

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

IA No.02/2021 in SC No.67/2021  
**State V/s Tinku**  
FIR No.106/2020  
U/s 147/148/149/380/427/436 IPC  
PS Gokalpuri

10.09.2021

**THROUGH WEBEX VIDEO CONFERENCING**

Present: Shri Nitin Rai Sharma, Ld. Special PP for the State.

Shri Rajeev Pratap Singh, Ld. Counsel for accused Tinku/applicant.

**ORDER**

This is second application filed under Section 439 Cr.P.C on behalf of applicant, seeking regular bail in the matter. His first bail application was dismissed by this Court vide detailed order dated 28.04.2021.

2. I have heard arguments advanced at bar by both the sides and perused the report filed in the matter as well as the chargesheet.

3. Before advertng to the arguments advanced at bar, it would be appropriate to have a brief overview of the facts of the case in hand. The case FIR in the matter was registered on 03.03.2020 on the complaint of one Illiyas, S/o Shri Fakira, wherein he stated that in the morning of 25.02.2020 he alongwith his family members had left his house bearing No.E-86, Main Nala Road, Bhagirathi Vihar due to fear of riots and thereafter he came to know that his aforesaid house and shop (situated at the ground floor thereof) had been vandalized/damaged and put on fire by the riotous mob.

4. (i) At the very outset, learned counsel for the applicant was asked a

specific question about the change in circumstance(s)/stage after dismissal of the last bail application of the applicant, to which he has submitted that in several matters of similar nature, being case FIRs No.64/2020, 79/2020, 93/2020, 98/2020 and 124/2020, all pertaining to PS Gokalpuri, applicant has already been enlarged on bail by this Court vide various orders and charges under requisite sections have also been framed against him in the said matters. He has been in judicial custody since 31.08.2020.

(ii) In addition, it is further contended that applicant 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 six (06) days in registration of FIR, as the alleged incident took place on 25.02.2020; whereas, case FIR in the matter was registered on 03.03.2020. The applicant has neither been specifically named in the FIR nor any specific role has been assigned to him in the matter. No recovery of any sort has been effected from him.

(iii) It is next contended that PW Nisar Ahmed is a “**planted witness**” which is apparent from the fact that he is resident of E-61/1, Bhagirathi Vihar; whereas the alleged incident occurred at E-78, Bhagirathi Vihar, there is a distance of about 17 houses between them, so it is practically not possible to do video-recording from such a large distance and as such, there is every possibility of tampering in the alleged video-recording vis-à-vis the arrest of the applicant has been effected in the matters without waiting for the forensic report. The applicant was not in town (Delhi) from the afternoon of 24.02.2020 till 9.00 AM on 25.02.2020, as he was away to Shikarpur (Uttar Pradesh). When he came back, then he was requested by the police official(s) to help them in clearing the road, which he did alongwith other co-accused and other persons, which was filmed/recorded by Nisar Ahmed. It is further argued that the innocence of the applicant is proved from his CDR location, which shows that he was not in Delhi during the aforesaid period. It is next argued that PW Nisar Ahmed was constantly in touch with Salman Malik (complainant of case FIR No.78/2020, PS

Gokalpuri) and Illiyas at or around the date of incident, but he waited till 15.03.2020 and did not inform the police about the incident. It is next argued that the FSL report in the matter has not been received so far. As regards the statement(s) of police witnesses recorded in the matter(s), thereby allegedly identifying the applicant to be part of the riotous mob on the said date of incident, it is argued that the same is not of any consequence as their statements are “**highly belated**” which do not inspire any confidence.

(iv) It is further argued that there is no evidence collected by the investigating agency that the applicant was in touch with other co-accused persons through phone, either before the incident in question or thereafter. It is emphasized that applicant is permanent resident of Delhi and as such, there is no possibility of his absconding in the matter. It is further argued that “*pre-trial detention has been deprecated by the Courts*” and “*bail is the rule and jail is an exception.*” In the end, it is argued that the investigation in the matter is complete; chargesheet(s) have already been filed; applicant is no more required for custodial interrogation; and no useful purpose would be served by keeping him behind bars in the matter, as trial thereof is likely to take long time. It is claimed that the applicant has clean past antecedents.

5. (i) Per contra, 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.

(ii) **As regards the case in hand**, it is submitted that initially applicant was arrested in case FIR No.133/2020, PS Gokalpuri and thereafter based on his disclosure statement, his arrest has been effected in the instant matter on 31.08.2020. It is submitted that the IO of case FIR No.78/2020 had got recovered one video-clip, wherein the applicant is duly seen/visible being part/member of the riotous mob that had vandalized and put on fire the house/shop of

complainants and as such, he was arrested in the instant matter as well. It is submitted that applicant has been found to be an active member of the riotous mob on the date and time of incident and his presence at the spot/SOC has been confirmed by police witnesses, who were lying posted as “**Beat Officers**” in the area/locality at the relevant time.

(iii) However, at this stage, learned Special PP has very fairly admitted applicant already stood enlarged on bail in case FIRs No.64/2020, 79/2020, 93/2020, 98/2020 and 124/2020 (all pertaining to PS Gokalpuri), after framing of requisite charges against him.

6. I have given thoughtful consideration to the arguments advanced at bar.

7. It is a matter of record that applicant has already been enlarged on bail in case FIRs 64/2020, 79/2020, 93/2020, 98/2020 and 124/2020 (all pertaining to PS Gokalpuri) which are matters of similar nature pertaining to the incidents of rioting at or around the same area/locality. He has been in judicial custody since 31.08.2020. I find substance in the submissions of learned counsel that presence of applicant is necessary for effective preparation of his defence and facilitate him to participate in the trial. His right to defend himself shall get prejudiced, if he is not admitted to bail at this stage. Therefore, without going into the controversy and keeping in view the aforesaid fact(s), I find that applicant deserves bail in the matter.

8. (i) Accordingly, applicant **Tinku, S/o Shri Ashok Kumar** is admitted to bail in the matter on his furnishing a Personal Bond in the sum of Rs.10,000 (Rupees Ten Thousand Only) with one surety in the like amount to the satisfaction of Court, subject to the condition that he shall not tamper with the evidence; shall not try to approach/influence public witnesses in any manner; he

shall maintain peace and harmony in the locality and that he shall appear before the Court on each and every date of hearing to attend the proceedings in accordance with the terms of Bail Bond, which would be executed by him; he shall furnish his mobile number to SHO, PS Gokalpuri upon his release from the jail and will ensure the same to be in working condition and further he shall also get installed “*Arogya Setu App*” in his mobile phone. It is further clarified that at the time of furnishing the Bail Bond, the applicant shall also furnish details as contained in Annexure-B, as per order dated 28.06.2021, passed by the Hon’ble High Court of Delhi in **Crl.M.C No.5328/2013**, titled as, “**Sunil Tyagi V/s Govt. of NCT of Delhi & Anr.**”

(ii) Needless to say, the applicant be released from the jail only after getting his RT-PCR/RAT (Rapid Antigen Test) done by the jail authorities.

9. Application stands disposed off accordingly.

10. It is hereby clarified that anything stated hereinabove shall not be construed as expressing any opinion on the merits of the case.

11. A copy of this order be sent to Superintendent Jail concerned as also to learned counsel for the applicant through electronic mode.

(VINOD YADAV)  
ASJ-03(NE)/KKD COURTS/10.09.2021