

State V/s Tahir Hussain: FIR No..65/2020: PS Dayalpur

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FIR No.: 65/2020
U/s 109/114/147/148/149/436/153-A/505/365/302/201/120-B/34 IPC
PS : Dayalpur

13.07.2020

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri Manoj Chaudhary, Ld. Special PP for the State.
Shri K.K Manan, Sr.Advocate alongwith Ms.Uditi Bali, Ld.Counsel for the accused Tahir Hussain/applicant.

Shri Joy Tirki, DCP (Crime Branch) (through video linkage).

ACP Surender Kumar Gulia and Inspector Amleshwar Rai, IO of the case (through video linkage).

ORDER ON BAIL APPLICATION

The arguments on this application were heard on 29.06.2020, 30.06.2020, 08.07.2020 as well as on 09.07.2020.

2. The applicant Tahir Hussain has been in judicial custody in this case since 16.03.2020. The bail is being sought by him on the grounds that there is no cogent evidence which is admissible in the eyes of law, to connect the applicant in the alleged murder of Shri Ankit Sharma. There is delay in recording the statements U/s 161 Cr.P.C of the witnesses as well as the statements U/s 164 Cr.P.C. The

applicant has not been identified in TIP proceedings. There is no evidence by way of video footage or CCTV footage to prove that the applicant was present at the scene of crime at the time of incident. Further, there is no evidence of abetment or conspiracy to kill Ankit Sharma on the part of applicant. There are two witnesses by the name of Kalu cited by the investigating agency in the chargesheet, one is Bharat @ Kalu, whose statement U/s 161 Cr.P.C as well as U/s 164 Cr.P.C have been recorded and another is Shri Sushil Kumar @ Kalu. One third Kalu also finds mention in the FIR, who was stated to be with deceased Ankit Sharma at the time of incident. It has been categorically argued that on entire day of 25.02.2020, the applicant was not present at or around the scene of crime and his alleged presence stated by the witnesses is false and same is belied by the CDR (Call Detail Records) location of the applicant. It is emphasized that the applicant was rescued in the intervening night of 24/25.02.2020 by the police force itself and was taken to his parental house at Mustafabad and he did not return at the scene of crime on 25.02.2020. It is further argued that the applicant himself had made PCR calls to save his skin from legal complications in the future. In the end, it was argued that co-accused Haseen @ Mullaji @ Salman has categorically admitted in his extra-judicial confession about murder of Ankit Sharma by him alone, which clearly exculpates the applicant. The learned counsel for the applicant has relied upon several judgments, the details whereof are as under:

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- (a) *Mohd. Shariff Suleman Nadaf V/s State, AIR 1969 Bom 383* (Date of Decision: 24.07.1968);
- (b) *Balkar Singh & Ors. V/s State of Punjab; AIR 1994 SC 1133* (Date of Decision: 30.01.1992);
- (c) *Sukadev Giri & Ors. V/s State of Odisha, MANU/SC/1224/2002;*
- (d) *Sumitra Banik V/s State of West Bengal; (1999) 9 SCC 24* (Date of Decision: 29.07.1999);
- (e) *Suresh & Ors. V/s The State of UP; AIR 2001 SC 1344;*
- (f) *Nanubhai Vastabhai Katariya V/s State of Gujarat; MANU/GJ/0389/1999* (DOD: 10.09.1999);
- (g) *Dataram Singh V/s Respondent; State of UP & Ors., MANU/SC/0065/2018;*
- (h) *Sachin S/o Duyaneshwar Fulkar V/s State of Maharashtra;*
- (i) *Ganesh Bhavan Patel V/s State of Maharashtra, 1979 SCR (2) 94;*
- (j) *Jagjit Singh V/s State of Punjab; MANU/SC /0044/2005;*
- (k) *Sahoo V/s State of UP; AIR 1966 SC 40;*
- (l) *Balwantbhai B. Patel V/s State of Gujarat & Anr., AIR 2010 SC 1158;*
- (m) *Pradeep Kumar @ Allahabadi V/s State (Govt. of NCT of Delhi);*

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3. I have gone through all the judgments and will advert to the judgments with reference to the proposition laid down therein and the arguments of the learned counsel for the applicant.
4. I have perused the chargesheet as well as the report filed by police in the matter.
5. I will advert to the arguments advanced at bar a little later, but firstly I wish to set out the gist of the case in brief.
6. The present case relates to the murder of Shri Ankit Sharma, a young officer of Intelligence Bureau (I.B). On 26.02.2020, complainant Shri Ravinder Kumar, S/o Shri Man Singh, R/o E-140-A, Gali No.6, Khajuri Khass, Delhi came to PS Dayalpur and stated that on 25.02.2020, his son Ankit Sharma, who was posted in Intelligence Bureau had come from his office and had gone out of the house to bring some household goods at about 5.00 PM. When he did not return after a long time, they started searching for him at nearby places, hospitals etc., but they could not find him. After waiting overnight, he lodged a missing report (GD No.009-A, dated 26.02.2020 at 11:41 Hrs) of his son Ankit Sharma at PS Dayalpur. Then he came to know from the local boys that a boy had been thrown into the “Khajuri Khas Nala” from the Masjid of Chand Bagh pulia after he was killed. Body of Ankit Sharma was recovered from Khajuri Khas nala near Chand Bagh pulia. Clothes of Ankit Sharma were missing. There was only

underwear on his body. The deceased Ankit Sharma had sustained sharp injuries on his head, face, chest, back and his waist. In the FIR, complainant Ravinder Kumar further stated that he **had a strong suspicion that his son Ankit Sharma had been killed by applicant and his goons**, who had gathered in his office and after killing his son, his body was thrown into the nala from the masjid.

7. After registration of FIR, investigation of the case was taken up by local police. During the course of investigation, postmortem of the body of deceased was got conducted at GTB Hospital on 27.02.2020 by a Board of Doctors. The postmortem report of deceased Ankit Sharma revealed 51 injuries caused by sharp edged weapons and blunt force. Thereafter, the investigation of the case was transferred to SIT of Crime Branch by the order of senior officers of Delhi Police on 28.02.2020.

8. Further, during the course of investigation, on inspection of the building of applicant, i.e E-7, Khajuri Khas, main Karawal Nagar road, Delhi and the adjoining area, a lot of debris, stones, bricks, broken bottles, some glass bottles with liquid, bullets and burnt articles were found lying scattered on the main Karawal Nagar road. The building of applicant had been used by rioters/miscreants/accused persons for brick pelting, stone pelting, pelting of petrol bombs and acid bombs. A lot of stones, bricks, glass bottles containing petrol with neck stuffed with clothes and other material including catapults

were found lying on the third floor and on roof top of the applicant's house.

9. The learned Special PP has very vehemently argued that the riots in the area of North-East Delhi were part of large scale conspiracy hatched at various levels all over Delhi in the aftermath of enactment of *Citizenship Amendment Act, 2019* (hereinafter referred to as “CAA”) on 11.12.2019. This led to incidents of violence at Jamia University Road on 13.12.2019. Later on, on 15.12.2019 again anti-CAA protests at various roads of Jamia Milia University, C.V Raman Marg, Bharat Nagar etc. took place wherein 29 buses were burnt. The violence again took place at Jamia Milia University on 16.12.2019 and a Committee by the name of “*Jamia Co-ordination Committee*” (in short “*JCC*”) was formed. Thereafter, Shaheen Bagh protests started on 15.12.2019. wherein in a systematic manner encroachment on the main road was made and there was complete blockage. Later on, the “*Dharna sites*” were made at several locations in North-East Delhi. It is further argued that the riots did not take place spontaneously. These riots were result of a well-planned and meticulously executed action by the anti-CAA protesters. It had in fact been planned before the visit of US President Donald J. Trump to India, as one group of particular community was aware of the fact that police system would be busy in handling arrangements for Trump's visit to Ahmedabad in Gujarat on 24.02.2020 and 25.02.2020 and hence, the very timing of riots just prior to the visit of US President Donald J. Trump to India points towards a very deep-rooted conspiracy behind the entire scenario.

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10. It is further argued that the trigger to the communal riots was “**Dharna-Pradarshan**” at Jaffarabad Metro Station on 22.02.2020, where for the first time violence was inflicted. It is further argued that the police had recorded statements of following P.Ws, viz., P.Ws Vikalp Kochar, Gyanender Kumar Kochar, HC Rahul, Ct.Parveen, Deepak Pradhan, Surender Pal Singh Sengar, Aakash, Bharat @ Kalu, Pradeep Verma, Girish Yaduvanshi, Priyanka Gaur, Rishabh Sharma, Phool Chand etc., who have clearly identified the applicant at the scene of crime, instigating the rioters of a particular community and exhorting them to kill the peoples of other community.

11. The statements of aforesaid witnesses have been read over before me. PWs Vikalp Kochar and Gyanendra Kumar Kochar are stated to be natural witnesses, as their shop by the name of Bunny Bakers is within the distance of about 5 metres from the scene of crime. It is stated to be quite near the Chand Bagh pulia. Similarly, PW Pradeep Verma runs a private car parking by the name of “**Pradeep Ki Parking**” which adjoins the house of applicant. P.Ws HC Rahul and Ct.Parveen were at the spot, being on law enforcement duty at the time of incident. On the strength of plain reading of the statement of aforesaid witnesses, it has been argued that all the said witnesses have consistently deposed that the applicant was present at the scene of crime, was exhorting the rioters of a particular community and on his instigation the said rioters had killed Shri Ankit Sharma.

12. It is further argued that the statements U/s 164 Cr.P.C of P.Ws Pradeep Verma and Bharat @ Kalu were got recorded on 08.05.2020 and they both categorically deposed on oath before the Ld.Magistrate that it was the applicant who had incited the religious feelings of rioters from a particular community, as a consequence whereof the rioters killed Shri Ankit Sharma.

13. The learned Special PP further submitted that during analysis of CDR of mobile number (9810363xxx) (number withheld) belonging to applicant, it was revealed that he had made several PCR calls on 24.02.2020 and 25.02.2020. As per CDR analysis, six PCR calls were made by applicant on 24.02.2020 between 2.50 PM and 6.00 PM and six PCR calls were made on 25.02.2020 between 3.50 PM to 4.35 PM. On checking the PCR calls, it was found that only four PCR calls made by applicant on 24.02.2020 had connected to Police Control Room, while remaining calls could not be connected due to reason mentioned as "*IVR key not pressed*". Out of four calls, three calls were sent to PS Dayalpur for local police action and one call was sent to PS Karawal Nagar. The concerned Emergency Officer, SI Shiv Charan Meena and other emergency officer of the day at PS Dayalpur, who had attended the PCR calls were examined. During investigation, it was revealed that there were thousands of people standing on both sides of main Karala Nagar Road from Chand Bagh pulia to Sherpur Chowk. Police force which was less in number in comparison to the rioters could not reach the spot on receipt of calls. It was quite late in

the night when staff from PS Dayalpur reached at the spot, which was in front of applicant's house. At that time, the applicant was present in front of his house. Shops and a few houses adjoining the house of applicant had been burnt. No damage had been caused by the rioters to applicant's house and none of his family members had sustained injuries. From the circumstances, it seemed that the accused persons/rioters were known to the applicant and applicant was present with the rioters at his house and he had deliberately made PCR calls to save his skin from legal complications in future.

14. It is further argued that during interrogation of applicant, it was revealed that in the intervening night of 24/25.02.2020 in the early morning hours, applicant had shifted his family from House No.E-7, main Karawal Nagar Road, Khajuri Khas, near Chand Bagh pulia, Delhi to his parental house at Mustafabad. However, he stayed back at his E-7, main Karawal Nagar Road house to keep an eye on the whole situation and lead the Muslim rioters against the Hindus on the next day. His call locations of 25.02.2020 proves this version to a great extent. The location of applicant near Jama Masjid, Munga Nagar, Delhi which is close to Chand Bagh Pulia and is the spot where Ankit Sharma was brutally murdered by the rioters/accused persons on 25.02.2020 speaks of his evil intentions, which led to the murder of a Hindu boy, besides other cases of arson, hurt/injury and loot.

15. It is further argued that during investigation it was revealed that applicant had got issued a licensed pistol and 100 rounds. He had deposited his pistol in PS Khajuri Khas on 07.01.2020, but had got released the same from PS Khajuri Khas on 22.02.2020, just before the riots, for the sole purpose of using the same in riots. Upon being interrogated on this score, the applicant failed to give a satisfactory reply regarding release of his weapon from concerned Police Station. During investigation, only 64 live cartridges and 22 empty cartridges out of 100 rounds were recovered at his instance. During investigation, the applicant could not give account of remaining 14 live cartridges and 22 empty/fired cartridges, as to when and where the same were fired/used. The fact regarding the release of pistol one day prior to the riots has been verified from the record of concerned Police Station and the concerned record has been filed. Pistol, live cartridges and fired cartridges were seized by SIT, Crime Branch in case FIR No.101/2020, PS Khajuri Khas and to verify firing by pistol in question, same has been sent to FSL on 09.03.2020 vide Receipt No.SFSL(DLH)/2195/BAL/478/20 and the report is awaited.

16. It is further argued that there is ample material on record in the form of statements of P.Ws that the applicant in furtherance of criminal conspiracy instigated the rioters of a particular community, which made co-accused Haseen @ Mullaji @ Salman, Nazim, Kasim, Shabbir, Sameer Khan and others to kill Shri Ankit Sharma. To further buttress this argument, it is argued that the applicant had provided

logistic support like lathis, dandas, stones, acid bottles, knives, swords, fire arms etc. to the rioters at the roof of his house itself.

17. I have given thoughtful consideration to the arguments advanced at bar by both the sides.

18. Alongwith the bail application, the learned counsel for the applicant has placed on record “*Annexure-F to Annexure-N*”, a brief scrutiny thereof is as under:

- (i) **Annexure-F** is a small video clip, which shows that some persons in the house of applicant have been blocking the main gate of the house.
- (ii) **Annexure-G** has three videos. First video is of 49 seconds, wherein the applicant can be seen making a public appeal that he is being falsely framed in the case, which is stated to be a self-serving statement by learned Special PP. In the second video, one Deepak Gaur, spokesman of Aam Aadmi Party is seen saying that the applicant had sent his aforesaid video to him. In the third video, one Sushil Mehra, correspondent of “Delhi Aaj Tak” is seen broadcasting same video of applicant.
- (iii) **Annexure-H** contains two videos. In the first video, applicant is seen stating that he was rescued by the police. In the second video, the applicant is seen moving around in his house as well as there is clip of some press-

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conference, where Shri Ajit Kumar Singla, the then Addl.CP, Delhi Police is seen saying that applicant was rescued from his house.

- (iv) **Annexure-I** is some audio conversation with Head Constable of PS Dayalpur, wherein request is being made for providing police help. Similarly, there are other two audio files in which the applicant is speaking to Shri Alok Kumar, Joint CP, Eastern Range and one Shri Satinder.
- (v) **Annexure-J** contains interview of PW Gyanendra Kumar Kochar and one small time banana vendor namely Smriti.
- (vi) **Annexure-K** is video clip of 1 minute 46 second, where applicant is seen pleading with rioters.
- (vii) **Annexure-L** contains two videos. In the first video, applicant can be seen running with a stick in his hand and in the second video, there is an interview of applicant, wherein he is seen categorically stating that he has absconded as he has been taking advice from his lawyers. This video was apparently prior to his surrender before the police when his application for anticipatory bail was dismissed.
- (viii) **Annexure-N** contains two communal videos, wherein a private person is seen alleging that it was police who was putting the houses on fire at or around the scene of occurrence.

Whether there is delay in recording the statements of witnesses and effect thereof?

19. The learned counsel for the applicant has very vehemently argued that there is considerable delay in recording of the statement of P.Ws U/s 161 Cr.P.C and U/s 164 Cr.P.C. The statements U/s 161 Cr.P.C of the P.Ws were recorded more than 10 days after the incident; whereas, the statements U/s 164 Cr.P.C were recorded more than 71 days after the incident. The learned counsel for the applicant in this regard has relied upon the following judgments:

(a) Ganesh Bhavan Patel V/s State of Maharashtra, 1979 SCR (2) 94 and;

(b) Jagjit Singh V/s State of Punjab; MANU/SC /0044/2005

20. Per contra, learned Special PP has argued that the investigation of the case was transferred to SIT, Crime Branch on 28.02.2020 and the investigation of the case was taken up on the same day. The inspection of the house/building of the applicant was got conducted by FSL team on the same day, i.e on 28.02.2020. The adjoining shops of applicant's building had been burnt. During riots, the situation of the area was tense and curfew like situation was prevailing all over North-East District of Delhi. People hardly visited their shops and did not come out of their houses due to tense atmosphere because of riots. Their statements were recorded by the police U/s 161 Cr.P.C as per their availability. It is further argued that

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there is no statutory period prescribed for recording of statement(s) of witnesses. As regards, statement(s) U/s 164 Cr.P.C, it is argued that there was adverse medical situation due to Covid-19 pandemic and on account of complete lockdown in the country, only urgent matters were being taken up or called in Court(s) on priority basis and as such, delay was occasioned in recording the statements U/s 164 Cr.P.C.

21. I have analysed the judgments aforesaid relied upon by the learned counsel for the applicant. ***In my considered opinion, the statements of witnesses can be said to be delayed when the witnesses are known to the police and yet police do not record their statements; whereas, in a case of rioting, police hardly has any idea as to who were the witnesses.*** Further, people normally do not come forward and it is admitted position on record that on the date of incident nearly 10,000 PCR calls were recorded in the area of PS Dayalpur. Thereafter, on the basis of these calls, police reverted back and traced out some of the witnesses. Therefore, at this stage, it cannot be said that there is delay in recording of statements of witnesses by investigating agency.

Whether there is cogent evidence which is admissible in the eyes of law against the applicant?

22. The learned counsel for the applicant has relied upon the following judgments:

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- (i) Mohd.Shariff Suleman Nadaf V/s State, AIR 1969 Bom 383** (Date of Decision: 24.07.1968);
- (ii) Balkar Singh & Ors. V/s State of Punjab; AIR 1994 SC 1133** (Date of Decision: 30.01.1992);
- (iii) Sukadev Giri & Ors. V/s State of Odisha, MANU/SC/ 1224/2002;**
- (iv) Sumitra Banik V/s State of West Bengal; (1999) 9 SCC 24** (Date of Decision: 29.07.1999);
- (v) Suresh & Ors. V/s The State of UP; AIR 2001 SC 1344;**
- (vi) Nanubhai Vastabhai Katariya V/s State of Gujarat; MANU/GJ/0389/1999** (DOD: 10.09.1999)

23. The aforesaid judgments have been relied upon by the learned counsel for the applicant to emphasize the point that unless and until an overt act on the part of applicant is shown to have been done on record, his presence at the site/spot can be merely of an “*innocent by-stander*”.

24. I have gone through the aforesaid judgments, however, the learned Special PP has relied upon below mentioned judgments, which goes on to show that the overt act on the part of a person who was member of unlawful assembly is not required. He can be fastened with liability with the aid of Section 149 IPC. The following are the judgments in this regard.

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- (a) *Lalji & Ors. V/s State of UP; AIR 1989 SC 752;*
(b) *State of UP V/s Ravinder @ Bablu & Ors.; Crl.Appeal No.1887/1999* (decided by the Hon'ble Supreme Court on 18.12.1999);

25. Even otherwise, there is overwhelming ocular evidence on record in the form of statement of witnesses also, as set out in the preceding paragraphs.

26. Therefore, at this stage, I find that there is enough material on record to presume that the applicant was very well present at the spot of crime and was exhorting the rioters of a particular community and as such, he did not use his hands and fists, but rioters as “*human weapons*”, who on his instigation could have killed anybody. It is again a matter of record that the investigation in the matter is still under progress as some other persons have to be apprehended, statement of two more persons have been recorded by Crime Branch on 07.07.2020 namely Rahul Kasana and Girish Pal, who both have stated about the conspiracy of communal riots hatched at the residence of applicant on 24.02.2020.

27. The learned counsel for the applicant has very vehemently argued that the applicant was not subjected to judicial TIP. This argument is not tenable because the applicant is the

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Municipal Councillor of the area and is well known and as such, not conducting TIP of the applicant is not fatal to the case of prosecution. It was argued by the learned counsel for the applicant that there is no evidence collected by the police either by way of videos or CCTV footage to prove that the applicant/accused was present at the scene of crime at the time of incident. This argument again does not hold water in the teeth of the statements of eye witnesses on record. There is evidence on record that rioters had broken all the CCTV in the vicinity.

Whether at this stage the Court would require to consider the material contained in Annexure-F to Annexure-N?

28. The learned Special PP has taken strong exception to the aforesaid material to be looked into by the Court. It is very vehemently argued that at the time of consideration on bail application, the Court is not required to look into the defence of the accused. He has relied upon the following judgments to emphasize the aforesaid point:

- (a) *Puran, Shekhar & Anr. V/s Ram Bilas & Anr.*, decided by the Hon'ble Supreme Court on 03.05.2001 in *Crl.Appeal No.599/2001*;
- (b) *Kalyan Chandra Sarkar V/s Rajesh Ranjan @ Pappu Yadav*; decided by Hon'ble Supreme Court on 12.03.2004 in *Crl.Appeal No.324/2004*.

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29. It is further argued that this case is at *pre-cognizance stage* and even at the stage of framing of charge, the law is fairly settled that the defence of accused cannot be looked into. Reference has been made to the celebrated decision of “*State of Orissa V/s Debendra Nath Padhi*”, decided by Hon’ble Supreme Court of India on 29.11.2004 in *Crl.Appeal No.497/2001*.

30. To rebut the aforesaid position, the learned counsel for the applicant has referred to the following judgments:

(a) *Sanjay Chandra V/s CBI; 2011 Vol.IV JCC 2913;*

(b) *Sharad Kumar V/s CBI; 2011 Vol.IV JCC 3078*

to emphasize the point that “*bail is the general rule and jail is an exception*”. The applicant being respectable person of the society will not flout the conditions of bail and shall be available to face the trial and as such, he is entitled for bail.

31. I have given thoughtful consideration to the arguments advanced at bar. I do not agree with the learned counsel for the applicant. It is settled law that it is necessary for the Court dealing with application for bail to consider among the other circumstances the following facts:

(a) *The nature of accusation and the severity of punishment, in case of conviction and the nature of supporting evidence;*

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(b) Reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant;

(c) Prima facie satisfaction of the Court in support of charge.

32. In this case, it is apparent that witnesses, whose statements have been recorded are residents of same locality and they can easily be threatened by a powerful person like the applicant.

33. Even if there is no video footage or CCTV footage, showing the presence of applicant at the spot, but there is enough ocular evidence available on record.

Whether extra-judicial confession of co-accused Haseen @ Mullaji @ Salman exculpates the applicant?

34. I have gone through the extra-judicial confession, which is in the form of transcript of some telephonic conversations of aforesaid co-accused with some third persons.

35. In my considered opinion, the extra-judicial confession of the aforesaid co-accused cannot be seen in isolation and the same has to be read with his disclosure statement, because in his disclosure statement the said co-accused has categorically

stated that on the instigation of applicant, he and other co-accused persons namely Nazim, Kasim, Sabir and Sameer Khan had killed Shri Ankit Sharma and thrown his dead body into the nala.

36. From the aforesaid conspectus of facts, I find that the riots in the area of North-East Delhi were carried out in an organized manner and as part of deep-rooted conspiracy and the involvement of applicant is being investigated upon with regard to his connection with members of *PFI, Pinjratod, Jamia Co-ordination Committee, United Against Hate Group* and *anti-CAA protesters*. That is, however, subject matter of another FIR as well as the proceedings being conducted by Enforcement Directorate (E.D).

37. Consequently, there is enough material on record in terms of ocular statement(s) of P.Ws, which prima-facie establish the presence of applicant at the spot.

38. The possibility cannot be ruled out that if released on bail at this stage, the applicant will threaten the witnesses.

39. Considering the gravity of offence, I do not find any merit in the bail application. The bail application is accordingly dismissed.

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40. It is hereby clarified that anything stated hereinabove in this order is based upon prima analysis of material available on record at this stage which is yet to be tested on the touchstone of trial.

41. A copy of this order be sent to learned counsel for the applicant on her e-mail.

(VINOD YADAV)
DUTY JUDGE/ASJ-03(NE)/KKD/13.07.2020