

DLNE010003232021



**IN THE COURT OF SH. PULASTYA PRAMACHALA  
ADDITIONAL SESSIONS JUDGE-03,  
NORTH-EAST DISTRICT  
KARKARDOOMA COURTS: DELHI**

IA 13/23 (Mohd. Tahir Hussain)

CNR No. DLNE01-000323-2021

Sessions Case No. 22/21

FIR No. 88/20

PS Dayalpur

U/s 147/148/149/153-A/505/307/120-B/34 IPC & 27/30 Arms  
Act

02.09.2023

**Order on Bail Application**

Vide this order, I shall decide bail application under Section 439 Cr.P.C., moved on behalf of applicant/accused Tahir Hussain.

1. Applicant along with co-accused persons, is facing trial for various charges including u/s. 307 read with S.120B &149 IPC, in respect of incident related to injured Ajay Goswami.
2. The brief facts of the present case are that, on 25.02.2020 relatives of an injured namely Ajay Goswami visited Dayal Pur police station and reported that Ajay was shot in the riots and was admitted in Hindu Rao hospital. ASI Vijayant Kumar visited this hospital and found that injured was not in condition to make his

statement. ASI Vijayant collected his MLC no. 962/20 and also seized his blood-stained cloths, sample blood gauze and pellet/bullet recovered from the body of Ajay.

- 3 . Subsequently, FIR was registered on 01.03.2020, on the basis of statement given by Sh. Ajay Goswami. Complainant alleged that on 25.02.2020 he had come to his uncle's home. At about 03.50 PM, he was going to his home at C 153, Gali No. 21, Khajuri Khas, Delhi. When he was at the corner of gali, he saw a huge mob on main Karawal Nagar road indulging into pelting stones and firing gun shots. Complainant on seeing this started running back towards home of his uncle in gali no. 8, Moonga Nagar. At that time, he felt being hit on his hip by some bullet. The persons standing there informed him that he was hit by bullet and that between gali 5 and 6 Gulfam and Tanvir were blindly firing. At that time uncle of complainant namely Sh. Rakesh Sharma reached there and lifted him with the help of some boys and took him to Mavi Hospital. Complainant was given first aid there and thereafter, he was taken to Hindu Rao Hospital, where he was admitted. This FIR was registered for offences punishable under Section 307/120B/34 IPC.
- 4 . As per this application, the first application of applicant was dismissed by sessions court on 02.05.2020. Thereafter, chargesheet was filed on 08.06.2020. Another application of applicant for bail was rejected by High Court of Delhi vide order dated 23.11.2022. Charges were framed against the applicant vide order dated 15.11.2022 and this court had found that offence

u/s. 147/148 and 153-A IPC, were common for several incidents of injuries to different persons, which took place one after another at same place. Charges for these offences were already framed in FIR No.91/20 and therefore, those charges were not framed in this case. Applicant has been granted bail in FIR No. 91/20, PS Dayalpur by High Court of Delhi vide order dated 12.07.2023. An application for bail in this case was moved before High Court of Delhi on 30.07.2023, but same was withdrawn with liberty to file the same before this court. Applicant has been granted bail by High Court of Delhi in FIR Nos. 80/20, 92/20, 117/20 and 120/20 of PS Dayalpur, besides FIR No.91/20.

- 5 . The material change has taken place in the circumstances after rejection of last bail application on 23.11.2022. The changes are that applicant remained in custody for more period and thereafter, he has been granted bail by High Court of Delhi in aforesaid five FIRs. FIR Nos.91/20 and 92/20 emanate from the set of facts. Statement of Ct. Pawan and Ct. Saudan have been recorded before the court in FIR No.91/20, which show contradictions and improvements. Despite evidence being recorded on multiple dates, prosecution has failed to produce public witnesses for cross-examination and in view of the number of counsels and the extensive nature of their cross-examination, there is no likelihood that trial will conclude early. Statement of various witnesses in FIR No.91/20 and 92/20 are similar for this case as well.
- 6 . Reply was filed by IO, thereby opposing the bail application on following grounds: -

- 6.1 Location of the mobile number i.e. 9810363925 of accused Tahir Hussain was on the spot from where he was instigating the other rioters for rioting. Statements of the witnesses Surendar Pal *Singh* Sengar, Bharat @ Kalu, Akash, Vikalp Kochar, HC Rahul, Ct. Parveen Ct. Pawan and Ct. Saudan corroborate the same.
  - 6.2 He is the main conspirator, who allowed the rioters to use his house and to attack on Hindus.
  - 6.3 He has been found promoting enmity and disharmony by rioting and instigating the rioters.
  - 6.4 Hon'ble Court has already dismissed his bail application vide order dated 23.11.2022.
  - 6.5 Hon'ble court has framed the charges u/s 307, 505 IPC r/w 120B IPC and 149 IPC and 188 IPC against the accused Tahir Hussain.
  - 6.6 All the witnesses of the case reside in the same locality and being a prominent/influenced person of the area accused Tahir Hussain could endanger, threaten the PWs and will *try* to manipulate them.
  - 6.7 He can jump the bail and will not face the trial.
7. **Ms. Tara Narula**, ld. counsel for applicant argued on the lines of ground taken in the application. She emphasized upon bail order passed by High Court of Delhi in other FIRs including FIR No.91/20 and 92/20, to submit that present case is also based on the similar kind of evidence and circumstances, as incidents reported in these three FIRs were very proximate in time and

place. Therefore, if applicant has been granted bail in FIR Nos. 91/20 and 92/20, then on the grounds of parity, he should be granted bail in this case as well. Ld. counsel took my attention to para 10.2 and 10.3 of the bail order as passed by High Court of Delhi in other five cases.

- 8 . **Sh. Madhukar Pandey**, ld. Special PP argued that bail order is not binding precedent. Anything stated in the bail order, is peculiar to that case only and therefore, bail granted in other cases cannot be a material change of circumstance for this case. He further submitted that public witnesses reside in same vicinity and they will feel threatened due to release of applicant.
- 9 . I have perused the record and the order of bail passed by High Court of Delhi in other five cases vide order dated 12.07.2023. I have particularly perused para 10.2 and 10.3 of this order, which relate to FIR Nos. 91/20 and 92/20. It is matter of record and undisputed fact that the incidents probed in FIR Nos.91/20, 92/20 and 88/20 (this case), took place at proximate time and places. In all these cases, this court framed charges (on 05.11.2022 in FIR No.88/20), but the charge for offence u/s 120B, 147, 148 and 153A was not framed in this case, for the reasons of proximate time and place of incidents in these three FIRs. In that situation, even though a bail order may not be a precedent for other case, in the aforesaid peculiar situation, bail granted to the applicant by a court higher in hierarchy to this court, does create a material change in the circumstances in favour of the applicant. Many of the witnesses are common in all these three FIRs and hon'ble

High Court of Delhi has appreciated the merit of the case in two of the FIRs i.e. 91/20 and 92/20, in order to find the applicant entitled for bail. In that situation for this court there may not be a reason to take a different view. This material change in the circumstance in itself becomes a ground to grant bail to the accused/applicant in this case as well. Hence, application is allowed.

10. Applicant Mohd. Tahir Hussain is admitted to bail, on his furnishing P/B and S/B in the sum of Rs.1,00,000/- each with one surety in the like amount, subject to the following conditions: -

10.1 Applicant/accused shall not leave India without express permission of the court.

10.2 Applicant and his surety shall intimate the court immediately after any change in their addresses or other particulars.

10.3 Applicant shall not try to influence any witness of this case.

10.4 Applicant and his surety shall mention their mobile numbers to be used by them during the period of bail.

Copy of order be sent to Jail Superintendent for intimation to the applicant. Another copy be supplied dasti to prosecution.

Announced in the open court **(PULASTYA PRAMACHALA)**  
today on 02.09.2023 **ASJ-03(North East)**  
**(This order contains 6 pages) Karkardooma Courts/Delhi**