

IA no.36/21
SC no.119/20
State vs Jalaluddin
FIR no.60/20
PS Dayalpur

11.11.2021

Present: IO Insp. Gurmeet Singh in person.
Sh. Mehmood Pracha, Ld. Counsel for
accused/applicant.

This is fourth occasion when the applicant/accused Jalaluddin has approached this Court for grant of bail. His first application was dismissed as withdrawn vide order dated 11.06.2020. Similar was the fate of his second and third bail application which were dismissed as withdrawn on 09.09.2021 and 31.07.2021 respectively.

The only change in circumstances that has taken place after the dismissal of his above three bail applications, as conveyed by the Ld. Counsel for the applicant, is the fact that the co-accused Md. Arif, Furkan, Shahdab Ahmed, Suvaleen and Tabassum have been granted bail in this case by the Hon'ble High Court vide order dated 03.09.2021. It is vehemently argued by the Ld. Counsel for the applicant that the allegations against the applicant and the evidence put forth against him are similar to the allegation and the evidence against the above named co-accused and therefore, the applicant is also entitled to be released on bail on the ground of

parity.

Ld. Counsel would further argue that the only evidence identifying the applicant as a member of the unlawful assembly which had caused fatal injuries to the HC Ratan Lal is a video of the alleged incident captured by private witness Sh. Vishal Chaudhary from his mobile phone. It is his argument that no authenticity can be attached to such a video recording and the same cannot be relied upon to enlarge the custody of the applicant in this case. Ld. Counsel placed heavy reliance upon the separate orders passed by the Hon'ble High Court vide which bail has been granted to five co-accused.

The bail application is vehemently opposed on behalf of the State. It is submitted by the IO that the accused was a part of violent mob which had killed HC Ratan Lal and also tried to kill other members of police party including DCP Shahdara and ACP Gokalpuri who had received serious injuries. He pointed out that in the video captured by the public witness Sh. Vishal Chaudhary, the applicant is clearly seen in the violent mob forcing the shopkeeper to switch off all the CCTV cameras installed in their shops before the start of the riot and is also seen pelting stones on the police party. The IO further submitted that the case against the applicant stands on a different footing than the five co-accused who have been granted bail by the Hon'ble High Court. It is his submission that the allegations and

evidence against the applicant are similar as against the other co-accused Sadiq @ Sahil whose bail application has been dismissed by the Hon'ble High Court vide order dated 14.09.2021. It is thus prayed that the instant bail application may also be dismissed.

I have considered the submissions made on behalf of both the parties and have perused the charge-sheet as well as material annexed thereto. I have also seen the video of the incident stated to be captured by public witness Sh. Vishal Chaudhary. The orders passed by the Hon'ble High Court vide which bail applications has been granted to five co-accused named hereinabove have been allowed and also the order dated 14.09.2021 vide which bail application of co-accused Sadiq @ Sahil has been dismissed have also been perused.

Perusal of the above referred orders passed by the Hon'ble High Court would clearly reveal that the case of the prosecution against the applicant and the evidence projected against him is totally different from the case/evidence against the five co-accused who have been granted bail but is similar to the case/evidence against the sixth accused Sadiq @ Sahil whose bail application has been dismissed. It would be apposite to reproduce herein following paragraph of the order dated 14.09.2021 of the Hon'ble High Court on the bail application of co-accused Sadiq @ Sahil.

“32. A perusal of the video footage

reveals that the Petitioner herein, who was wearing a yellow and white t-shirt, can be seen on GNCTD Camera ID No. 7033161 installed at E2 56 Chand Bagh at F 150 at 12:06:49 PM. He was further seen on Camera ID No. 7033182 installed at F 150 Chand Bag at 12:13:20 PM with co-accused Imran Ansari, as well as on Camera No. 06 installed at Aman Motors at 13:10:40 PM with a danda in his hand, walking behind co-accused Imran Ansari. The Petitioner can also been seen in the video taken by Vishal Chaudhary which places the Petitioner at the Scene of Crime at 00:34 seconds and 01:19 seconds with a danda in one hand and pelting stones at the police officials with his other hand.”

In the instant case also, the applicant is seen in one of the videos exhorting the shopkeepers to pull down the shutter of their shops. In another video, the applicant is seen pelting stones towards the directions where the police party had been apprehended by the violent mob and were being beaten. Thus, the presence of the applicant at the Scene of Crime is quite evident. It is also manifest that he was not a curious onlooker or bystander. The manner in which he was pelting stones towards the police personnel who were being beaten by

the other members of unlawful assembly, clearly indicates that he shared the common object of the unlawful assembly i.e. to cause injuries by the police personnel and to kill them. He has neither made any attempt to stop the other members of the assembly from beating the police personnel nor did he try to disassociate from the assembly. To the contrary, he is seen actively pursuing the object of the common assembly by pelting stones upon the police officials. In this regard, it would be material to refer the following observations of the Hon'ble Supreme Court in Kattukulangara Madhavan v. Majeed & Ors. (2017) 5 SCC 568, the Hon'ble Supreme Court has categorically stated:

“23. In the first place, the presence of an accused as part of an unlawful assembly, when not as a curious onlooker or a bystander, suggests his participation in the object of the assembly. When the prosecution establishes such presence, then it is the conduct of the accused that would determine whether he continued to participate in the unlawful assembly with the intention to fulfill the object of the assembly, or not. It could well be that an accused had no intention to participate in the object of the assembly.

For example, if the object of the assembly is to murder someone, it is possible that the accused as a particular member of the assembly had no knowledge of the intention of the other members whose object was to murder, unless of course the evidence to the contrary shows such knowledge. But having participated and gone along with others, an inference whether inculpatory or exculpatory can be drawn from the conduct of such an accused. The following questions arise with regard to the conduct of such an accused:

1. What was the point of time at which he discovered that the assembly intended to kill the victim?

2. Having discovered that, did he make any attempt to stop the assembly from pursuing the object?

3. If he did, and failed, did he dissociate himself from the assembly by getting away?

The answer to these questions would determine whether an accused shared the common object in the assembly. Without evidence that the accused had no knowledge of the

unlawful object of the assembly or without evidence that after having gained knowledge, he attempted to prevent the assembly from accomplishing the unlawful object, and without evidence that after unlawful object, and without evidence that after having failed to do so, the accused disassociated himself from the assembly, the mere participation of an accused in such an assembly would be inculpatory.”

The conduct of the applicant during the entire incident in which one police official lost his life and other two sustained serious injuries, is sufficient to hold that he actively participated in the incident by pelting stones on the police officials which justifies invocation of Section 147 IPC r/w Section 302 IPC against him.

It was also argued by the Ld. Counsel for the applicant that no reliance can be placed upon the video of the incident shot by a private witness Vishal Chaudhary. The arguments has been noted only to be rejected. Same video footage has been considered by the Hon'ble High Court while dismissing the bail application of co-accused Sadiq @ Sahil vide order dated 14.09.2021. Therefore, it does not lie in the mouth of the applicant to contend before this Court that said video footage can not be considered.

It is well settled that following factors inter-alia shall be borne in mind by the Court while considering the application for bail;

(i) *Whether there is any prima-facie or reasonable ground to believe that the accused had committed the offence;*

(ii) *Nature and gravity of the accusation;*

(iii) *Severity of punishment in the event of conviction;*

(iv) *Danger of the accused absconding or fleeing, if released on bail;*

(v) *Character, behaviour, means, possession and standing of the accused;*

(vi) *Likelihood of the offence being repeated;*

(vii) *Reasonable apprehension of the witness being influenced;*

(viii) *Danger, of course, of justice being thwarted by grant of bail.*

[see Mahipal Vs. Rajesh Kumar (2020) 2 SCC 118].

As already noted hereinabove, the accusations against the applicant are of serious nature. He is stated to have been a part of violent unlawful assembly which attacked the police officials who had come to prevail upon them and to control the situation and resultantly one of the police officials succumbed the injuries and other two sustained serious injuries. The case is still at

initial stage where charges are yet to be framed against the accused including the applicant herein. There is every likelihood that the applicant may approach or influence the only public witness Sh. Vishal Chaudhary, if released on bail.

In view of the above discussed facts and circumstances of the case and without commenting upon the merits of the case, this Court does not find any merit in the bail application. Same is hereby dismissed.

(VIRENDER BHAT)
ASJ-03(NE)/KKD Courts/Delhi