

Bail Matters 1617/2022  
STATE Vs. NEERAJ SARKAR  
FIR No. 440 /2022  
PS Crime Branch-North Delhi

14.06.2022

This is an application moved on behalf of accused/applicant seeking Bail, placed before me being Vacation Judge in terms of Order No.14412-14488/F2(9)/Judl./Vac/North/2022 dated 30.05.2022 of the Ld. Principal District & Sessions Judge, North District, Rohini Courts, Delhi.

Present: Sh. Vineet Dahiya, Ld. Addl. PP for the State.

Sh. Mukesh Katyan, Ld. Counsel for the accused/applicant  
**Neeraj Sarkar.**

IO Inspr. Pradeep Paliwal is present.

Reply has been filed by the IO. Same is taken on record.

This is an application moved u/s 439 Cr.P.C seeking **extension of interim bail of the accused/applicant for a period of 90 days.**

The FIR in the present case was registered u/s 186/353/332/323/436/109/147/148/149/307/427/120B/34 of IPC and 25 Arms Act w.r.t. the riots that took place at Jahangir Puri on 16.04.2022.

Ld. Counsel for the accused/applicant submits that the accused/applicant was granted interim bail by the Ld. ASJ/Special Judge, NDPS, North, Rohini Courts, Delhi for the purpose of appearing in his 12<sup>th</sup> class examinations till today as the last exam of the accused/applicant is going on today.

He submits that the accused/applicant is a law abiding and peace loving citizen of India and he is preparing for entrance exams for his higher studies. He submits that accused/ applicant is a young boy and if he is kept in JC for long, his career may be spoiled. He further submits that investigation qua the present accused/applicant has already been completed and he is not required for further investigation.

He further submits that accused/applicant has been falsely implicated in the present case by the police authorities on the complaint of Inspr. Rajeev Ranjan. He submits that the accused/applicant is a devotee of Lord Hanuman and on the eve of Hanuman Jayanti he had participated in the procession for which proper permission was taken from the police

authorities. He has also filed one application which was given by Vishva Hindu Parishad in the name of SHO in this regard. He submits that the accused/applicant has a fundamental right of freedom of religion under Article 25 to 28 of the Constitution of India and he was exercising his right peacefully and he has been falsely implicated in the present case and his rights have been violated. He submits that accused/applicant is a Hindu and Hindus have the right to practice and propagate their religion and the accused/applicant was doing the same. He further submits that he does not know why he has been arrested in the present case. He also submits that interim bail of the accused/applicant for a period of 90 days may be extended so that he can prepare for entrance exams for his further career.

Per contra, Ld. Addl. PP for the State submits that the present bail application is not maintainable as for the purpose of hearing bail application u/s 439 Cr.P.C., accused/applicant must be in custody and at present the accused/applicant is not present in the court rather he is appearing in his exams and hence, the present bail application should be dismissed in limine. In this regard he has relied on the judgment of Hon'ble High Court of Delhi titled as Vijay Singh Vs. State (Govt. of NCT of Delhi), decided on 18.01.2017.

On merits, he submits that accused/applicant has a right of freedom of religion but that freedom is not absolute. He submits that accused/applicant was a member of unlawful assembly and there are specific allegations against him. He further submits that Ct. Deepak and HC Pritam in their statements u/s 161 Cr.P.C have put specific allegations against the accused/applicant. He also submits that the alleged offences committed by the accused/applicant are heinous in nature. He further submits that one sword has been recovered from the possession of father of th accused/applicant. He submits that the procession was not at all peaceful and the accused/applicant was involved in violence and riots and does not deserve any leniency. He further submits that investigation in the present case is still pending and charge sheet is yet to be filed. He submits that the prayer of the Ld. Counsel for the accused/applicant for extension of interim bail is vague in nature as he has not specified as to in which course he has to take admission or on which date, time and place he has to appear in any

entrance exam. He also submits that the situation in the area of Jahangir Puri is still tense and hence, accused/applicant should not be granted bail.

I have heard the rival contentions of the Ld. Addl. PP for the State and Ld. Counsel for the accused/applicant and perused the record.

Education is a fundamental right of any citizen. The same has been protected by Ld. ASJ/Special Judge, NDPS by granting interim bail to the accused/applicant to appear in his 12<sup>th</sup> class examinations. The purpose of interim bail has already been completed. The accused/applicant has not produced any material as to in which entrance exam he has to appear. The accused/applicant can apply for the entrance exam while remaining in JC also and there is no bar in this regard. This court is of the considered opinion that the submissions of the Ld. Counsel for the accused/applicant for extension of interim bail of the accused/applicant for a period of 90 days for the purpose of preparing for entrance exams for higher studies and applying for the entrance exams / courses is vague in nature.

As per the contents of FIR, the offences committed by the members of unlawful assembly/mob are heinous in nature. As per the reply of IO, accused/applicant was member of unlawful assembly. Several persons were injured in the said incident. The police had used 40 to 50 tear cells to disburse the unlawful assembly of which the accused/applicant was a member but the members of unlawful assembly started pelting stones on the police officials and also fired upon them due to which SI Meda Lal got gun injury in his hand and other police officials and public persons were also injured. The public property was also damaged.

In the present case, procession was organized on the eve of Hanuman Jayanti. All the persons are equally entitled to the freedom of conscience and right to freely profess, practice and propagate religion. However, the said fundamental right under Article 25 to 28 of the Constitution are not absolute and are subject to public order, morality, health and other provisions of the Constitution of India.

In the present case the members of unlawful assembly, of which the accused/applicant was a member, disturbed the public order and hence, the right under Article 25 of the Constitution of India was breached by them on their own. IO who is present in the court today submits that no

permission was granted for the procession on the eve of Hanuman Jayanti. The members of unlawful assembly are involved in riots. Several police officials and public persons have sustained injuries. The unlawful assembly of which the accused/applicant was a member, have damaged the public properties due to which the law and order situation in the area became tensed and as per the reply of IO, situation is still tensed.

The rights of the accused/applicant are not absolute in nature and they are subject to the rights of other people and law and order situation. No one is above law and no one can be allowed to indulge in violence and riots in the name of religion. The accused/applicant cannot take the shed of his fundamental rights under Article 25 to 28 of the Constitution of India by indulging in violence and riots. Moreover, as per the judgment of Hon'ble High Court of Delhi in Vijay Singh (supra), the provision of Section u/s 439 Cr.P.C is restricted to be invoked by the person already in custody. The accused/applicant in the present case is not in the custody of the court and is on interim bail and hence, I find merit in the submission of Ld. Addl. PP for the State.

Accordingly, keeping in view the gravity of the offence, the fact that investigation in the present case is still pending and the fact that the purpose of which accused/applicant was granted bail has already been fulfilled, I do not find any merit in the application of the accused/applicant seeking extension of interim bail. Accordingly, bail application u/s 439 Cr.P.C. stands dismissed.

The observations made herein shall have no effect on the merits of the case.

A copy of this order be given dasti to all concerned.

A copy of this order be also sent to Ld. Secretary, DLSA and Jail Superintendent as per the directions of Ld. Principal District & Sessions Judge vide circular No. 24535-24579/Judl./North/RC/2021 dated 13.08.2021.

(Virender Kumar Kharta)  
Vacation Judge  
Addl. Sessions Judge - 01(POCSO)  
North District, Rohini Courts/Delhi  
14.06.2022