

**IN THE COURT OF SH. AMITABH RAWAT
ADDITIONAL SESSIONS JUDGE-03
(SHAHDARA), KARKARDOOMA COURT, DELHI**

I.A. No. 170-2023 (Tasleem Ahmed)

SC No. 163/2020 (RIOTS CASE)

FIR NO. 59/2020

PS- Crime Branch, Delhi (Investigated by Special Cell)

U/s 13/16/17/18 UA (P) Act, 120B r/w 109/114/124-

A/147/148/149/153A/186/201/212/295/302/307/341/353/395/419/420/42

7/435/436/452/454/468/471/34 IPC & Section 3 & 4 Prevention of

Damage to Public Property Act, 1984 and Section 25/27 Arms Act.

State Vs. Tahir Hussain & Others

25.11.2023

Present: Sh. Madhukar Pandey, Ld. Link SPP for Sh. Amit Prasad,
Ld. SPP alongwith Inspector Anil and SI Raj Bahadur,
Pairavi Officer from Special Cell.
Mohd. Hasan, Ld. Proxy Counsel for the applicant/accused
Tasleem Ahmed.

(1) The present bail application was being argued and was put up for clarifications on 26.08.2023 when arguments turned acrimonious and Ld. Counsel for accused and Ld. SPP started shouting upon each other and also making personal allegations against each other, leading the court to adjourn the matter.

(2) After the case was adjourned, ld. counsel for the accused moved a pre-ponement application, in which he again leveled certain allegations that Ld. Special Public Prosecutor had threatened to implicate him in this case.

(3) Thereafter to this reply, Ld. SPP had filed a reply stating that Sh. Mehmood Pracha, Ld. Counsel for applicant/accused has made specific personal allegations against him, as stated in the application. He

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(2)

argued that Ld. Counsel had argued that he has got conducted private investigation done on him and has found out that Special Public Prosecutor has, in an underhand manner, taken money in cash from the police. Ld. SPP stated that if this allegations is correct, he is not fit to continue as Special Public Prosecutor in this case. Ld. SPP further submitted that Ld. Counsel for accused may place the material on record to substantiate his false and grave allegations on his integrity alongwith the affidavit of the private investigator. He further stated that Ld. Counsel for accused has put question marks on his integrity and prosecution cannot be browbeaten like this.

Ld. SPP further pointed out that even under law Mr. Mehmood Pracha, Ld. Counsel for accused cannot represent an accused in this case as he himself has been mentioned in the statement of one public protected witness namely 'SMITH' and there is conflict of interest as he can be summoned as a witness by court, prosecution or any accused persons during trial. He further submitted that despite no objection by the accused to be represented by Sh. Mehmood Pracha, there is still conflict of interest and violation of Bar Council Rules, meant for advocates.

He had referred to Section 395 Cr.P.C and asked the Court to refer the matter to the Hon'ble High Court of Delhi on the question of law whether Mr. Mehmood Pracha can represent an accused in this case. He argued that this will have an implication at the later stage of trial.

He had referred to the judgment of Hon'ble High Court of Gujarat in a case titled as *Gohel Himatsingh Lakhaji vs. Patel Motilal*

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Garbaldas and Ors., MANU/GJ/0141/1965.

Ld. SPP submitted that without this issue being decided, he cannot address arguments on the bail application of applicant/accused.

(4) Accused submitted that he wanted to continue with Mr. Mehmood Pracha. Ld. Proxy Counsel for accused, on instructions, submitted that they do not wish to state anything about the submissions made by Ld. Prosecutor and court may pass any order, it deems fit.

(5) The court had tried its level best to cool down the tempers between Ld. Counsel for the applicant/accused and Ld. Special Public Prosecutor without any fruitful result.

(6) Two question have arisen now, one is regarding the specific allegations made by counsel for the accused, more particularly of having conducted a private investigation against the Ld. SPP and having concluded that Ld. SPP has taken money in cash from the police, in an underhand manner and second is of conflict of interest.

(7) The court is of the view that whenever counsel for the accused and Ld. Prosecutor appear in a case, they should represent their client instead of resorting to making wild allegations.

Ld. Counsel for the accused, despite the case having been adjourned, moved the application for pre-ponement alleging that Ld. Prosecutor wants to implicate him in this case. It was thereafter that Ld. Prosecutor also made clear about the allegations made by counsel against

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(4)

him during the hearing.

(8) In all fairness, the court does not, in this case, want to meddle into the allegations particularly made by Ld. counsel for the accused against the Ld. Special Public Prosecutor and for that, Ld. SPP may take action at his own end, if he so desires.

However, the court deprecates the wild allegations without substantiation made against the ld. Prosecutor and particularly when it did not concern the merits of the case.

(9) Regarding the second issue of conflict of interest which the Ld. SPP has raised is that Ld. Counsel for the accused, by name, has been mentioned by witness 'Smith' in his statement under Section 164 Cr.P.C and thus Sh. Mehmood Pracha, Ld. Counsel for the accused cannot represent as he can be cited as a witness by the prosecution or by any of the accused persons in this case. The court does not want to get into as to who is appointed as a prosecutor or an advocate in a case. In this case, it is for the accused to decide as to which advocate he wants. The accused despite being aware of the allegations of conflict of the interest still insists that he should be represented by the same advocate Sh. Mehmood Pracha. Regarding this issue whether it is a conflict of interest and is not allowed by Bar Council of Delhi Rules, the same is left open for the prosecutor or for the Bar Council of Delhi to consider or to initiate an action, if deemed fit.

(10) As far as the court is concerned, the proceedings must

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continue as it impacts / hampers the case of all other accused persons and even the case of prosecution.

Hence, put up for arguments on the bail application of accused Tasleem Ahmed on 07.12.2023.

Copy of this order be sent to Bar Council of Delhi.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 25.11.2023