

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

Sessions Case No.116/2021	
State Vs	Gulfam, Aged about 24 years, S/o Mohd. Shaeed, R/o House No.338/A, Gali No.55, Moonga Nagar, Delhi.
FIR No.90/20	
PS Dayalpur	
U/s 147/148/149/436/120-B IPC	

02.09.2021

PHYSICAL HEARING

Present: Shri Amit Prasad, Ld. Special PP for the State alongwith
IO, ASI Surender Pal.

Shri Anis Mohammad, Ld. Counsel for accused Gulfam 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. (i) 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 GD No.30A, dated 25.02.2020, pursuant to PCR call made by SI Naresh Kumar to the effect that on account of large-scale conflict between pro-Citizenship Amendment Act (CAA) group and anti-CAA group, a riotous mob of around 1500-1600 persons had

gathered in the area at or around Munga Nagar Shiv Mandir and resorting to rioting. It was further informed that the rioters had converted themselves into various unlawful assemblies and had committed large-scale violence, including damage to the vehicles lying parked in the area.

(ii) Thereafter, during the course of investigation, a written complaint (vide Diary No.95, dated 03.03.2020) was received from one Chetan Arora, S/o Shri Sunder Lal Arora, r/o House No.215, Munga Nagar, main Karawal Nagar road, near Chand Bagh Puliya, Delhi; wherein, he stated that on 25.02.2020, between 3.00 PM to 5.00 PM, a riotous mob consisting of about 100-150 rioters had **damaged** the infrastructure of his hall, as a result of which suffered financial loss to the tune of around Rs.3.60 lakhs. His said complaint was clubbed with the instant case FIR.

3. During the course of further investigation, IO prepared site plan and recorded the statements of witnesses in the matter. Accused Gulfam was formally arrested in the matter on 08.05.2020 from Mandoli Jail, pursuant to disclosure statement made by him in case FIR No.86/2020, PS Dayalpur. His arrest had already been effected in case FIR No.86/2020, PS Dayalpur on 05.05.2020.

4. The learned defence counsel has made a strong pitch *inter alia* submitting that 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 five (05) days in registration of FIR, as the alleged incident took place on 25.02.2020; whereas case FIR in the matter

was registered on 02.03.2020.

(ii) SI Naresh Kumar did not specifically name/identify the accused in his telephonic call (registered vide DD No.30A). Even complainant Chetan Arora did not specifically name/identify the accused either in his written complaint or in his statement recorded under Section 161 Cr.P.C in the matter on 10.04.2020. Similarly, PW Gokul Chand Sharma, who was the pujari of Shiv Mandir, Munga Nagar at the relevant time had also not specifically named/identified the accused in his statement recorded under Section 161 Cr.P.C on 10.04.2020. No recovery of any sort has been effected from the accused.

(iii) It is further argued that accused was initially arrested in case FIR No.86/2020, PS Dayalpur and thereafter based on his disclosure statement, his formal arrest has been effected in the case in hand on 08.05.2020 from Mandoli jail complex. Besides his own disclosure statement, there is no other incriminating evidence to connect him with the commission of crime in the present matter. In addition, it is contended that it is absolutely wrong/illegal on the part of investigating agency to import the statements of witnesses/evidence collected in case FIR No.86/2020, PS Dayalpur in this case as the same is in total violation of Article 20 (2) of the Constitution of India under the doctrine of "***Double Jeopardy***".

(iv) 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 the matter.

(v) It is very strenuously emphasized that there is no electronic evidence available against the accused in the form of CCTV footage/video-clip to nail his presence at the spot/SOC at the relevant time. His CDR location is of no consequences to the prosecution as he is resident of the same locality/area.

5. Per contra, learned Special PP for the State has very vehemently argued that this is one of the cases of riots near “*Chand Bagh*” and “*Brijpuri Puliya*”, which spread on Wazirabad Road and Karawal Nagar Road as well upto Sherpur Chowk, including Shiv Vihar tiraha and Mahalaxmi Enclave. It is emphasized that the present case was registered pursuant to receipt of DD No.30A to SI Shiv Charan which was regarding vandalism of Shiv Temple, situated at Gali No.5, Moonga Nagar, Delhi by the riotous mob on 25.02.2020. It is argued that accused was formally arrested in the present matter on 08.05.2020 at Mandoli Jail, pursuant to the disclosure statement made by him in case FIR No.86/2020, PS Dayalpur.

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

(a) Role of accused	He has been found to be an “ 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	PWs Bhai Sahab and Kapil, who are eye witnesses in case FIR No.86/2020, PS Dayalpur have duly identified the accused vide their statements recorded under Section 161 Cr.P.C in the said matter on

	05.05.2020. It is submitted that their said statements have been imported in the case in hand.
(c) Technical Evidence	CDR location qua the mobile phone number 8810454529 belonging to the accused has confirmed his presence at the spot/scene of crime (SOC) on the date and time of incident.
(d) Involvement in other cases	Besides the case in hand, he is also involved in three other cases of riots, being case FIRs No.86/2020, 100/2020 and 116/2020, all pertaining to PS Dayalpur.

7. (i) As regards the contention of the learned counsel that complainant Chetan Arora did not specifically name the accused in his initial written complaint as well as in his statement recorded under Section 161 Cr.P.C and even PW Pandit Gokul Chand Sharma not specifically naming the accused in his statement recorded under Section 161 Cr.P.C, plus 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. 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. Except for the statements of police personnel, there is hardly any statement of victim(s)/public witnesses which could throw light qua the rioting activity undertaken by unlawful assembly of rioters. It is argued that accused has been duly identified by PWs Bhai Sahab and Kapil vide their statements recorded under Section 161 Cr.P.C on 05.05.2020

in case FIR No.86/2020, PS Dayalpur and the issue of importing their evidence in the instant matter cannot be decided at this stage and same would be taken care off during the course of trial.

(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 in the incident in the particular area of PS Dayalpur. It is argued that the place of incident(s) in the instant case and case FIR No.86/2020, PS Dayalpur are quite nearby and same unlawful assembly had been operating in both the area(s) at the relevant time. It is submitted that this is not the proper stage to dwell upon the said issue and same would be seen during the course of trial.

8. 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.

9. 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.

10. 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.

11. 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”.

12. 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).

13. Now, reverting back to the case in hand. A careful perusal of the chargesheet filed in the matter reveals that sections 147/148/149/436/120-B IPC have been invoked by the investigating agency. It is relevant to note that except for section 436 IPC, all the sections invoked in the matter are triable by learned Magistrate. Now, let us see whether ingredients of Section 436 IPC are made out in the matter or not. Before that, it would be appropriate to have the definition of Section 436 IPC, which for ready reference is re-produced as under:

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Section 436- Mischief by fire or explosive substance with intent to destroy house, etc.—Whoever commits

*mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any **building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property**, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

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14. (i) The case FIR in the matter was registered on 02.03.2020, on the basis of GD No.30A, dated 25.02.2020 pursuant to PCR call made by SI Naresh Kumar. The sole written complaint in the matter has been preferred by Chetan Arora, S/o Shri Sunder Lal Arora, which was registered vide Diary No.95, dated 03.03.2020 at PS Dayalpur. I have carefully gone through the aforesaid written complaint. In his said complaint, he has merely stated that that on 25.02.2020, between 3.00 PM to 5.00 PM, a riotous mob consisting of about 100-150 rioters had damaged the infrastructure of his hall, as a result of which he suffered financial loss to the tune of around Rs.3.60 lakhs. **The said complainant has not stated a single word regarding committing mischief by fire or explosive substance by the riotous mob in his aforesaid hall on 25.02.2020, i.e on the date of incident. Even in his statement recorded under Section 161 Cr.P.C in the matter on 10.04.2020, he did not state a single word regarding putting/setting on fire of his said hall by the riotous mob on 25.02.2020.** As such, the ingredients of Section 436 IPC are not at all made out either from his written complaint or from his statement recorded under Section 161 Cr.P.C in the matter.

(ii) Now, proceeding further. PW, Pandit Gokul Chand Sharma, S/o Shri Raja Ram Sharma is stated to be an eye witness of the incident in question. He at the relevant time was working as priest (pujari) in Shiv Mandir, Munga

Nagar. He has not preferred any written complaint in the matter. His statement under Section 161 Cr.P.C in the matter was recorded by the IO/investigating agency on 10.04.2020. **A careful reading of his aforesaid statement clearly reveals that even this witness has not stated a single word regarding committing mischief by fire or explosive substance by the riotous mob in “Shiv Mandir” on 25.02.2020.** Accordingly, no ingredient qua Section 436 IPC is made out from his said statement.

(iii) Next in pipeline are the statements of two public witnesses, namely Bhai Sahab, S/o Shri Amar Singh and Kapil, S/o Shri Dinesh, recorded under Section 161 Cr.P.C on 05.05.2020 in case FIR No.86/2020, PS Dayalpur. **Admittedly, the statements of said two witnesses have not been recorded in instant case FIR.** It is beyond comprehension that under what provision(s) the investigating agency has imported the statements of said witnesses recorded in case FIR No.86/2020, PS Dayalpur in the case in hand. Be that as it may, at this stage even if the said issue is kept off the burner and the aforesaid statements are considered on their face value, then also no ingredients of Section 436 IPC are getting made out therefrom.

15. (i) There is no eye witness(es) of the incident in question. Furthermore, there is no CCTV footage/video-clip of the incident available on record.

(ii) Before proceeding, it is also relevant to note here that till date the investigating agency has not been able to apprehend/arrest any other accused person in the matter, meaning thereby that no progress/further investigation in the case has so far been made and the investigating agency is still standing on the same square which it did when the accused was enlarged on bail by this Court vide order dated 14.10.2020

(iii) This Court is conscious of the fact that cases of communal riots have to be considered with utmost sensitivity.

16. In view of the aforesaid discussion, I am of the considered view that ingredients of Section 436 IPC are not at all made out from the material produced on record by the investigating agency. Except Section 436 IPC, all the offences invoked in the matter are triable by the court of learned Magistrate.

17. Accordingly, the case file be placed before learned Chief Metropolitan Magistrate (North-East), Karkardooma District Courts on **10.09.2021 at 2.00 PM**, with a request to him either try the matter himself or assign it to some other competent Court/learned MM. Accused is directed to appear before learned CMM (North-East) on the said date.

18. Ahlmad to comply.

(VINOD YADAV)
ASJ-03(NE)/KKD COURTS/02.09.2021