

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

**Sessions Case No.16/2021**

**FIR No.40/2020**

**PS Gokalpuri**

**U/s 147/148/149/380/427/452/436/188 IPC**

**State**

**Versus**

- 1. Mohd. Shahnawaz @ Shanu @ Ansari  
S/o Mohd. Rashid  
R/o H. No. A-528, Gali No. 22,  
Phase-10, Shiv Vihar, Delhi.**
- 2. Mohd. Shoaib @ Chhutwa  
S/o Islam  
R/o H. No. 93, Gali No. 5/2,  
Behind Rajdhani School,  
Babu Nagar, Delhi.**
- 3. Shahrukh  
S/o Salauddin  
R/o B-262, Gali No. 7, Babu Nagar  
Near Shiv Mandir, Delhi.**
- 4. Rashid @ Raja  
S/o Riyajuddin  
R/o A-22, Gali No. 1, Chaman Park,  
Shiv Vihar Tiraha, Delhi.**
- 5. Azad  
S/o Riyasat Ali  
R/o C-824, Gali No. 9,  
Old Mustafabad, Delhi.**

6. **Ashraf Ali**  
**S/o Anisul Haq**  
**R/o H. No. A-18, Chaman Park,**  
**Indira Vihar, Delhi.**
7. **Parvez**  
**S/o Riyajuddin**  
**R/o A-30/6, Gali No. 1, Mahalaxmi Enclave,**  
**Babu Nagar, Delhi & Mohalla Patua, PS Chaudpur,**  
**Distt. Bijnour, UP.**
8. **Md. Faisal**  
**S/o Raisuddin**  
**R/o H. No. F-14, Gali No. 1, Babu Nagar,**  
**Main Brijpuri Road, Delhi.**
9. **Rashid @ Monu**  
**S/o Khalil**  
**R/o H. NO. 259, Gali No. 7, Shiv Mandir,**  
**Shakti Vihar, Delhi.**

**ORDER ON THE POINT OF CHARGE:-**

1. The case of the prosecution is that the above named accused were part and parcel of the unlawful assembly that had gathered in the streets near main Brijpuri Road, Bhagirathi Vihar, Delhi on 25.02.2020 during the protest against NRC/CAA and in pursuance to the common objective of the unlawful assembly, they not only cause damaged and looted properties worth crores of rupees but also burnt large number of houses, shops, schools, vehicles belonging to general public. There also alleged to have created disharmony in the Society by threatening and terrorising public at large. It is stated that the above acts of the accused are not only anti-national but also a challenge to establish Rules of Law

in Delhi.

2. Ld. Sr. Public Prosecutor took the Court through the entire material on record in order to show that prima-facie a case for framing of charge u/s 147/148/149/380/427/436/452 IPC is made out against all the accused. Apart from other evidence on record, Ld. Sr. Public Prosecutor placed heavy reliance upon the statements of complainant Jitender, his father Gopi Chand, Shekhar Bhardwaj and Jagdish Prasad who are stated to be public eye witnesses to the incident. Besides these public witnesses, Const. Vipin, HC Hari Babu and Const. Sanjay are also stated to have identified some of these accused to be present in the mob which had resulted to rioting, violence, vandalism etc. during the above incident.

3. The only arguments put forth on behalf of the accused is that the statements of the above public witnesses is not trustworthy for the reason that these have been recorded on 01.04.2020 i.e. more one month after the date of incident. It is submitted that such huge unexplained delay in recording of the statements of the material witnesses is sufficient to indicate at this very stage itself that they have been planted later on and they had not actually witnessed any such incident. On this ground, it is argued that, the accused are liable to be discharged.

4. It is true that the statements of above named public witnesses to the incident have been recorded after a delay of more than one month. However, it is be noted here that this case is an off shoot of communal riots which had irrupted in North-East Delhi on 24.02.2020 and continued till 26.02.2020 when the situation was brought under control by the police and para-military force. There had been instances of rioting, killing, looting, vandalizing, setting ablaze

movable and immovable properties etc. by the members of each community against each other. There was an atmosphere of terror and trauma which prevailed in the area for several days even after these riots. As submitted by the Ld. Sr. Public Prosecutor, the public witnesses like the ones in the instant case, had become so terrified that they were reluctant to come forth and present their version of the incident before the investigating agency. It is also pointed out by the Ld. Sr. Public Prosecutor that soon after the situation had become normal to some extent, there was outbreak of Covid-19 Pandemic which resulted in complete lock down from second week of March, 2020 and this too resulted in delay in recording the statements of public witnesses. Keeping these circumstances, in view, it would be a miscarriage of justice to disbelieve the statements of these witnesses at this very stage and throw out the prosecution case merely for the reason that their statements were recorded after about one month of the incident. In the opinion of this Court, the delay in recording of the statements of this witnesses does not appear to be deliberate or contumacious. It appears to have occasioned on account of situation which prevailed in the area during and after the incident of rioting and therefore, the accused cannot claim discharge in this case merely on this score. The truthfulness of otherwise of the statements of these witness can be assessed only during the trial of the case.

5. It was also pointed out by the Ld. Defence Counsels that CCTV video footage which forms part and parcel of the charge-sheet in this case pertains to the date 24.02.2020 whereas the incident in question had admittedly taken place on 25.02.2020. It is also pointed out that there is no CCTV video footage on record which pertains to the date 25.02.2020. This fact is not disputed by the Ld. Sr. Public Prosecutor. However, he submitted that the prosecution does not rely upon the said CCTV video footage and the prosecution case is bases upon the

other evidence on record including ocular version of the witnesses named herein above . Therefore, this fact also is of no help to the accused.

6. No other point was raised by the Ld. Defence Counsels which may entitle to the accused to seek discharge in this case.

7. Considering the entire material on record as well as above discussion, it is prima-facie evident that the charges u/s 147/148/149/380/427/436/452 IPC are liable to be framed against all the accused.

**(VIRENDER BHAT)**  
**ASJ-03(NE)/KKD COURTS/11.10.2021**