case FIR no.78/20 and they had disclosed their involvement in the incidents forming subject matter of the FIR registered in this case. Accordingly, the IO reached Bhagat Singh Picket where ASI Satender alongwith all the accused was present. The IO interrogated all the four accused and checked a viral video wherein the accused were seen pelting stones. Accordingly, the IO arrested these four accused in this case on the same day. They are stated to have made separate disclosure statements admitting their involvement in the instant case.

4 It is further mentioned in the chargesheet on 17.03.2020 when the IO was present in the area for further investigation of this case, a secret informer met him and told him that certain rioters are present in B.S Park and can be apprehended. Accordingly, the IO alongwith the staff and secret informer reached B.S.Park where two persons were found present and on the pointing out of the secret informer, they were apprehended. The IO checked the viral video and found those two persons present in the mob pelting stones. They disclosed their names as Sameer Saifi @Pummy and Salman @ Taseen@ Bhondal. After interrogation, they were arrested in this case. They are also stated to have made separate disclosure statements admitting their involvement in the instant case.

5 After completion of investigation, chargesheet was submitted before the Ld.CMM, who committed the case to the

Court of Sessions.

6 Certain photographs taken out as the screen shot from the viral video have been annexed alongwith the chargesheet.

7 It appears that after the filing of the chargesheet, investigation was continued to nab more rioters and to record the statements of further eye witnesses to the incidents. During the course of further investigation, statements of various witnesses namely Ct.Mukesh, Ct.Ashwani etc.were recorded with regards to the identification of the accused as rioters. Thereafter, a supplementary chargesheet was filed which has been tagged with the main chargesheet.

8 I have heard the Ld.Special PP, Ld.Counsels appearing for the accused and have perused the entire material on record.

9 According to the Ld.Special PP, the accused have been identified as the rioters by the two eye witnesses namely Ct.Mukesh and Ct.Ashwani and have also been identified by several public witnesses including the complainants in the viral video which has been seized in this case by the IO. It is his submission that the viral video was shot by some public persons when the incidents of vandalization and arson etc.were committed by the accused alongwith their associates in Yamuna Vihar area. He argued that there is sufficient material on record to frame charges against the accused.

10 Ld.Defence Counsels submitted that almost all the witnesses, whose statements have been recorded to identify the accused as rioters, have identified the accused upon seeing the viral video but there is no CD or pendrive containing the said viral video on record. They further pointed out that there is nothing on record to disclose the source of viral video and from where it was obtained or downloaded by the IO and what happened to the same thereafter. They further argued that the TIP of the accused was not conducted after their arrest which fact also renders their identification doubtful. It is their submission that accused have been falsely implicated in this case and there is no legally admissible material on record to frame charges against them.

11. Perusal of the record shows that there is a seizure memo dt.18.04.2020 at page no.177 vide which a CD prepared from the viral video related to the incidents of violence dt.24.02.2020, 25.02.2020 and 26.02.2020, was seized by the IO. However, no such CD or pendrive has been filed either alongwith the initial chargesheet or alongwith the supplementary chargesheet. There is a report dt.23.09.2020 of the FSL annexed alongwith the supplementary chargesheet, perusal of which reveals that a DVD has been sent to the FSL for forensic examination and no indication of any alteration was found in the same. Since no such CD or a pendrive containing the said video footage has been filed on record, it can not be said whether the same related to the violent incidents that took place from 24.02.2020 to 25.02.2020 at the incident spots involved in this case and that whether the

accused are actually seen in the video footage indulging in such violence.

12. In view of the same, the statements of all those witnesses, who had identified the accused in the said viral video become immaterial.

13. Statements of Ct.Mukesh and Ct.Ashwani dt.21.05.2020 which have been annexed alongwith the supplementary chargesheet reveal that both of them were present in their respective beats on 24.02.2020 and 25.02.2020 during the riots and had seen accused Gulfam, Bilal Ansari, Suhail @ Bholu, Imran, Salman @ Taseem@ Bhondal and Sameer Saifi @ Pummy present in the unlawful assembly indulging in vandalization and arson in the shops and houses on the Noor-E-Illahi road and Vijay Park near Mother Dairy. They claim to have known all the 6 accused and thus were able to recognize them in the mob. Even though the statements of these witnesses have been recorded after more than one year of the incident of violence involved in this case, still it would not serve the ends of justice to discard their version at this very stage where charges are to be decided against the accused. In a case like the instant one, which has its genesis in unprecedented communal riots that had erupted in North East area on 24.02.2020 and in which large number of rioters were involved who had caused not only large scale destruction of properties but also have resorted to killing of several innocent persons, it is not only expected of Investigating

Agency but also necessary to continue further investigation of the case even after the filing of the first chargesheet by making further endeavour to nab more culprits and to trace more eye witnesses.

14. It is a settled principle of law that at the time of deciding charges against the accused, the court has to consider both i.e. the initial chargesheet as well as the supplementary chargesheet to ascertain whether there is a ground for presuming that accused have committed the offence. Both these reports filed u/s 173 Cr.PC have to be read conjointly and judicial mind has to be applied to all the documents/statements annexed with both the reports.

15. Resultantly, even if the statements of the witnesses, who have identified the accused as rioters on the basis of viral video shown to them by the IO as well as the said viral video is taken out of consideration, still there is sufficient evidence in the shape of statements of two witnesses Ct.Mukesh and Ct.Ashwani which prima-facie establish the involvement of the accused in the incident in question at this stage. No case for their discharge has been made out.

16. So far as the issue of TIP is concerned, it needs to note that TIP is mandatory when the witnesses and the assailants were not known to each other before the incident and the witness had seen the assailant for the first time at the time of commission of offence. In the instant case, there are only two eye witnesses

namely Ct.Mukesh and Ct.Ashwani. Both of them have stated that the accused were well known to them before the riots and hence they were able to identify them in the mob. In view of the same, there was no requirement of conducting TIP to establish the identity of the accused.

17. Hence, the charges for the offences punishable u/s 147/148/380/436/457 r/w section 149 IPC are liable to be framed against all the accused.

**Announced in Open
Court on 04.03.2022**

**(VIRENDER BHAT)
ASJ-03(NE)/KKD COURTS/DELHI**