



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 20<sup>th</sup> April, 2023  
Pronounced on: 12<sup>th</sup> July, 2023

+ **BAIL APPLN. 3551/2020**

+ **BAIL APPLN. 2437/2021**

+ **BAIL APPLN. 2440/2021**

+ **BAIL APPLN. 2752/2021**

+ **BAIL APPLN. 2807/2021**

TAHIR HUSSAIN

..... Petitioner

Through: Mr. Salman Khurshid, Sr. Adv. with  
Mr. Rizwan, Ms. Sachi Chopra, Mr.  
Aadil Singh Bopara, Ms. Shama  
Usmani, Mr. Aman Khullak, Ms.  
Mariya Mansuri, Ms. Anshu Kapoor  
and Ms. Nistha Sinha, Advs.

versus

STATE

..... Respondent

Through: Mr. S.V. Raju, ASG for the State with  
Mr. Madhukar Pandey, SPP, Mr.  
Anshuman & Aditya, Advocates.  
Insp. Manoj Kumar, SI Deepak Joshi  
and SI Vineet Kumar.

**CORAM:**



**HON'BLE MR. JUSTICE ANISH DAYAL**  
**JUDGMENT**

**ANISH DAYAL, J.**

1. This judgment will dispose of 5 bail applications filed by the petitioner seeking regular bail in FIR No.80/2020 (Bail Appl.2752/2021), FIR No.91/2020 (Bail Appl.2440/2021), FIR No.92/2020 (Bail Appl.2437/2021), FIR No.117/2020 (Bail Appl.3551/2020) & FIR No.120/2020 (Bail Appl.2807/2021), all registered at P.S. Dayalpur. These bail petitions were argued collectively by the parties since they adverted to similar facts and circumstances. These FIRs have been filed under various provisions of the Indian Penal Code *inter alia* including sections **147** (*rioting*), **148** (*rioting, armed with deadly weapon*), **149** (*unlawful assembly*), **153A** (*promoting enmity*), **307** (*attempt to murder*), **427** (*mischief causing damage*), **436** (*mischief by fire/explosive with intent to destroy house, etc.*), **505** (*statements conducing public mischief*) IPC.

2. For convenience of reference, the essential details relating to each of these FIRs are produced herein below in a tabulated form:

Particulars	FIR 80/2020 PS Dayalpur	FIR 91/2020 PS Dayalpur	FIR 92/2020 PS Dayalpur	FIR 117/2020 PS Dayalpur	FIR 120/2020 PS Dayalpur
Referenced in this judgment as -	FIR No.1	FIR No.2	FIR No.3	FIR No.4	FIR No.5
Complainant	ASI Hari Lal	ASI Hukam Singh	ASI Hukam Singh	Zeeshan	Irshad Ali
Date of Incident	25.02.2020	25.02.2020	25.02.2020	25.02.2020	24.02.2020
General Diary	GD 45-A	GD 163-A	GD 151-A	GD 37-A	GD 40-A



<b>(GD) Entry No.</b>	25.02.2020	25.02.2020	25.02.2020	04.03.2020	04.03.2020
<b>Date of complaint</b>	GD entry	GD entry	GD entry	28.02.2020	26.02.2020
<b>Date of FIR</b>	25.02.2020	02.03.2020	02.03.2020	04.03.2020	04.03.2020
<b>FIR u/Sections</b>	147, 148, 149, 427, 436, 120B IPC and u/S 3, 4 PDPP Act	147, 148, 149, 153A, 307, 436, 505, 34, 120B IPC and u/S 27, 30 Arms Act	147, 148, 149, 153A, 307, 436, 505, 34, 120B IPC and u/S 27, 30 Arms Act	147, 148, 149, 427, 436, 120B IPC	147, 148, 149, 427, 436, 120B IPC
<b>Chargesheet</b>	18.07.2020	27.07.2020	27.07.2020	17.07.2020	17.07.2020
<b>Date of Arrest</b>	22.04.2020	06.05.2020	06.05.2020	21.04.2020	21.04.2020
<b>Discharged u/Section &amp; Order dated</b>	436 IPC <i>vide</i> Order dt. 19.10.2022 by ASJ KKD	436, 505 IPC <i>vide</i> Order dt. 13.10.2022 by ASJ KKD	436, 505 IPC <i>vide</i> Order dt. 13.10.2022 by ASJ KKD	-	-
<b>Charges framed &amp; Order dated</b>	No	120B r/w 147, 148, 153A, 302 & 120B r/w 147, 148, 307 IPC <i>qua</i> the Petitioner <i>vide</i> Order dt. 13.10.2022 by ASJ KKD	149, 307, 120B IPC <i>qua</i> the Petitioner <i>vide</i> Order dt. 13.10.2022 by ASJ KKD in addition to charges framed u/S 147, 148, 153A IPC in	No	No



			similar incident in FIR 91/2020 PS Dayalpur		
<b>Number of Witnesses</b>	42	51	53	33	44
<b>Total Number of Accused</b>	10	6	6	10	10
<b>No. of co-accused besides Petitioner granted bail</b>	9	5	5	9	9

### **Background Facts**

3. These FIRs arose out of rioting incidents which occurred on 24<sup>th</sup> and 25<sup>th</sup> February, 2020 in parts of Delhi during alleged protests against the Citizenship Amendment Act, 2019. Two of these complaints were filed by different complainants relating to certain alleged incidents which took place during those riots, and three of the complaints were based on GD entries by police officials.

3.1 As regards FIR No.80/2020 (*referred to as "FIR No.1" for convenient reference*), it was registered by ASI Hari Lal on the basis of information received on PCR Call *vide* DD No.45A on 25<sup>th</sup> February, 2020, from one Irshad Ali. As per the information, it was reported that about 100 persons were standing with petrol bombs on the terrace of the petitioner's house in Gali No.5, Chand Bagh Pulia, Nigam Parishad and were throwing these at other houses. It was noted that there were a number of people



gathered in that area raising slogans, pelting stones on the police, sound of firing bullets was coming from the road and the mob was not dispersing despite efforts of the police. There was panic and violence including arson and damage of property. Accordingly, the said FIR was registered. As per the status report, the incidents occurred on 25<sup>th</sup> February, 2020 between 2:00 to 4:00 p.m. at Chand Bagh Pulia. Till 28<sup>th</sup> February, 2020, no complainant came forward to lodge any complaint with respect to riots that had occurred and the case was registered on DD entry. During the course of investigation, search was made for eye witnesses and efforts were made to collect CCTV footage and photographs of crime scenes were taken. It was found that Ct. Pawan and Ct. Vikrant of PS Dayalpur were present in the area on law-and -order duty and they had allegedly seen the petitioner rioting, pelting stones and instigating others. Both the constables were able to identify the petitioner since he was a public figure and they knew him previously. The statements of both the constables were recorded and the petitioner was formally arrested on 22<sup>nd</sup> April, 2020 in Mandoli Jail as he was already in judicial custody in FIR No.101/2020. Later, statements of two eyewitnesses Surender Singh and Rajbir Singh Yadav, who reside near the place of occurrence, were also recorded and they were able to identify the petitioner as well. Further, 3 PCR callers were examined and statements under section 161 Cr.P.C. were recorded and two of them identified the petitioner as present on the terrace of his house, and part of the mob pelting stones, petrol bombs and firing on the people across the main Karawal Nagar Road. But they were all discharged of offence punishable under section 436 IPC.



3.2 As regards FIR No.91/2020 (*referred to as 'FIR No.2' for convenient reference*), it was registered on the complaint by the ASI on the basis of information received from Sushrata Trauma Centre, Civil Lines reporting one Ajay aged 30 years with firearm injuries. It was noted that on reaching the Trauma Centre on 29<sup>th</sup> February, 2020 to obtain the statements of the injured, it was informed that the injured had already been discharged from the hospital and statement could not be obtained. On the basis of the incidence of rioting which had happened in these areas, several people had got injured. On the basis of the inspection of scenes of crime and from the information received, FIR No.2 was registered. As per the status report, during the course of investigation, injured Ajay was examined who categorically named and identified the petitioner. He had stated that on 25<sup>th</sup> February, 2020 at around 4:00 p.m. when he had gone to purchase household articles and reached the area of Chand Bagh, he found that riots had broken out in that area. When he reached near the petitioner's house, he saw an angry mob on the terrace of his house pelting stones, firing gunshots and throwing petrol bombs from the terrace on the houses of other communities and chanting communal slogans. Suddenly one of the boys in the crowd fired a pistol-like object that hit him on his right hand shoulder. He later identified the boy as Gulfam @ VIP who had fired upon him, as he has lived in the same area since birth. He also identified other individuals in the mob including the petitioner, Shaha Alam, Tanvir Malik, Nazeem and Kasim. As per his MLC, the nature of injury was described as grievous and dangerous to life. Charges have been framed against all accused under sections 120B r/w section 147, 148, 153A, 302 IPC and also under sections 120B, 149 r/w 147, 148, 307 IPC. Accused Gulfam and Tanveer were also charged under



section 27 Arms Act. But they were all discharged of offence punishable under section 436 and 505 IPC.

3.3 As regards FIR No.92/2020 (*referred to as 'FIR No.3' for convenient reference*), it was registered on the basis of information received by the ASI recorded in DD No.151A from the Sushrata Trauma Centre of one person namely Prince aged 19 years who had received a firearm injury. However, on reaching the Trauma Centre on 29<sup>th</sup> February, 2020 to obtain the statement of the injured, it was learnt that the injured had already been discharged and no statement could be obtained. In view of previous incidents of riots and that people had been injured and from enquiries received, the said FIR was registered. As per the status report, during the course of investigation, injured Prince was examined where he named and identified the petitioner. The statement of injured Prince, as noted in the status report, is exactly the same as that of injured Ajay in the status report filed in FIR No.2 including the report of MLC, and is therefore not being repeated, to avoid prolixity. Charges have been framed against all accused under sections 120B, 149 r/w 307 IPC. This was in addition to charges framed u/s 147, 148, 153A IPC in similar incident in FIR 91/2020. Accused Gulfam and Tanveer were also charged under section 27 Arms Act. But they were all discharged of offence punishable under section 436 and 505 IPC.

3.4 As regards FIR No.117/2020 (*referred to as 'FIR No.4' for convenient reference*), it was registered on the basis of information received from the complainant Zeeshan, S/o Fajlu Rehman recorded in DD No.69/2020 stating that his shop, which was situated at main Sherpur Chowk, Delhi-110094 had been robbed by some miscreants on 25<sup>th</sup>



February, 2020. In his shop, there were furniture articles such as bed, almira and other things, none of which had been left after the incident and he had suffered a loss of Rs.20 lakhs. As per the status report, during the course of investigation, statements of various witnesses were recorded and it came to light that the petitioner played a major role in the conspiracy behind the riots, not only providing logistics support and manpower but also financial support to protesters sitting at Chand Bagh. Since he as a sitting Councillor at the time of riots, he also used his political clout and social background to mobilize the mob for committing riots in the area. As per the statement of prosecution witnesses the petitioner was present at the spot and was among the rioters who burnt the complainant's shop.

3.5 As regards FIR No.120/2020 (*referred to as 'FIR No.5' for convenient reference*), it was registered on the basis of a complaint by one Irshad Ali, S/o Shamshad Ali stating that his shop in which he worked located at Monga Nagar, Main Karawal Nagar Road, Delhi-110094 had been looted on 24<sup>th</sup> February, 2020 by breaking open the shutter of the shop by the rioters who had set it on fire. He alleged that he suffered a loss of around Rs.17 to 18 lakhs on account of articles robbed from the shop and loss of about Rs.10 lakhs due to damage to the building. As per the status report the complainant identified Mohd. Shadab, the petitioner's brother Shah Alam, Riyasat Ali, Gulfam, Rashid Saifi, Arshad Qayyum etc. who were looting his shop. The second complainant Mohd. Zahid stated that the rioters were raising slogans in the petitioner's name stating that they were with him. During the course of investigation Ct. Pawan and Ct. Vikrant were found to have been present in the area on law-and-order duty and had seen the petitioner pelting stones and instigating others. Both the constables





were able to identify the petitioner as he was a public figure and they knew him previously. The petitioner was formally arrested on 21<sup>st</sup> April, 2020 in Mandoli Jail as he was already in judicial custody in FIR No.101/2020. Further statements of public witnesses Surender Singh, Rajbir Singh Yadav, Pradeep Kumar Verma and Manoj Kumar were also recorded under section 161 Cr.P.C. who had seen the incident of rioting and also identified the petitioner along with other accused persons.

### **Submissions on behalf of the Petitioner**

4. Ld. Sr. Counsel for the petitioner has *inter alia* made the following submissions on behalf of the petitioner with regard to the respective FIRs:

4.1 **FIR No.1:** It was submitted that the present FIR was registered on the basis of DD entry only and no complainant had come forward to give his/her complaint for the riots which occurred on 25<sup>th</sup> February, 2020. There was an inordinate delay of 3 days in registration of the FIR which has not been satisfactorily explained by the investigating agency. The alleged incident took place on 25<sup>th</sup> February, 2020 and the instant FIR was registered on 28<sup>th</sup> February, 2020. There is no evidence against the petitioner with regard to destruction of any kind of property. The alleged incident took place 40 meters away from the petitioner's house and the petitioner had nothing to do with it. There is not a single video attached by the investigating agency where it can be seen that the petitioner participated in any manner in the riots or caused damage to any property. The petitioner was in his own house when the rioters forcefully entered and he tried to persuade them to stop and leave his house. The only evidence available on record against the petitioner is the identification by PWs Surender Singh,



Rajbir Singh Yadav and Jai Bhagwan and police personnel. In fact Jai Bhagwan in his supplementary statement, when shown the photographs of the accused, does not recognize the petitioner. Jai Bhagwan also does not mention the name of petitioner in his complaint and merely implicated the petitioner by improving his statement recorded under section 161 Cr.P.C. It was further pointed out that the Ld. Sessions Court in this FIR, dropped charges under section 436 IPC *vide* order dated 19<sup>th</sup> October, 2022 noting that the said section was added without application of mind. As regards the other sections, viz. 147/148/149/427/120B IPC, they areailable in nature. It is noted that in the said order of the Sessions Court dated 19<sup>th</sup> October, 2022, it was observed that “*on perusal of the main charge-sheet as well as the first supplementary charge-sheet except for general information regarding incidents taken place during the riot, one cannot get any idea as to for what particular incident this particular case was registered and charge-sheet was filed.*”

4.2 **FIR No.2:** It was submitted that as regards this FIR, it was registered on the basis of DD No.163A received from the Trauma Centre regarding firearm injury to one Ajay Kumar Jha. It was stated by the complainant that when he went to buy house-hold articles, he saw a huge crowd gathered near Chand Bagh Pulia raising slogans and there were many people at petitioner’s house who were chanting religious slogans, pelting stones and throwing petrol bombs. The investigation is complete and a charge-sheet has been filed on 27<sup>th</sup> July, 2020 and the petitioner is not required in custody; 5 out of 6 accused have been granted bail. There is an inordinate delay of 5 days in registration of FIR which has not been explained; the incident took place on 25<sup>th</sup> February, 2020 and the FIR was



registered on 1<sup>st</sup> March, 2020. The alleged victim Ajay Kumar Jha has not named the petitioner and later made improvements while his statement was recorded under sections 161 Cr.P.C. No evidence was collected by the prosecution of any video or CCTV footage to prove the presence of the petitioner at the time of incident. The victim's statement is similar to the statement of victims in FIR No.88/2020 and FIR No.92/2020 which throws a serious doubt on credibility of the statements. Statements of witnesses as well seem to be manufactured. Some of the statements of public witnesses are not relevant in the present FIR. A cut-copy-paste process has been adopted by the prosecution. The public witnesses are the same, their statements are identical as also the statements of so-called eyewitnesses were recorded after a gap of 4 months of the incident. The witnesses seem to be omnipresent since they are witnesses in other FIRs also. As an illustration, Ct. Saudan is a witness in FIR No.88/2020, FIR No.91/2020, FIR No.92/2020; Ct. Pawan is witness in FIR No. 80/2020, FIR No. 88/2020, FIR No.91/2020, FIR No.92/2020, FIR No. 117/2020 and FIR No. 120/2020; Harish Chander is witness in FIR No.88/2020, FIR No.91/2020, FIR No.92/2020 and Prashant Kumar is witness in FIR No.88/2020, FIR No.91/2020, FIR No.92/2020. It was further submitted that the applicability of section 307 IPC, which is the only non-bailable section, has been negated by the FSL report dated 31<sup>st</sup> August, 2021 which states that the evidence bullet was not found identical when compared with the test-fired bullet fired through the pistol 7.65 mm caliber. The credibility of eyewitnesses namely Ct. Saudan and Ct. Pawan has already been raised by this Court in order dated 13<sup>th</sup> October, 2020 in Bail Appl. 2925/2020 *Kasim v. State*, with regard to the co-accused in FIR No.91/2020 stating as under “*There is no*



*explanation as to why the said police officials did not make any PCR call/DD entry to the concerned police station regarding involvement of petitioner on 25.02.2020. The injured made his statement on 02.03.2020 wherein he named the petitioner and only thereafter, the Ct. Saudan and Ct. Pawan made their statements on 03.03.2020 stating that they were on duty at the spot on the date of incident and had seen the incident and identified the petitioner.”* Moreover Ld. Sessions Court *vide* order dated 13<sup>th</sup> October, 2020 has discharged the petitioner in respect of offences under section 435/505 IPC as also under section 27 of the Arms Act.

**4.3 FIR No.3:** Considering that the allegations made in this FIR are verbatim as that in FIR No.91/2020, except that the injured’s name is Prince Bansal as opposed to Ajay Kumar Jha, the learned senior counsel has placed the same submissions in support of bail application as in FIR No.91/2020.

**4.4 FIR No.4:** It is submitted that the investigation is complete, and a charge-sheet has been filed on 17<sup>th</sup> July, 2020 and the petitioner is not required in custody anymore. Further 9 out of 10 accused have been granted bail. There is an inordinate delay of 7 days in registration of FIR which has not been explained; the alleged incident took place on 25<sup>th</sup> February, 2020 and the FIR was registered on 4<sup>th</sup> March, 2020. The petitioner was not named in the FIR and the complainant later made improvements while his statement was recorded under sections 161 Cr.P.C. falsely implicating the petitioner. The statement of witnesses is similar to statements of witnesses in other FIRs throwing doubt upon the credibility of the statements. A copy-cut-paste process has been employed by the prosecution in this FIR as well. One witness namely Surender Singh whose statement under sections 161 Cr.P.C. was recorded on 27<sup>th</sup> May, 2020, without even mentioning the FIR



number and sections. He only disclosed about the incidents on 24<sup>th</sup> February, 2020 while the FIR has been registered relating to incidents on 25<sup>th</sup> February, 2020. Same is the case with the statements of witnesses Rajbir Singh and Pradeep Kumar Verma. Even the statements of witnesses Ct. Sangram is also the same. Ct. Pawan's statement was recorded without a date when he stated that he was present at the spot and had seen the incident but clearly did not make any PCR call, DD entry nor did he report the matter to the senior officer. The prosecution has not filed the duty roster which shows that he was at the spot. As noted above, this Court had discarded the statements of said witnesses in FIR No. 109/2020. The same situation applies to witness Ct. Vikrant.

4.5 It was further submitted that the petitioner's licensed pistol was released days before the day of incident, was only circumstantial and cannot possibly implicate him for all these offences. Reliance is placed on the decision of the High Court of Karnataka, Dharwad Bench in the case of ***Jameer v. State of Karnataka***, CrI. P. No.100086/2018 *vide* decision dated 23<sup>rd</sup> March, 2018 wherein it was held as "*The circumstances relied on by the prosecution are the last seen circumstance and the bloodstained clothes of the deceased and the recovery of the knife. The knife is stated to have been recovered on the basis of the joint disclosures made by the accused. The last seen theory is to the effect that the deceased was last seen on the previous night i.e., on 14.03.2016 by CW.13. The dead body was found only at 4.00 p.m. on 15.03.2016. There is no clear material as to the motive. Therefore, taking into consideration all the facts and circumstances, it is not proper to extend the custody of the petitioners solely by way of punishment*". No evidence had been collected by the prosecution of video or CCTV footage to



prove the presence of the petitioner. Investigation had failed to establish as to who lit the fire as per the allegation of Zeeshan to bring home the charge under section 436 IPC. 11 FIRs for a single offence of conspiracy have been lodged against the petitioner. Reliance was therefore placed on the decisions of Hon'ble Supreme Court in *Kasim v. State*, Bail Application No. 2925/2020 *vide* order dated 13.10.2020.

4.6 It was submitted that FIR No.109/2020 was registered on 4<sup>th</sup> March, 2020 on the basis of a written complaint dated 1<sup>st</sup> March, 2020 made by one Om Singh alleging that rioters looted Rs.6,000/- from his *paan-khokha* and set fire to his shop in Karawal Nagar Road. Charge-sheet was filed and the prosecution clubbed 17 other complaints with the aforesaid charge-sheet including the complaint of Zeeshan. The Sessions Court has discharged all the accused in FIR No.109/2020 based on the complaint of Zeeshan.

4.7 Multiple FIRs have been filed against the petitioner regarding the same offences and facts. Reliance was placed on the decision of Hon'ble Supreme Court in *T.T. Antony v. State of Kerala*, (2001) 6 SCC 181 which has been approved and followed by the Hon'ble Supreme Court in *Arnav Ranjan Goswami v. UOI* (2020) SCC OnLine SC 462.

4.8 **FIR No.5:** It was submitted that the investigation in the matter is complete and a charge-sheet has been filed on 17<sup>th</sup> July, 2020 and the petitioner is not required in custody. 9 out of 10 accused have been granted bail. There is an inordinate delay of 7 days in registration of FIR which has not been explained by the investigating agency. The alleged incident took place on 24<sup>th</sup> February, 2020 and the instant FIR was registered on 4<sup>th</sup> March, 2020. Petitioner is not named in the FIR and the complainant improved his statement recorded under section 161 Cr.P.C. The



complainant states that he received a call regarding looting and burning of a shop and he called an emergency number and no help was provided. In his statement he completely changed his stand, claiming other co-accused who were not named in the FIR, and stated that he went to the place of incident and saw other co-accused. The prosecution has also failed to establish as to who lit the fire which is an important ingredient to bring home charges under section 436 IPC.

5. Aside from the specific submissions made with respect to each FIR, as noted above, general submissions which are common to all have also been made as under:

5.1 It was contended that even though the allegations relate to people collecting at the house of the petitioner and the petitioner does live there, he cannot be made responsible for individual acts which may have happened during the course of said riots. Apparently 11 video clips showing rioters were available with the police which do not show the petitioner or relate to the 24<sup>th</sup> February, 2020 incident while all these FIRs, except for one which relates to 25<sup>th</sup> February, 2020, relate to 24<sup>th</sup> February, 2020. There was no video or CCTV footage available for 24<sup>th</sup> February, 2020.

5.2 As regards the licensed pistol of the petitioner, it was released to the petitioner on 22<sup>nd</sup> February, 2020 after completion of local body elections on 10<sup>th</sup> February, 2020. There was no report that the petitioner was brandishing the weapon or had fired with it and the pistol was seized on 1<sup>st</sup> March, 2020. In the house search of the petitioner, 100 cartridges were recovered however these had been issued pursuant to the license. The license allows the gun holder upto 100 cartridges and to show empty cartridges for purposes of re-





issue. 64 unused cartridges and 22 used cartridges were recovered while 14 were missing.

5.3 As regards the allegation that the petitioner had taken away his family and then came back, it was submitted that it was natural for the petitioner to protect his family since the riots had started on 22<sup>nd</sup> -23<sup>rd</sup> February, 2020 and petitioner took the family away on 24<sup>th</sup> February, 2020.

5.4 It was submitted that the petitioner himself had made frantic phone calls to the police after a mob of rioters gathered around his house on 24<sup>th</sup> February, 2020 at about 1:30 p.m. and set fire to a motorcycle outside his house. Thereafter they started banging on the main gate and tried to force open the gate. His staff including workers at his factory, situated in the house, tried to support the main gate from inside the house, however the rioters succeeded and climbed on to the roof. The petitioner feared the safety of his family and called up the SHO of the area Mr. Pawan Kumar who did not take his call. Then he also called the ACP of the area who also did not answer. Then at 3:52 p.m. the petitioner tried calling the PCR but could not succeed. Then he called the police helpline at 3:54 p.m. and gave details of the events taking place. Extracts from the transcripts and audio of the PCR call were also annexed by the petitioner. The rioting increased and the rioters started pelting stones. The petitioner and his wife tried to douse the fire in the adjacent building using buckets and pipes connected to the water tank in his house and tried to prevent the rioters from climbing up the roof. When the police did not arrive, the petitioner called Mr. Sanjay Singh, the Parliamentarian from AAP who advised to contact a senior officer of the police. Later senior officer DCP Surya was contacted by the Parliamentarian





and he assured the petitioner of immediate help. At 5:10 p.m. petitioner once again made call to police help line and excerpt from that call was provided by the petitioner. A sixth call was made at 5:58 p.m. when an urgent request was made for police to be deployed. Extracts from that call were also provided by the petitioner. At about 7:30 p.m. police finally arrived at their house and tried calling him down stairs but he refused due to fires raging; when he was assured of safety, he came down. At 9:00 p.m. he decided to take his wife and children and all family members down from the flat and they were taken by the police to a safe place. The police performed a complete and thorough search of the house in his presence and took the same under their control. Thereafter, on 25<sup>th</sup> February, 2020 when the petitioner went back to his house at about 8:30 a.m. some slogans were shouted against him and he left the house and did not return back. On 25<sup>th</sup> February, 2020 at 4:00 p.m. when some local people called him up and informed that police had started leaving, he expressed concern that the situation could again become critical. However the police reassured the petitioner that the matter was secured. On 27<sup>th</sup> February, 2020 petitioner made a written complaint and sent it to the Commissioner of Police informing him the above facts and expressing concern about the removal of the police as also the story being run by the media that the petitioner was responsible for riots.

6. It was therefore reiterated that the common feature in all these FIRs was that:

- a) The petitioner was not named in the FIR;
- b) He was not named in the statements recorded under section 161 Cr.P.C;



- c) His name was added later in subsequent statements recorded;
- d) No specific act was attributed to the petitioner;
- e) Total number of accused in each FIR varied from 6 to 10 and all, besides the petitioner, have been granted bail;
- f) Police witnesses have been discredited by the order of this Court;
- g) All private witnesses were cut-copy-paste statements – replicated as is evident from an *ex facie* perusal;
- h) FSL report relating to the gun stated that it was not used and the cartridges allegedly recovered were licensed and less than 100 were recovered whereas the Arms Rules allow up to 100 cartridges;
- i) As regards the gun recovered from Gulfam, the FSL report did not corroborate it and he was granted bail;
- j) No overt act has been attributed to the petitioner which would lead to charge under Section 120B IPC and the petitioner was just head of the community being a Counsellor.
- k) No video footage showing his presence.

### **Submissions on behalf of the State**

7. Submissions by the Mr. S V Raju, the Ld. ASG on behalf of the State: The Ld. ASG has opposed the bail application of the petitioner. Detailed charts were given on the basis of which the Ld. ASG articulated his submissions. His submissions can be clubbed under the following headings:

7.1 **Nature of the Offence:** It was submitted that while the other co-accused have been granted bail, as regards FIR No.1, bail petition of the petitioner was rejected by the Ld. ASJ on 22<sup>nd</sup> October, 2020. As regards FIR No.2, the bail petition of the petitioner was rejected by the Ld. ASJ on 15<sup>th</sup> May, 2020. As regards FIR No.3, bail petition of the petitioner was rejected by the Ld. ASJ on 15<sup>th</sup> May, 2020. As regards FIR No.4, bail petition of the petitioner was rejected by the Ld. ASJ on 22<sup>nd</sup> October, 2020. As regards FIR



No.5, bail petition of the petitioner was rejected by the Ld. ASJ on 22<sup>nd</sup> October, 2020.

Apart from the 5 FIRs before this Court, multiple other FIRs have been filed against the petitioner. The list of such other FIRs is as under:

S. No.	F.I.R.	UNDER SECTION
1.	59/2020 Dated 06.03.2020	109, 114, 124A, 147, 148, 149, 153A, 186, 201, 212, 295, 302, 307, 341, 353, 395, 420, 427, 435, 436, 452, 454, 468,471, 120B, 34 IPC  25, 27 ARMS ACT  13, 16, 17, 18 UAPA  3, 4 PDPP ACT
2.	65/2020 Dated 26.02.2020	109, 114, 147, 148, 149, 436, 153-A, 505, 365, 302, 201, 120B, 34 IPC
3.	88/2020 Dated 01.03.2020	147, 148, 149, 153-A 505, 307, 120B, 34 IPC  27 & 30 ARMS ACT
4.	101/2020 Dated 25.02.2020	109, 114, 147, 148, 149, 153-A, 186, 212, 353, 395, 427, 435, 436, 452, 454, 505, 120B, 34 IPC  3, 4 PDPP ACT



		25 & 27 ARMS ACT
5.	114/2020 Dated 27.02.2020	109, 114, 147, 148, 149, 427, 454, 395, 435, 436, 153-A, 505, 120B, 34 IPC
6.	116/2020 Dated 27.02.2020	109, 114, 147, 148, 149, 153-A, 323, 392, 395, 427, 436, 454, 505, 120B, 34 IPC 25 & 27 ARMS ACT

**7.2 Reasons for delay in filing of FIR:** It was submitted that the incident took place on 25<sup>th</sup> February, 2020 and the FIR were registered later. The delay was unavoidable since on 24<sup>th</sup> and 25<sup>th</sup> February, 2020 there were riots on a large scale and more than 4000 PCR calls were made to PS Dayalpur; around 600 complains had been made; about 150 MLCs were conducted; about 400 had been injured and 56 had been killed. There were only 10-15 police officers at PS Dayalpur and there were casualties amongst the police officers aside from those of the public.

**7.3 Role of the petitioner:** As per the Ld. ASG, the petitioner was Municipal Corporator of the area and played a key role in the riots. He was found promoting enmity and disharmony by rioting, burning private and public properties, stone pelting, and instigating others. The accused persons under criminal conspiracy with a common object, caused damage and looted properties. It was argued that the petitioner was kingpin of the unfortunate event of North East Delhi riots, since he financially supported the riots, arranged the logistic support till its execution by continuously controlling



and guiding mobs to attack the people of the other community. At preparation level, the petitioner associated with other conspirators including Khalid Saifi and during investigation in the FIR under UAPA it was established that he was responsible for financing the protests and riots in the area. He got his licensed pistol released from PS Khajuri Khas on 22<sup>nd</sup> February, 2020 just before the riots occurred and could not give account of the live cartridges found at his residence. The house of the petitioner was the highest building of the area and was strategically selected as a controlling room to stock up materials like stones, bricks and various crates of glass bottles serving as petrol bombs. He enjoyed a mass base of supporters of his local community since he was a prominent face in the locality being a corporator. At the level of execution, he controlled the riots as commander under whose instructions other accused operated and used them as human weapons. The footage from the CCTV cameras installed in the office at the first floor of the building showed that footage had been deliberately deleted during the period from 23<sup>rd</sup> February, 2020 to 28<sup>th</sup> February, 2020 and it would be evident that this was to conceal the visitors to his house. The CDR location of the petitioner showed his presence at the area on 24<sup>th</sup> and 25<sup>th</sup> February, 2020. No damage or injury was sustained to the body of the petitioner, nor to any member of his family or any damage or loss was caused to his property.

**7.4 Evidence against the petitioner:** As regards FIR No.1, the statements of Ct. Pawan was recorded where he stated that on 15<sup>th</sup> February, 2020 he saw the petitioner, his brother and others present at the house of petitioner and they had caused loss of properties by pelting stones, petrol bombs etc. Similar statement was recorded of Ct. Vikrant. Further



statement was recorded of Surender Singh where he stated on 24<sup>th</sup> February, 2020 around 2:00-3:00 p.m. he saw people hurling stones from the house of the petitioner. Also, on 25<sup>th</sup> February, 2020 in the afternoon, there were lot of people in the building of the petitioner and by the evening they started riots. Similar statements were made by Rajbir Yadav, Rohit Rathore and Radhey Krishan. As regards FIR No.2 statements of witnesses Ajay Kumar Jha, Mukesh Kumar Jha Hari Kishore, Manoj Kumar Jha, Harish Chander, Prashant Kumar, Ct. Pawan and Ct. Saudan were recorded. As regards FIR No.3 statements of Prince Bansal, Narender Bansal, Kuldeep Bansal, Harish Chandra, Prashant Kumar, Ct. Pawan and Ct. Saudan were recorded. As regards FIR No.4 the petitioner had been identified by both public witnesses and police witnesses; statements were recorded under section 161 Cr.P.C. of Ct. Vikrant and Ct. Pawan. As per their statements, the petitioner and other co-accused caused lot of loss to nearby shops and houses by setting them on fire. As regards public witnesses, statements were recorded under section 161 Cr.P.C. of Zeeshan, Khali, Irfan and Sajid on various dates on 4<sup>th</sup> and 5<sup>th</sup> March, 2020. As per Zeeshan, he had stated that on 25<sup>th</sup> February, 2020, rioters had come to his shop, caused breakage and looted the materials lying and while he escaped to save himself, he saw the rioters including the petitioner, Shah Alam, Gulfam and Rehan. As per the statement of Khali, he had also stated that on 25<sup>th</sup> February, 2020, rioters had looted his shop and amongst the rioters were the petitioner and 4 other co-accused including Shah Alam, Gulfam, Rashid Saifi and Arshad Qayyum. Statement of Sajid was also recorded where similar allegations were made and he named the petitioner, Shah Alam, Gulfam, for the same. Statement of Irfan was also recorded where he made similar allegations and named the petitioner and 4



other co-accused. As regards FIR No.5 statements of Ct. Pawan and Ct. Vikrant and public witnesses Pradeep Kumar Verma, Surender Singh, Manoj Kumar and Rajbir Yadav were recorded.

**7.5 No Parity:** It was submitted that the petitioner cannot seek parity with other co-accused who have been granted bail since he was the main conspirator in the case and all other accused were acting on the behest of the petitioner. As adverted to above, the allegations were that he had instigated the people of a particular community and provided logistical support as well as his house as central point for the said activity. He used his muscle power and clout to act as the kingpin, planning, instigating and executing the riots.

**7.6 Antecedents of the petitioner:** It was submitted that 12 cases were registered against the petitioner and he was arrested in all of them and not granted bail.

**7.7 Tampering of witnesses:** It was submitted that there were public witnesses in the said matters who were residents of the same locality and if released on bail at this stage, there is every likelihood that he would threaten or intimidate them. Being the sitting counsellor of the area, he could use his clout and the powerful position to intimidate such witnesses.

**7.8 Learned ASG also relied upon following judgements:** on the proposition that where two FIRs can be filed, if certain facts come to light during the course of investigation that there was a larger conspiracy, then the object of the other part of conspiracy can be dealt with differently – *Ram Lal Narang v. State*, (1979) 2 SCC 322; separate trial is the rule and joint trial is an exception, and there may be a conspiracy in general as also a separate one – *State of Jharkhand v. Lalu Prasad Yadav*, (2017) 8 SCC 1; accused not being named in the FIR was irrelevant since it is possible that if



names of accused are revealed in subsequent statements of the witnesses, such names can be included – *Latesh v. State of Maharashtra*, (2018) 3 SCC 66. As regards the issue that the police and public witnesses were “pocket witnesses”, the Ld. ASJ stated that it was a matter of trial and cannot be considered at this stage.

### **Rejoinders/Rebuttals**

8. Opposing the submissions of the Ld. ASG, the learned counsel for the petitioner rebutted as under:

8.1 It was contended that riots itself was ‘conspiracy’ and events relating to different victims were within the same conspiracy. Therefore, events which form part of the conspiracy had to be in the same FIR and not multiple FIRs.

8.2 On credibility of witness, it was reiterated that on the complaint of Zeeshan in FIR No.109/2020, 3 accused had already been discharged. Moreover, the statements of witnesses like Radha Krishan, Rohit Rathore were taken after 6-9 months. In other FIRs also the statements were recorded as late as in 2021 i.e. 1.5 years later.

8.3 Learned senior counsel for the petitioner relied upon following judgements: on the proposition that where there are multiple FIRs, the allegations have to be examined on the basis of each FIR and not on the basis of general clubbing together – *Nirmal Singh Kahlon v. State of Punjab*, (2009) 1 SCC 441 and *Upkar Singh v. Ved Prakash*, (2004) 13 SCC 292; multiple FIRs filed on the same offences and facts – *T.T. Antony v. State of Kerala*, (2001) 6 SCC 181 and *Arnav Ranjan Goswami v. UOI* (2020) SCC OnLine SC 462; ‘consequence test’ on multiple FIRs: if an





offence forming part of the second FIR arises as a consequence of the offence alleged in the first FIR then offences covered by both the FIRs are the same and, accordingly, the second FIR will be impermissible in law – *Amitbhai Anilchandra Shah v. CBI*, (2013) 6 SCC 348; bail is the rule and jail is an exception, and where there are serious allegations, taking into account the punishment that could be imposed after trial, and delay in trial – *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; grave and serious allegations and pending several criminal cases cannot be basis for refusal of bail – *Prabhakar Tewari v. State of U.P.*, (2020) 11 SCC 648; person on bail has better chance to prepare his case and mechanical detention should be demoted – *Babu Singh v. State of U.P.*, (1978) 1 SCC 579; on grave consequences of pre-trial detention – *Moti Ram v. State of M.P.*, (1978) 4 SCC 47.

9. In response to the rebuttal by the State, Ld. ASG has contended that *firstly*, the issue was not on conspiracy only but on specific role of the accused-petitioner; *secondly*, FIRs No.1, 2 and 3 were registered for incidents around the same time and conspiracy was alleged only in one case while others were for substantial offences; *thirdly*, as regards FIR No.1, there was no right of bail exercised by the petitioner; *fourthly*, as regards multiplicity of FIRs as contended above, it was not merely a case of conspiracy and were for different offences which have to be tried separately.

### Analysis

10. For the purposes of assessment of the bail petition, it may be useful to scrutinize each FIR independently in order to get a perspective on the nature of offences alleged in each respective FIRs:



10.1 As regards **FIR 1**, the charges under section 436 IPC were dropped by the learned Sessions Court *vide* order dated 19<sup>th</sup> October 2022 and no appeal has been preferred by the State against this order. As regards the other sections under which the FIR was registered, viz., sections 147, 148, 149, 427 r/w 120B IPC, it is notable that they are all bailable offences and therefore the issue of grant of bail is a foregone conclusion. It is also noted that the maximum punishment for these offences is 2 or 3 years and the petitioner has already been in custody for more than 3 years. Moreover, all the other nine accused have been granted bail. The petitioner has been arrested on 22<sup>nd</sup> April 2020 and has already been incarcerated for the last three years. The charge-sheet was filed as far back as on 18<sup>th</sup> July 2020, but no charges have been framed as yet. Considering that there are number of witnesses, the trial will take a long time to conclude. This Court would like to advert to order dated 7<sup>th</sup> October, 2020 of a coordinate Bench of this Court in *Irshad Ahmad v. State NCT of Delhi*, Bail Appl. 2696/2020 regarding bail of a co-accused in FIR No.80/2020, in particular para 2 and 3 of the said order which is extracted as under:

*“2. Learned APP has opposed the present petition by stating that on 25.02.2020, around 100 people were standing on the terrace of the house of co-accused Tahir Hussain (main accused) and they were throwing petrol bombs on the house of Hindu community. Petitioner’s name was disclosed by co-accused Tahir Hussain. Petitioner herein is an associate of the said accused. As per the statement of eye-witness, namely, Rohit, has confirmed petitioner’s role and identification. Further, mobile phone location of the petitioner has ascertained his presence at the spot. Thus, the present petition deserves to be dismissed.*

*3. It is not in dispute that there is no electronic evidence such as CCTV footage or photos to implicate the petitioner in the present case. As per the statement of Constable Pawan and*



Constable Ankit (both are eye witnesses and were present at the spot), they had identified the petitioner and other co-accused. However, they have not made any complaint on the date of incident, i.e. 25.02.2020, whereas the FIR was lodged on 28.02.2020. Thus, the said witnesses seem to be planted as one.”

(emphasis added)

Ct. Pawan is also a witness in all other 4 FIRs before this Court. For convenience of reference, a tabulation regarding the list of all police witnesses who were common in various FIRs is provided below:

S. No.	Witness Name	Original F.I.R. Nos.
1.	Constable Pawan	80,88,91,92, 117, 120
2.	Constable Sangram Singh	65,80,101,116,117,120
3.	Constable Saudan	88, 91, 92
4.	Constable Vikrant	80,117,120
5.	Head Constable Vikram	80,101,116,117,120
6.	Head Constable Virender	80,101,116,117,120

10.2 As regards **FIR No.2**, it relates to an allegation by one Ajay Kumar Jha regarding a firearm injury for which the alleged victim did not name the petitioner nor was he ever accused of brandishing the weapon. The credibility of the police witnesses Ct. Saudan and Ct. Pawan has already



been doubted upon by this Court while granting bail to co-accused in ***Kasim v. State*** (*supra*), as noted above in para 4.2 and extracted again for purposes of easy reference: “*There is no explanation as to why the said police officials did not make any PCR call/DD entry to the concerned police station regarding involvement of petitioner on 25.02.2020. The injured made his statement on 02.03.2020 wherein he named the petitioner and only thereafter, the Ct. Saudan and Ct. Pawan made their statements on 03.03.2020 stating that they were on duty at the spot on the date of incident and had seen the incident and identified the petitioner.*” Ct. Saudan is also a witness in FIR No. 3 and Ct. Pawan is also a witness in all other 4 FIRs before this Court. Further, the petitioner has been discharged of offences punishable under sections 436, 505 IPC as also under section 27 Arms Act by the learned Sessions Court *vide* order dated 13<sup>th</sup> October 2020. No appeal has been filed by the State against the said order. As regards the other offences for which the petitioner is charged, namely sections 147 and 148 IPC, they are bailable in nature and the maximum punishment for these offences is 2 or 3 years and the petitioner has already been in custody for more than 3 years. As regards offence punishable under section 153A IPC, which is non-bailable, the maximum imprisonment is for a period of three years. The petitioner has already been in custody for more than three years now. As regards offence punishable under Section 307 r/w 120B, IPC, the evidence is purely circumstantial in nature, since the credibility of the eyewitnesses has already been diluted by observations of this Court in ***Kasim v. State*** (*supra*). Even the FSL report does not support the prosecution's case. As regards the charge under section 302 IPC, the complainant complained of only an injury, and there is nothing on record to



state if there was any other named deceased. Perusal of the FIR, charge-sheet, order on charge, status report does not reveal if there was any named deceased in this FIR. There is reference generally to persons being killed in the riots, as also to the murder of one Ankit Sharma, an intelligence official for which FIR no. 65/2020 had been registered (as per the charge-sheet). Why the charge under section 302 IPC has been framed even when it did not form part of the FIR or the charge-sheet, is an issue outside the purview of this bail petition and does not necessitate any further deliberation. Moreover, the petitioner has been in custody since 6<sup>th</sup> May 2020 under this FIR which is a period of more than three years, and the charge-sheet has been filed on 27<sup>th</sup> July 2020. All the other 5 co-accused, including Gulfam from whom the gun was recovered and against whom the allegation was of firing a shot, has been granted bail. The total number of witnesses is 51, and it would take time for the trial to conclude.

10.3 As regards **FIR No. 3**, the same position arises as in FIR No. 2, considering that this FIR was lodged on the basis of the complainant, Prince Bansal, who alleged that he had received a firearm injury. It is reiterated herein that all other co-accused have been granted bail, including Gulfam, who had allegedly fired the shot, the petitioner has been discharged for offences under sections 436 and 505 IPC. The two other sections 147, 148 IPC are bailable in nature. Section 153A IPC prescribes an offence for a maximum of 3 years (*which period the petitioner has already undergone*) and regarding the charge under Sections 307 and 120B IPC, the observations made in para 10.2 above would be relevant. There are 53 witnesses and the trial will take time to conclude. This Court would like to advert to



Judgement dated 19<sup>th</sup> April, 2021 of a coordinate Bench of this Court in ***Gulfam @ VIP v. State***, Bail Appl. 1200/2021 regarding bail of the person accused to shooting, in FIR No.92/2020 wherein it has been recorded as under:

*“8. Pertinently, no weapon/arm has been recovered at the instance of petitioner in this FIR case. This court is informed that the FSL report qua weapon of offence in this case was returned with objection and want of live cartridges used in the alleged incident and requisite steps regarding the same are in progress. Prima facie prosecution has not been able to satisfy this Court as to how the licensed fire arm recovered in FIR No. 101/2020, registered at police station Khajuri Khas, Delhi was used by the petitioner in this case. Further, lacune and discrepancies in the investigation carried out in the FIR in question have already been dealt in detail in the case of Tanvir Malik [Bail Appln.3864/2020] and are not repeated for the sake of brevity. Charge sheet in this case has already been filed and trial shall take substantial time.”*

*(emphasis added)*

Credibility of Ct. Sudan and Ct. Pawan has been addressed in Para 10.1 and 10.2, who are witness in this FIR as well.

10.4 As regards **FIR No. 4**, the charge-sheet has been filed on 17<sup>th</sup> July, 2020 but after three years, the charges have not yet been framed. The petitioner was not named in the FIR and the complainant later made improvements while recording his statements. As regards the offence punishable under section 436 IPC, the petitioner has been discharged in other FIRs(*as noted above*) and as regards the offences under which the FIR was registered viz. sections 147, 148, 149 r/w 120B IPC, they would be bailable in nature. The same is the position with offence punishable under section 427IPC. In any case, the maximum imprisonment of any of these



offences is either two or three years which the petitioner has already undergone. All the other nine co-accused have been granted bail and there are 33 witnesses for which the trial will take time to conclude. This Court would like to advert to order dated 12<sup>th</sup> October, 2020 of a coordinate Bench of this Court in ***Mohd. Rehan @ Arshad Pradhan v. State NCT of Delhi***, Bail Appl. 2849/2020 regarding bail of co-accused in FIR No.117/2020 where it was held as under:

*“5. It is not in dispute that in the present case there is no CCTV footage, video clip or photo to corroborate prosecution’s claim. Statement of Constable Pawan and Constable Vikram recorded being eye witnesses whereby, they identified the petitioner, however, they did not make any DD entry as the alleged incident is of 25.02.2020 whereas the present FIR was registered on 04.03.2020. Even the witness Irfan, Salim, Surender Singh and Pradeep Kumar Verma who claimed to know the petitioner, they also did not make any complaint to the police on 25.02.2020. Even the Constable Pawan and Constable Vikram, being the responsible officials of the police, did not make any DD entry or PCR call on the day of incident regarding the same.”*

*(emphasis added)*

*(\*Constable Vikram is to be read as Constable Vikrant, as per the ld. counsel for the petitioner as there was a typographical error in the above cited decision )*

Credibility of Ct. Pawan has been addressed in above paras, who is a witness in all FIRs before this Court. Ct. Vikrant is also a witness in FIR No. 1 and 5 before this Court.

10.5 As regards **FIR No. 5** filed on 17<sup>th</sup> July, 2020, and the petitioner was arrested on 21<sup>st</sup> April, 2020 and has already undergone more than three years of custody, while all of the other nine co-accused have been granted





bail and the petitioner was not named in the FIR and the complainant later improved upon his statements. As regards the offence punishable under section 436 r/w 120B IPC, it is noted above that the petitioner had been discharged in other offences for lack of evidence by the learned Sessions Court. Further, offences punishable under sections 147, 148, 149, 427 r/w 120B IPC, are bailable in nature and in any event the maximum punishment prescribed is either 2 or 3 years. The petitioner has already undergone more than this period. There are 44 witnesses and the trial will take time to conclude. Further, despite the charge-sheet being filed in July 2020, the charges have not yet been framed. Credibility of Ct. Vikrant has been addressed in Para 10.4, who is a witness in this FIR as well.

11. In the considered opinion of this Court after examining each of these FIRs in isolation, as above, a clearer picture emerges of the scope and extent of the offences for which the petitioner is charged with. The custody of 3 years as an undertrial has already overshoot some of the maximum period of punishment prescribed in some of these offences. It would not serve any purpose deliberating upon the aspect of multiple FIRs and the legal position in that regard as canvassed by the petitioner's counsel and refuted by the learned ASG. Irrespective of the multiple FIRs, of which there are total of 11FIRs, the Court has to consider the FIRs which are before this Court, as regards the grant of bail. It is noted that there may be other proceedings regarding other FIRs that are not before this Court, and the fate of the petitioner's custody will also depend upon those legal proceedings.

12. Aside from the analysis above, this Court would like to advert to some orders and decisions which inform the opinion of this Court.





13. As regards the gravity of the offence, the Hon'ble Supreme Court in ***Prabhakar Tewari v. State of U.P.***, (2020) 11 SCC 648 has stated in para 7 as under:

*“7. On considering the submissions of the learned counsel for the parties, having regard to the circumstances of this case, in our opinion, there has been no wrong or improper exercise of discretion on the part of the High Court in granting bail to the accused. The factors outlined in Mahipal [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] for testing the legality of an order granting bail are absent in the order [Vikram Singh v. State of U.P., 2019 SCC OnLine All 5566] impugned. The materials available do not justify arriving at the conclusion that the order impugned suffers from non-application of mind or the reason for granting bail is not borne out from a prima facie view of the evidence on record. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex facie error in the order has been shown by the appellant which would establish exercise of such discretion to be improper. We accordingly sustain the order [Vikram Singh v. State of U.P., 2019 SCC OnLine All 5566] of the High Court granting bail. This appeal is dismissed.”*

*(emphasis added)*

14. In a restatement of basic fundamental principles of criminal jurisprudence, the Hon'ble Supreme Court in ***Satender Kumar Antil v. CBI***, (2022) 10 SCC 51 observed as follows:

*“12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India...”*



(emphasis added)

The Hon'ble Supreme Court also noted the observations made by V.R. Krishna Iyer, J., in *Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P.*, (1978) 1 SCC 240 as under:

*“1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law. The last four words of Article 21 are the life of that human right.””*

(emphasis added)

The Hon'ble Supreme Court further made note of their observations in *Sanjay Chandra v. CBI*, (2012) 1 SCC 40 as under:

*“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.”*

*22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted*



or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.”

15. There are other aspects in the matter regarding improvements in statements, delay in the registration of FIRs, copy-paste statements of various police witnesses and public witnesses as well (*which this Court has perused*) as also the discrediting of the police witnesses. These aspects are not necessary to delve into since, as discussed above, in each of the FIRs before this Court, the petitioner would be entitled to bail, in the considered opinion of this Court, *inter alia* due to some of the offences being bailable, the period of incarceration exceeding the maximum periods of sentence prescribed, all other co-accused having been given bail, charges have not been framed in three of the FIRs even after 3 years, and even in the two FIRs where there are allegations of firearm injury, the person accused of shooting having already been given bail. These observations have no bearing on the other FIRs registered against the petitioner, which are not before this Court and therefore outside the scope of scrutiny. It was argued by the Id. Counsel for the petitioner that notwithstanding the fact that the petitioner was an influential political person in that area, being the Municipal Corporator, the petitioner had attempted on multiple occasions to call the police in relation to the rioters. Whether these statements are accurate or not will have to be tested in the trial. At this stage, considering the specific offences for which the petitioner has been charged with in these FIRs, the petitioner would be entitled to be enlarged on bail in these 5 FIRs.



As regards his release from jail, that would depend whether he is required to be in custody in other FIRs registered against him.

16. In light of the above, this Court finds it to be a fit case for grant of bail to the petitioner in these 5 FIRs. Consequently, the petitioner is directed to be released on bail in these 5 FIRs on furnishing a personal bond in the sum of Rs. 100,000/- each with one surety of the like amount subject to the satisfaction of the Ld. Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court and deposit his passport with the Ld. Trial Court.
- ii. Petitioner shall provide permanent address to the Ld. Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned. The mobile location be kept on at all times.
- vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainants/victims or any member of the



complainants/victims' family or tamper with the evidence of the case.

17. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

18. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

19. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

20. Judgement be uploaded on the website of the Court.

**ANISH DAYAL, J**

**JULY 12, 2023/sm**