

B.A.No. 1184
FIR No. 96/2021
PS Kotwali
State v. Jugraj Singh
&
B.A.No. 2345
FIR No.98/2021
PS Kotwali
State v. Jugraj Singh

30.06.2021 at 4 pm

ORDER

This common order shall dispose of application u/s 438 Cr.P.C. for grant of anticipatory bail on behalf of accused-applicant Jugraj Singh in case FIR No. 96/2021 and an application u/s 438 Cr.P.C. for grant of anticipatory bail on behalf of accused-applicant Jugraj Singh in case FIR No. 98/2021, as the both the FIRs are arising from same set of allegations.

Ld. counsel for the accused-applicant has contended that accused-applicant has been falsely implicated in the present case. That accused-applicant has not participated in the riots nor was armed with any deadly weapon nor assaulted or obstructed any public servant. That the accused-applicant has not caused any damage to the protected monument or destroyed public property nor insulted the National flag. That co-accused Sandeep Singh Sidhu has already been granted bail. That accused-applicant followed his farmer colleagues and was not aware of the prescribed route. That applicant has not committed any offence.

That from reply of police to bail application, it is clear that there is strong apprehension of arrest of applicant/ accused by the police & thus his application for anticipatory bail is maintainable. That police has canvassed the case against applicant / accused on the basis of video clippings / CCTV footages etc., and does not state that applicant/ accused has been identified by any independent witnesses in the video clippings/ CCTV footages. That accused-applicant is implicated only on the basis of identification by co-accused which is not admissible in law. That accused-applicant has not caused any injury to anyone. That case has been projected in such a way that simple events are made to appear in serious & aggravated form. That thousands of farmers had gathered at Red Fort in protest against 3 Farmer Acts. Applicant / accused is a farmer, had joined farmers' protest at Singhu Border 2 days prior to 26.1.21, like other farmers, as there was a call of farmer leaders to reach there on the said day; followed his fellow farmers & he was not aware of the prescribed route; was under impression that all his fellow farmers were following route as per law & being a villager he just followed them; has not been in any criminal conspiracy with anybody to commit any crime nor caused any assault & therefore no culpability of any offence can be attached to the applicant/accused; was not carrying any weapon nor any offence of any kind has been committed by him & mere presence of the applicant/accused at Red Fort will not make the

applicant/accused member of the unlawful assembly specially when a common object to do a criminal act cannot be attributed to the Applicant / accused. it is alleged against the applicant / accused that he is seen climbing the flagpole located at Rampart, Red Fort and hoisting Nishan Sahib; he is the person who has hoisted the religious flag at the Rampart of the Red Fort on 26.01.2021; That it is an admitted fact that the said flag post in Rampart of the Red Fort was an empty flag post where the Hon'ble Prime Minister of India hoists National Flag every year on 15 August (Independence Day) & there was no national flag, then no offence has been committed. It is not understandable as to how hoisting Nishan Sahib, has caused embarrassment and humiliation to the people of this country. Conspiracy has not been established at any stage, as the alleged main conspirator co-accused has stated in his bail application & same is reflected in the bail order also, that he was not knowing the applicant/ accused prior to hoisting of religious flag. Unfurling of religious flag on an empty flagpole is not an offence under any law. That application is maintainable & can be considered even if NBW'S are issued. Ld. counsel has relied upon decision in **Siddharam Satlingappa Mhetre v. State of Maharashtra And Ors.** SCC (1) 2011 694 and **Gurcharan Singh and Ors. v. State (Delhi Administration)** AIR 1978 SC 179. That accused-applicant is ready to join the investigation.

Ld. Addl. PP contended that despite specific orders of appropriate authorities, on 26.1.2021 at around 12.15 pm, an unruly mob of over around 1000-1200 persons on 40-50 Tractors, 125-150 motorcycles and in private vehicles reached at Shanti Van red light trying to break the barricades, in order to reach Red Fort. Police staff apprised them through loud hailers that they are not allowed to go to Red Fort, as it was not the prescribed route for tractor rally. They were also asked to maintain social distancing, in view of Covid-19 pandemic guidelines, but they ignored all these directions and broke the barricades with the blunt force of tractors. That they drove their tractors rashly, negligently and even tried to hit the police personnel deployed on duty while shouting slogans and creating nuisance, and also attacked the police and security personnel by causing them injuries upon them with deadly weapons, they destroyed public property at large, and robbed arms and ammunition. They caused hindrance in the celebration of Republic Day and also caused damage to tableau. That during this riot at Red Fort a total 167 individuals sustained injuries, out of which 144 were policemen (Delhi Police / CRPF / CISF & SSB) and 23 were civilians including media persons. The riotous mob were carrying spears, swords, lathis and indulged into such an act of terror, that created mayhem at Red Fort and in furtherance to which riotous mob ransacked/ sabotaged/robbed the government/ public property and also damaged the building Red Fort, a national

heritage site and pride of the nation. That the accused applicant was part of the unruly mob and that he is the person who had hoisted the religious flag at the Rampart of the Red Fort on 26.1.2021, and that in one of the video footage is clearly seen climbing the flagpole located at the Rampart, Red Fort and hoisting Nishan Sahib in the presence of other co-accused persons. That he is one of the key executors of the well orchestrated conspiracy hatched to convert Red Fort into a protest site, and has played an active role in the Red Fort episode. That in one video footage he is seen carrying a sword, in another when the police is trying to stop the mob, from entering the wells of the Red Fort he is seen pushing policemen, and is clearly seen entering the Red Fort from the Lahore Gate with the unruly mob. That the Red Fort is National heritage site and by hoisting the Nishan Sahib humiliation and dembarassment has been caused to the nation at Red Fort on the Republic Day. That the case of the accused-applicant is not on the same footing as that of the co-accused who have already been granted regular bails and interim protections and anticipatory bails earlier as the accused-applicant was part of the unlawful assembly that violated the agreed route for the tractor rally of the protesting farmers on the eve of Republic Day, having actively participated by hoisting Nishan Sahib on the flagpole at the Red Fort Rampart.

Heard.

FIR No. 96/2021 is registered on 27.1.2021 at PS

Kotwali on the statement of SHO PS Kotwali, in respect of the violence and rioting at Red Fort on 26.1.2021 by an unruly mob of protestors agitating against the three Agriculture Acts/ Farm Bills promulgated by the Parliament in the month of September 2020. It emerges from the contents of the FIR in question that on 26.01.2021, there was reinforced law and order arrangement in and around the Red Fort, with adequate deployment of local police and other forces, on account of Republic Day Celebration-2021 in the backdrop that in the protest against 3 Farm Bills, demonstrations were being organized at various borders of capital Delhi by the different groups of Kisan unions/Organizations, as the differences/ disagreements remained unresolved after several rounds of parleys between the representatives of Kisan Organizations and Central Government and these Organizations had proposed a Tractor Rally on 26th January, 2021 in Delhi, declaring that they would enter Delhi after removing the barricades placed on the roads to stop the vehicular traffic during Republic Day arrangements. Following discussions between the authorities and the representatives of the farmers unions four routes for the proposed tractor parade were tabled and confirmed by the Farmers Union with undertaking of due adherence, from 12.00 noon to 5pm, and no part of the jurisdiction of kotwali police station was included in any of the agreed routes. At 12.00 pm information was received at Control room that farmers in large numbers on

tractors and private vehicles were approaching Shanti Van red light from Rajghat side. There was barricading along the Nishad Raj Marg leading to the Red Fort for Republic Day function. At 12.15 from the Rajghat side some 1000-1200 persons on 30-40 tractors, 125-150 motorcycles and some private vehicles. reached at Shantivan red light and started raising slogans for marching towards Red Fort. They were informed that the same is not the authorized route and that they cannot be permitted to go to Red Fort to carry on their protest. The congregation did not desist instead became violent and driving the tractors dangerously and rashly broke away the barricades, endangering the lives of the police personnel. Thereafter the unruly mob broke the barricading at Subhash Marg upper and lower Subhash Marg, even hit the ambulance stationed at Nishad Raj reached Lal Qila Chowk, shouting slogans against reached at Gyan path. Meanwhile. Some more tractors and unknown/unidentified persons, after breaking the barricades reached at Lai Qila Chowk. Senior police officers tried to pacify the mob, but they were unrelenting. Large numbers of protestors gathered and entered the Red Fort from Lahore Gate and started beating the police personnel. The mob climbed the Rampart and unfurled the religious flag at the Pole of Rampart and even on domes at the sides of Rampart, they were shouting slogans, demonstrating swords skills and created much nuisance and ruckus at the Rampart. They also tried to enter inside the Red

Fort through Meena Bazar but they were stopped by police staff. They attacked on the police staff by hurling stones, beating the policemen by sticks and even attacked with swords. The riotous mob caused damage to the government vehicles and public property, they robbed chains, ropes, sticks & various other articles used for barricading, besides body protecting gears like cane stick, shields, helmets etc. from the staff deployed for guarding the Red Fort, and also attempted to wrest the MP-5 weapon and a SLR, though the attempt was thwarted by the police personnel, but still they managed to one magazine of MP-5 and SLR containing 20 live cartridges each. They used and brandished dangerous weapons viz. swords, lathis, spears, pharsey, against the police personnel. They forced police and security personnel to jump into the moat to save their lives. The members of unruly mob completely disregarded and violated the conditions laid down in the permission / NOC for Tractors Rally by reaching Red fort illegally, with the common object to hurt policemen, cause damage to Red Fort and public property and caused hindrance in discharge of official duties and also injured them with the use of the weapons they were carrying including sticks, swords, bhaale, pharsey etc., they also pelted stones over the police personnel deployed on their duties at Red Fort and also damaged the tableau of Republic Day, 2021 stationed at Red Fort.

Accused-applicant is alleged to be very much present

alongside the unruly mob from Singhu Border itself, that breached the barricading done by the Delhi police and reached Red Fort via Burari, while carrying deadly weapons like lathies, pharsa, spears etc., which weapons were used by the riotous mob voluntarily against the police force personnel guarding the national heritage site or on duty in the course of Republic Day Arrangement, 2021, causing grievous hurt to many policemen, while they all were discharging their duties as public servant. The prosecution is armed with CCTV Footage, Media clippings, besides CDR analysis of the mobile phone number of the accused-applicant, and disclosures recorded in custody of the co-accused who have already been chargesheeted.

Besides being part of the same unruly Mob, the specific acts/omissions attributed to the accused-applicant from the material gathered and analysed at this stage are that he had disregarded the order specifying the route for the Tractor Rally on the Republic Day, he had entered inside a protected monument and onto a prohibited area of the protected monument, climbed up the flagpole on the rampart of the Red Fort and unfurled a religious flag of the Sikh community, he had obstructed policemen in the due discharge of their duties. Both the FIR's in question are founded upon similar set of allegations, the complainants are different, it is the SHO PS Kotwali who is the complainant in FIR No.96/2021, and the Superintending Archeologist Delhi Circle Archeological

Survey of India is the complainant under FIR No.98/2021, for damage to the UNESCO Protected National Heritage Site, though FIR No. 96/2021 also invokes section 30 of the Ancient Monuments and Archeological Sites and Remains Act, 1958, infarction of which is the mainstay of the FIR No.98/2021.

The accused-applicant under both the FIR's is alleged to have climbed one of the flagpoles on the Rampart at the Red Fort, a restricted area of the protected site, and to have hoisted Nishan Sahib, a religious flag of the Sikh community. Though case IR No. 96/2021 pertains also to commission of offences u/s 307/308 IPC besides provisions of the Arms Act, however, it is not being alleged against the accused-applicant that he had caused any injury to the policemen on duty or had assaulted the police men on duty though he is seen resisting policemen from preventing him and other members of the unlawful assembly from entering the Well of the Red Fort. Offence u/s 30 of the Ancient Monuments and Archeological Sites and Remains Act, 1958, is made punishable with imprisonment upto two years, offence u/s 3353 IPC is punishable with imprisonment upto two years and u/s 188IPC, maximum prescribed is upto six months of imprisonment. H'ble the Supreme Court of India on 7.5.2021, in the Suo Motu Writ Petition(C) No.1/2020, IN RE: CONTAGION OF COVID VIRUS IN PRISONS, taking stock of the prevailing situation arising from the unprecedented surge in and spiralling cases in the second wave

of COVID-19 pandemic in order to limit fresh arrests in contravention of the directives issued in the Judgement of Arnesh Kumar vs. State of Bihar has called for strict adherence to the same reminding the authorities concerned that any arrest in contravention would tantamount to Contempt of Court. Hon'ble the Supreme Court of India in **Arnesh Kumar v. State of Bihar &Anr.** CrI. Appeal No. 1277/2014 on 02.07.2014, had issued specific directives attending arrests of accused in cases pertaining to offence under Section 489A IPC, and extended to all offences made punishable with imprisonment upto seven years:-

All police officers be provided with a check list containing specified sub- clauses under [Section 41\(1\)\(b\)\(ii\)](#);

The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Superintendent of police of the district for the reasons to be recorded in writing;

Notice of appearance in terms of [Section 41A](#) of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

The directives are rendered applicable to all cases involving such offences punishment prescribed for which is upto seven years. That the investigating agency has chosen to announce reward for his arrest does not in any manner affect the gravity of the nature of accusations per se, and hence based upon the nature of accusations and the material available against the accused-applicant till date, the accused-applicant would be entitled to the protection of the above directives reaffirmed by H'ble the Supreme Court of India recently in the matter of Sou Motu Writ Petition (C) No. 1/2020, IN RE CONTAGION OF COVID 19 VIRUS IN PRISONS, on 7.5.2021, and accordingly interim protection is being granted to accused Jugraj Singh at this stage till the next date of hearing, subject to the condition hat the accused-applicant shall join investigation in case FIR No.96/21 and 98/21, on 8.7.2021, 11.7.2021, 15.7.2021 and as and when called upon to do so by the respective IO's. The IO shall intimate the dates on which his presence shall be required besides the ones mentioned in the present order by written notice affording him reasonable opportunity to travel from hometown to Delhi in the prevailing

pandemic situation of restricted movements and lockdowns announced by respective State Governments.

For report and consideration, put up on **20.7.2021**.

Copy of order be forwarded to Ld.Counsel for accused-applicant through electronic mode.



(Neelofer Abida Perveen)
SpecialJudge-02, NDPS/
ASJ, (Central), THC / Delhi
30.06.2021