

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

I.A. No. 171/2023 (Tahir Hussain)

FIR No. 59/2020

PS : Crime Branch (being investigated by Special Cell)
U/S. 13/16/17/18 UA (P)Act, 120B read with Section
109/114/124A/147/148/149/153A/186/201/212/295/302/307/341/
353/395/419/420/427/435/436/452/454/468/471/34 IPC &
Section 3 & 4 Prevention of Damage to Public Property Act,1984
and Section 25/27 Arms Act
Tahir Hussain Vs. State

Dated : 30.03.2024

ORDER

1. This is a bail application of the applicant/accused Tahir Hussain filed under Section 437 of Code of Criminal Procedure, 1973.

2. The submissions on behalf of the applicant are that the FIR in the present case i.e. FIR bearing No.59/2020 dated 06.03.2020 was initially registered with PS-Crime Branch u/s.147,148,149,120B IPC but later on offences u/s. 120B read with 302, 307, 124A, 153A, 186, 253, 395, 427, 435, 436,452,454,109,114 IPC, Sections 3 and 4 of the Prevention of damage to Public Property Act and Sections 25 and 27 of the Arms Act were added on 15.03.2020 and finally the offences u/s. 13,16,17 and 18 of the Unlawful Activities Prevention Act, 1967 were added on 19.04.2020. The accused was arrested in the present FIR on 06.04.2020. After completion of investigation, the charge-sheet was filed on 16.09.2020. Subsequently, supplementary charge-sheets were also filed and the matter is pending on the question whether the investigation is complete or not.

3. The further submissions of the applicant are that the applicant is a peace loving and law abiding citizen of India, who has served as an honest elected councilor of Mustafabad area in Delhi. The applicant has been falsely implicated in the present FIR on the basis of inadmissible disclosure statements of co-accused persons.

4. The further submissions of the applicant are that many co-accused persons namely Natasha Narwal, Devangana Kalita, Asif Iqbal @ Tanha, Faizan Khan and Ishrat Jahan have already been granted bail in the present FIR and as the applicant has much better case than them, he is also entitled for bail on parity as well. Further, the order of granting bail to the co-accused persons Natasha Narwal, Devangana Kalita and Asif Iqbal @ Tanha was challenged by the State to the Hon'ble Supreme Court of India, but the petition of the State has been dismissed vide order dated 02.05.2023.

5. Taking specific grounds, it is submitted on behalf of the applicant that the applicant is innocent and has no role to play in the commission of the alleged offences and there is no evidence whatsoever in the main or supplementary charge-sheets to link the applicant to the offences as alleged against him and further the charge-sheets fail to establish any meeting of mind of the applicant with co-accused persons with respect to the conspiracy to commit the alleged offences. Further, no cogent material exists against the applicant in the charge-sheet corroborating the role of the applicant. Further no provision under the UA(P)A is attracted against the applicant. Further the applicant has been named in the present case only on the basis of disclosure statements of co-accused persons and pertinently, no recovery has been made on the basis of the said disclosure statements and as such the statements are inadmissible under section 25 of the Indian Evidence Act, 1872. Further, the

applicant is not a member of any of the groups or organizations and the said fact has been appreciated by this Court while granting bail to accused Ishrat Jahan vide order dated 14.03.2022. Further, the applicant has been under incarceration for about four years. Further, the charges are yet to be framed and given the large number of documents and witnesses, the trial is likely to take long time. Further, as the investigation is already complete, no purpose would be served to keep the applicant under incarceration. Further, the applicant satisfies the triple test i.e. availability for trial, not at flight-risk and not to tamper with the evidence or influence the witnesses. Further, in view of the case of the applicant, the bar of Section 43D of UA(P)A has overcome in the present case. Further, the applicant is suffering from multiple illnesses including a defect in abdominal wall and has also recently undergone Cataract surgery. Further, if granted bail the applicant will attend the trial regularly and abide by all the conditions imposed by the court.

6. Ld. Counsel for the applicant has relied upon the following judgments:

1. Union of India Vs. K.A.Nazeer (2021)3 SCC 713
2. P. Chidambaram vs. Directorate of Enforcement
2019 SCC Online SC 1549
3. Vernon Vs. The State of Maharashtra & Anr.
Criminal Appeal No.639/2022
4. Union of India Vs. K.A.Najeeb (2021) 3 SCC 713
5. Asif Iqbal Tanha Vs. State of NCT Delhi
2021 SCC Online Del 3523
6. Natasha Narwal Vs. State of NCT Delhi
2021 SCC Online Del 3254
7. Devangana Kalita Vs. State of NCT of Delhi
2021 SCC Online 3255
8. Tahir Hussain Vs. State
2023: DHC: 4711

7. In reply to the bail application, the submissions on behalf of the prosecution are that the present case pertains to a larger conspiracy which was registered on 06.03.2020 and in total 21 accused persons have been arrested, out of which charge-sheet qua 18 accused persons has already been filed including the present applicant. Further, in terms of Section 173 (8) the investigation is still in progress. Further, the application has no merits. Further, in the Special Leave Petition as filed by the State in the Hon'ble Supreme Court against the three judgments of the Hon'ble High Court of Delhi qua the co-accused persons Devangana Kalita, Natasha Narwal and Asif Iqbal @ Tanha, the Hon'ble Supreme Court has ordered that the impugned judgment shall not be treated as precedent and may not be relied upon by any of the parties in any of the proceedings. Prosecution has also relied upon one judgment of Hon'ble Supreme Court passed in Gurwinder Singh Vs. State of Punjab & Another in CrI. Appeal no.704 of 2024 in SLP (CrI.) 10047 of 2023.

8. The Court has heard arguments and gone through the record.

9. One of the contentions of Ld. Counsel for the applicant is that co-accused Ishrat Jahan has been granted bail by this court vide order dated 14.03.2022 and the case of the applicant is on much better footing. Further, co-accused persons Devangana Kalita, Natasha Narwal and Asif Iqbal @ Tanha have also been granted bail by the Hon'ble High Court of Delhi and the orders qua these co-accused persons were challenged by the State and vide order dated 18.06.2021 Hon'ble Supreme Court has dismissed the SLPs and as such the present applicant also deserves bail on parity as well.

10. As far as the bail as granted by the Ld. Predecessor of this Court

to co-accused Ishrat Jahan is concerned, it is noted that one of the considerations of the Ld. Predecessor was the fact that the said accused was a woman. Ld. Predecessor nowhere mentioned that no conspiracy is made out and no case under sections 13,16,17 and 18 of UA(P)A is made out. In the concluding para i.e. para no.12 of the order, Ld. Predecessor noted that the facts qua the co-accused Ishrat Jahan, who was a woman, persuaded the Court to allow her application despite the embargo contained in the Cr.P.C and the UA(P)A. Thus, Ld. Predecessor was also of the view that embargo under the UA(P)A was there. As such, when the main consideration to grant bail to the co-accused Ishrat Jahan was the fact that she was a woman, the same cannot be taken into consideration for the present applicant.

11. Now comes the question of parity as claimed by the applicant with the co-accused persons Devangana Kalita, Natasha Narwal and Asif Iqbal @ Tanha. It is noted that in para no. 49 of the order dated 18.10.2022 regarding to co-accused Devangana Kalita, the Hon'ble High Court of Delhi opined that the accusations made against the appellant under section 15, 17 and 18 of the Unlawful Activities Prevention Act, 1967 are not prima-facie true. In the same way in para no. 28 of the order for co-accused Natasha Narwal, the Hon'ble High Court opined that no offence under section 15, 17 and 18 of Unlawful Activities Prevention Act, 1967 was made out. Similarly, giving the same observation, in para no. 77 of the bail order of co-accused Asif Iqbal @ Tanha, the Hon'ble High Court gave conclusions only with regard to the said accused. Thus, giving opinion specifically about the co-accused persons, the Hon'ble High Court concluded that limitations and restrictions on grant of bail under section 43D(5) of Unlawful Activities Prevention Act, 1967 do not apply. As such it is important to note that opinion of the Hon'ble High Court is with respect to the co-accused persons

only and is not general and therefore, cannot be considered for any other accused including the present applicant.

12. Another contention on behalf of the applicant is that the role of the applicant in the present FIR is limited to offence under section 120B IPC and section 17 & 18 of UA(P)A, but no cogent material has been placed on record to even remotely make out the ingredients of the offences against the applicant. Further, the prosecution has failed to show that the applicant conspired to or abated in the commission of any terror act or raised funds for the terrorist act. Further, as far as the allegation of conspiracy is concerned the applicant was not a member of any of the organizations or WhatsApp groups as mentioned in the charge-sheet. Regarding allegation of conspiracy, Ld. Counsel pointed out that the statements of the relevant protected witness i.e. Saturn, as recorded under Section 161 and 164 Cr.P.C are contradictory qua the role of the present applicant and the statement of the said witness has already been dealt with by some other Sessions Court while dealing with the application of co-accused Umar Khalid and the said Sessions Court opined that the statement of the said witness prima facie does not appeal to the senses. Ld. Counsel further submitted that the Ld. Additional Sessions Judge, North East, Karkardooma Courts, while granting bail to accused Umar Khalid in the FIR no.101/2020, PS-Khazoori Khas vide the order dated 15.04.2021 observed that based on the material placed on the record, a lofty claim of conspiracy could not be inferred and the same is relevant for the present case also. Ld. Counsel further pointed out that there are more than 10 FIRs against the present applicant and the applicant has been granted bail in many of them and as the material or evidence in those FIR is almost the same, the applicant deserves bail in this case also.

13. As far as the role of the applicant as shown by the prosecution is concerned, record shows that the applicant while participating in the conspiracy, not only funded the activities of the riots but also participated in the other activities which led to the riots.

14. The statements of some prosecution witnesses as recorded under Section 161 Cr.P.C and other material on record clearly show the role of the present applicant.

15. One of the witnesses of the prosecution is Rahul Kasana who clearly states the role of the applicant regarding distribution of money to the protesters in order to make preparations for the riots, meeting of the present applicant with the other co-accused persons. Ld. Counsel for the applicant regarding this witness contended that the statements of this witness cannot be trusted as he has given contradictory statements as recorded under Section 161 and 164 Cr.P.C. The Court is of the view that at this stage, the Court cannot go into details and should not analyse the statements so minutely. Further, not only the said witness but some other witnesses also gave statements against the applicant to show as to how the applicant was instigating the protesters and gathered the protesters on the roof of his house and was himself involved in throwing petrol bombs etc. on the public. It is also on record that the applicant got released his licenced revolver just two days before the alleged incidents and used the same as 22 spent or used cartridges were recovered from his house. Besides this, allegedly the applicant got converted approximately Rs. 1.5 crore in cash, which was used in the rioting and the said fact has been confirmed through the statements of different witnesses and examination of relevant bank accounts.

16. Another contention of the Ld. Counsel for the applicant is that the alleged acts of the applicant cannot be termed as terrorist act and do not constitute the offences under Section 13,16, 17 & 18 of UA(P)A. The Court is not in agreement with this contention of the Ld. Counsel. Definition of 'Terrorist Act' as provided under Section 15 of the UA(P)A clearly shows that even if some inflammable substance, fire arms, lethal weapons are used which is likely to cause death or injury to any person or causes loss, damage or destruction to any property, such act would fall in the definition of Terrorist Act. In the case in hand, the allegations against the applicant, as mentioned earlier are such that his acts may fall in the definition of Terrorist act. As such, at this stage, it cannot be said that the provisions of UA(P)A as mentioned in the charge-sheet are not applicable to the applicant.

17. In support of her arguments, besides relying upon the earlier mentioned rulings, the Ld. Counsel also relied upon *Ranjitsing Barhmajeetsing Sharma V. State of Maharashtra* (2005) 5 SCC 294, *National Investigation Agency Vs. Zahoor Ahmad Shah Watali* (2019) (5) SCC 1, *Abdul Wahid Siddibaba Vs. NIA*, CrI. A. 1428/2019 decided on 24.02.2019 by the Hon'ble High Court of Delhi and *Shamil Saquib Nachal Vs. State of Maharashtra*, Bail Application no. 512/2013 decided on 06.05.2013.

18. The above mentioned rulings would have supported the case of the applicant but as already discussed by the court earlier, the applicant seems to have been involved in the commission of the alleged offences and cannot be given benefit of the mentioned rulings.

19. On the other hand, the prosecution also relied upon the judgment *Gurvinder Singh Vs. State of Punjab and Another*, CrI. Appeal no.704 of 2024

in SLP (Crl.) 10047 of 2023 and contended that the rejection of bail is a rule and to allow the bail is an exception under the UA(P)A. The judgment as relied upon by the prosecution makes it clear that bail must be rejected as a rule if after hearing the public prosecutor and after perusing the final report or the case diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. As already mentioned, in the case in hand, after going through the record, the Court is of the view that the allegations against the accused are prima facie true.

20. Thus, in view of the facts as discussed above and the bar under Section 43(D)(5) of UA(P)A, the Court does not find the case of the applicant to be a fit case for granting bail.

21. Accordingly, the bail application is dismissed.

22. Copy of this order be given dasti to the Ld. Counsel for the applicant/accused.

(Sameer Bajpai)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 30.03.2024