

**IN THE COURT OF VINOD YADAV: ADDL. SESSIONS JUDGE-03:
(NORTH-EAST): KARKARDOOMA DISTRICT COURTS: DELHI**

Sessions Case No.127/2021

State V/s Noor Mohammad @ Noora

FIR No.153/2020

PS Khajuri Khas

U/s 147/148/149/188/392/435/436/34 IPC

31.08.2021

PHYSICAL HEARING

Present: Shri Naresh Kumar Gaur, Ld. Special PP for the State.

Shri Akhtar Shamim, Ld. Counsel for accused Noor Mohammad @ Noora alongwith accused on bail.

ORDER ON CHARGE

The matter is listed for consideration on charge today. I have heard arguments advanced at bar by both the sides and perused the entire material on record.

2. The facts of the case in brief required for the present are that FIR in the matter was registered on 02.03.2020, on the basis of written complaint dated 29.02.2020 (received vide DD No.53-B), made by one Mohd. Hanif, S/o Shri Abdul Majid, wherein he stated that his tailoring shop by the name of “**Prince Tailor**”, situated in Gali No.4, E-Block, near Adarsh Lakhpat School, Khajuri Khas, main Karawal Nagar Road, Delhi-94 was looted and set on fire by the riotous mob on 24.02.2020 at about 5.00 PM, as a result of which he suffered financial loss to the tune of around Rs.5.00 lakhs.

3. The learned counsel for the accused made a strong pitch by submitting that the instant matter is a perfect recipe for discharge of accused on account of the following reasons:

(i) It is argued that the accused has been falsely implicated in the matter by the investigating agency, being resident of the same area/locality. His false implication is further evident from the fact that there is an “*unexplained delay*” of about seven (07) days in registration of FIR, as the alleged incident took place in the evening of 24.02.2020; whereas, the case FIR in the matter was registered on 02.03.2020. Besides the case in hand, he has further been falsely roped in following other cases of rioting of the same police station, viz:

- (a) FIR No.129/2020, PS Khajuri Khas;
- (b) FIR No.150/2020, PS Khajuri Khas;
- (c) FIR No.170/2020, PS Khajuri Khas;
- (d) FIR No.209/2020, PS Khajuri Khas;
- (e) FIR No.215/2020, PS Khajuri Khas;
- (f) FIR No.220/2020, PS Khajuri Khas;
- (g) FIR No.221/2020, PS Khajuri Khas;
- (h) FIR No.223/2020, PS Khajuri Khas

(ii) Complainant Mohd. Hanif did not specifically name/identify the accused in his initial written complaint dated 29.02.2020. He even did not name/identify the accused vide his statement recorded under Section 161 Cr.P.C on 13.03.2020. However, later on at the instance of investigating agency, he has falsely implicated the accused vide his supplementary statement recorded under Section 161 Cr.P.C on 02.04.2020. No recovery of any sort has been effected from the accused.

(iii) Even independent eye witness namely Waseem, S/o Shri Abrar also did not specifically name/identify the accused vide his statement recorded under Section 161 Cr.P.C on 20.04.2020. Furthermore, the persons who had made call at number 100 on the date of incident, i.e PWs Amit, Sunil Singh, Smt.Mamta Pathak and Smt.Chavvi Kansal also did not not specifically name/identify the accused vide their respective statements recorded under Section 161 Cr.P.C by the IO.

(iv) Even the identification of accused by police witness namely Constable Sangram (No.2800/NE) is of no consequences to the prosecution, as firstly his statement dated 02.04.2020 is **highly belated** and secondly he did not make any call at number 100 on the date of incident, which creates doubt upon the veracity of his said statement.

(v) It is contended that the accused was initially arrested in case FIR No.221/2020, PS Khajuri Khas and subsequent to his disclosure statement in the said case, he has been implicated in the instant matter.

(vi) It is next contended that there is no electronic evidence available against the accused either in the form of CCTV footage/video-clip or his CDR location, to confirm his presence at the spot/scene of crime (SOC) on the date and time of incident.

(vii) Out of the alleged riotous mob of 150-200 persons, only accused has been chargesheeted in the matter. Till date, the investigating agency has not been able to identify/apprehend any other accused person in the matter, which is very surprising and clearly points out towards his false implication. In terms of Section 141 IPC, to constitute an “*unlawful*

assembly”, there has to be atleast five (5) members, which admittedly is lacking in the case in hand.

4. Per contra, the learned Special PP for the State has very vehemently argued that on 24.02.2020 some unscrupulous elements hatched a large scale conspiracy and carried out riots in the area of North-East District of Delhi. The communal riots continued for two days unabated, resulting in large number of deaths of innocent persons and loss of property worth crores of rupees. It is submitted that initially the accused was arrested in case FIR No.221/2020, PS Khajuri Khas and subsequent to his disclosure statement made in the said case, his arrest has been effected in the case in hand.

5. The evidence available against the accused has been specified as under:

(a) Role of accused	He has been found to be “ active member of the riotous mob ” on the date and time of incident that took active participation in rioting, vandalizing and arson in the area/locality in question on the date and time of incident.
(b) Ocular evidence	(i) Complainant Mohd. Hanif has duly named/identified the accused to be part/member of the riotous mob, vide his supplementary statement recorded under Section 161 Cr.P.C on 02.04.2020. (ii) The presence of accused persons at the spot/SOC on the date and time of incident has also been confirmed by Constable Sangram vide his statement recorded under Section 161 Cr.P.C in the matter on 02.04.2020. The said police witness was lying

	posted as “ Beat Constable ” in the area/locality in question at the relevant time.
(c) Involvement in other cases	Besides the case in hand, accused is involved in several other cases of rioting in the area/locality.
(d) Miscellaneous	Accused had refused to undergo judicial “ Test Identification Parade ” (TIP) and as such, an adverse inference is liable to be drawn against him.

6. (i) As regards the contention of the learned counsel that the complainant did not specifically name the accused in his initial written complaint and there being delay in registration of FIR, it is argued that the communal riots in North-East Delhi were very unprecedented; people were very much scared; police personnel were busy in maintaining law and order duty, rescuing the victims and stopping further damage to the life, limb and property(ies) in the area; there was curfew like atmosphere at or around the area and the people were so shocked and traumatized that it took several days for them to muster courage to come out and report the matter to the police when the situation became normal. As a sequel thereto, it is contended that the “**atmosphere of terror**” remained for weeks together, people were highly scared and it may be possible that due to highly surcharged and tense atmosphere, complainant might have got scared and could not name the accused in his initial written complaint, however, after gaining some composure and courage, he went on to name him vide his supplementary statement recorded in the matter. It is contended that since the police personnel remained busy in maintaining law and order, the matters were not promptly reported to the police station.

(ii) The learned Special PP has next argued that further investigation in the matter is on and efforts are being made to identify the other rioters involved

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in the incident(s) in the particular area of PS Khajuri Khas.

(iii) As regards non-availability of any CCTV footage in the matter, it is emphasized that dreary days of 24.02.2020 and 25.02.2020 saw parts of North-East Delhi gripped by a communal frenzy, reminiscent of carnage during the days of partition. The rioters had broken down virtually every CCTV in the vicinity and had damaged the DVRs thereof on 24.02.2020 and 25.02.2020 and as such, it is quite possible that on this account no CCTV footage is available in the matter.

7. Lastly, it is submitted that at the stage of consideration on charge, the court is not supposed to meticulously judge the evidence collected by the investigating agency and has to take *prima facie* view thereupon.

8. I have given thoughtful consideration to the arguments advanced at bar by both the sides. I have also carefully gone through the chargesheet filed in the matter.

9. The law with regard to framing of charge is fairly settled now. In the case of “**Kallu Mal Gupta V/s State**”, 2000 I AD Delhi 107, it was held that while deciding the question of framing of charge in a criminal case, the Court is not to apply exactly the standard and test which it finally applied for determining the guilt or otherwise. This being the initial stage of the trial, the court is not supposed to decide whether the materials collected by the investigating agency provides sufficient ground for conviction of the accused or whether the trial is sure to culminate in his conviction. **What is required to be seen is whether there is strong suspicion which may lead to the court to think that there is ground for presuming that the accused has committed an offence.**

10. Furthermore, in case titled as, “**Umar Abdula Sakoor Sorathia V/s**

Intelligence Officer Narcotic Control Bureau”, JT 1999 (5) SC 394 it was held that, “it is well settled that at the stage of framing charge, the Court is not expected to go deep into the probative value of the materials on record. If on the basis of materials on record, the court could come to the conclusion that the accused would have committed the offence, the court is obliged to frame the charge and proceed to the trial”.

11. It is well-settled law that at the time of framing of charge the FIR and the material collected by the investigating agency cannot be sieved through the cull ender of the finest gauzes to test its veracity. A roving inquiry into the pros and cons of the case by weighing the evidence is not expected or even warranted at the stage of framing of charge (reliance **Sapna Ahuja V/s State”, 1999V AD Delhi p 407**).

12. (i) Now, reverting back to the case in hand. Though, there is no specific CCTV footage/video-clip of the incident available on record, however, at this stage we have the ocular evidence in the form of supplementary statement dated 02.04.2020 of complainant Mohd. Hanif, whereby he has categorically named/identified the accused to be part/member of the riotous mob at the relevant time. His said statement finds corroboration from the statement (dated 02.04.2020) of Constable Sangram, who was lying posted as “**Beat Constable**” in the area/locality in question at the relevant time. Their statements cannot be brushed aside/discarded at this stage, merely because there has been some delay in recording of their statements or the complainant has not specifically named the accused in his initial written complaint. The said issue cannot be decided at the stage of consideration on charge . **Ocular evidence is considered the best evidence, unless there are strong reasons to doubt it.** At this stage, defence

State V/s Noor Mohammad @ Noora: SC No.127/2021: FIR No.153/2020: PS Khajuri Khas has not been able to put forth any reason worth to disbelieve/discard the ocular evidence of aforesaid witnesses by doubting their presence at the spot/SOC on the date and time of incident.

(ii) The learned Special PP has been able to accord cogent explanation with regard to delay in registration of FIR and recording the statements of witnesses in the matter.

(iii) As regards only accused being chargesheeted in the matter, the said issue also cannot be adjudicated upon at the stage of consideration on charge. This Court, will try to seek answers to the said question during the course of trial.

13. As regards the contention of learned counsel that accused is not seen/visible in any CCTV footage, I find substance in the submissions of learned Special PP that rioters had broken down virtually every CCTV in the vicinity and had damaged the DVRs thereof on 24.02.2020 and 25.02.2020 and as such, it is quite possible that on this account no CCTV footage is available in the matter. The aforesaid fact has also been taken due note of by Hon'ble High Court of Delhi while dismissing the regular bail applications of two accused persons namely Sameer Khan and Kasim in case FIR No.65/2020, PS Dayalpur (**IB Officer Ankit Sharma murder case**) vide detailed order dated 03.05.2021 (passed in Bail Applications No.1344/2021 and 1166/2021). The observations made by Hon'ble High in the said order are re-produced hereunder: To quote:

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21. It is a matter of fact, in such like cases where large mob is involved in riots and illegal activities causing harm to public property, peace and life, statement of eye witnesses and corroborative evidence plays a vital role and at the time of considering the bail application of accused, it would be too soon to analyse the testimony of eye witnesses and public witnesses to arrive at a conclusion as to whether any case is made out against the accused or not. Non availability of technical evidence such like CCTV footage etc. cannot be

accepted as a ground for non-availability of direct evidence, as it is a matter of record that CCTV cameras installed in the areas in question were either broken or hidden by the mob. At the time of grant of bail only a prima facie opinion has to be formed and the facts and circumstances of this case do not persuade this Court to keep a lenient view towards the petitioners. Petitioners have been playing hide and seek with the prosecution. Charge sheet in the FIR in question has already been framed and trial is in progress. Petitioners will have an opportunity to make their case at the appropriate stage during the course of trial.

22. With aforesaid observations, these petitions are dismissed, while making it clear that any observation made herein shall not influence trial of the prosecution case.

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14. Even recently the Hon'ble High Court of Delhi, while dismissing the bail application of accused Pankaj Sharma in case FIR No.35/2020, PS Gokalpuri, vide order dated 21.05.2021 (passed in Bail Application No.1264/2021) has been pleased to observe as under:

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24. The plea of petitioner that similar to those cases, there is no CCTV footage in the present case and so, petitioner's involvement in the offence is not proved, cannot be accepted, as there may not be technical evidence in the form of CCTV footage but the call detail record of petitioner shows his presence at the spot of crime on the day of incident and his participation in "Kattar Hindu Ekta" whatsapp group, is still under scrutiny. Besides, PCR call record, statement of eye witnesses and other witnesses, dissuades this Court to keep a lenient view for petitioner. Moreover, each case has to be seen in the peculiar facts of the said case and observations made in one case are not binding on another.

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15. (i) It is pertinent to note here that it is permissible for the Court to sift

State V/s Noor Mohammad @ Noora: SC No.127/2021: FIR No.153/2020: PS Khajuri Khas and weigh the evidence for the limited purpose of finding out whether or not *prima facie* case against the accused has been made out or not. The material to determine *prima facie* case would depend upon the facts of each case. However, it is not expected to decide the credibility and truthfulness of the available material at the stage of consideration on charge. The disputed defence of accused cannot be taken into consideration at this stage. Sufficiency of material or evidence is not required for framing of charges, unless Court finds that the materials are completely and absolutely absent for the purpose of trial. It is well settled that when there is evidence indicating strong suspicion against the accused, the Court will be justified in framing of charge and granting an opportunity to the prosecution to bring on record entire evidence for the purpose of trial.

(ii) Even recently the Hon'ble Supreme Court in **Criminal Appeal No.873/2021**, titled as, “**Saranya V/s Bharathhi & Anr.**” (DOD 24.08.2021) has been pleased to lay down as under:

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7.1 In the case of Deepak (supra), to which one of us (Dr. Justice D.Y. Chandrachud) is the author, after considering the other binding decisions of this Court on the point, namely, Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460; State of Rajasthan v. Fatehkaran Mehdu (2017) 3 SCC 198; and Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605, it is observed and held that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for “presuming” that the accused had committed the offence. It is observed and held that at that stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, take at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to appreciate the evidence

on record and consider the allegations on merits and to find out on the basis of the evidence recorded the accused chargesheeted or against whom the charge is framed is likely to be convicted or not.

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16. In view of the aforesaid discussion, I am of the considered opinion that *prima facie* there is enough material on record to frame charges against the accused under requisite sections. Let charges under appropriate sections be framed against the accused. Put up the matter at 2.00 PM for getting the charges signed from the accused and fixing the dates of trial.

(VINOD YADAV)
ASJ-03(NE)/KKD COURTS/31.08.2021