

State V/s Gulfam: FIR No.90/2020: PS Dayalpur

Bail Application No.1384/2020

State V/s Gulfam

FIR No.90/2020

U/s 147/148/149/436/120-B IPC And Section 3 PDPP Act

PS: Dayalpur

14.10.2020

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri Amit Prasad, Ld. Special PP for the State alongwith IO,
ASI Surender Pal.

Shri Anish Mohd., Ld. Counsel for accused Gulfam/applicant.

ORDER

I have heard arguments advanced at bar by both the sides and perused the report as well as the chargesheet filed in the matter.

2. The learned counsel for the applicant has very vehemently argued that the applicant has been in judicial custody in the matter since 08.05.2020. He has been falsely implicated in the matter. There is no legally sustainable evidence against him. The applicant was not a part of unlawful assembly/riotous mob. No recovery of any sort has been effected from the applicant. The TIP of the applicant was not got conducted in the matter. No CCTV footage of the alleged incident is available on record which could depict the presence of applicant at the scene of crime on the date of alleged incident. The CDR location of the applicant at the scene of crime on the date of alleged incident is of no consequences to the prosecution as he is resident of the same locality/area. Besides his own disclosure statement, there is no other incriminating evidence to connect the applicant with the commission of crime in the present matter. The applicant has clean past antecedents. It is further argued that the investigation in the matter is complete; chargesheet has already been filed; the applicant is no more required for any custodial interrogation and no useful purpose would be served by keeping him behind bars, as the trial in the matter is likely to take long time; and furthermore

the applicant is not a previous convict. In the end, it is submitted that applicant has already been enlarged on bail in connected cases, being case FIRs No.86/2020 and 116/2020 (both pertaining to PS Dayalpur) by this Court vide detailed orders dated 29.09.2020 and as such, the applicant is also entitled for grant of bail in the present matter as well, as the facts of all the aforesaid cases are somewhat similar in nature.

3. Per contra, learned Special PP for the State has very vehemently argued that this is one of the cases of riots near “*Chand Bagh*” and “*Brijpuri Puliya*”, which spread on Wazirabad Road and Karawal Nagar Road as well upto Sherpur Chowk, including Shiv Vihar tiraha and Mahalaxmi Enclave. It is emphasized that the present case was registered pursuant to receipt of DD No.30A to SI Shiv Charan which was regarding vandalism of Shiv Temple, situated at Gali No.5, Moonga Nagar, Delhi by the riotous mob on 25.02.2020. It is argued that applicant was formally arrested in the present matter on 05.03.2020 at Mandoli Jail, pursuant to the disclosure statement made by him in case FIR No.86/2020, PS Dayalpur. It is further argued that the CDR location qua the mobile phone number 8810454529 belonging to the applicant confirmed his presence at the scene of crime on the date of incident. It is further argued that besides the present matter, applicant is also involved in three other cases of riots, being case FIRs No.86/2020, 100/2020 and 116/2020, all pertaining to PS Dayalpur.

4. In the end, it is argued that the investigation of the case is still in progress; many persons who were part of the “*riotous mob*” need to be identified and arrested; the “*conspiracy angle*” behind such a large-scale riot needs to be unearthed; and there is every chance that if released on bail, the applicant may threaten the witnesses, who are residents of the same locality and as such, the dismissal of the instant application has been prayed for.

5. I have given thoughtful consideration to the arguments advanced at bar.

6. It is matter of record that arrest of applicant in the present matter has been formally effected at Mandoli Jail, pursuant to disclosure statement made by him in case FIR No.86/2020, PS Dayalpur. The applicant has already been enlarged on bail in said case FIR No.86/2020, PS Dayalpur by this Court vide detailed order dated 29.09.2020. Besides his own disclosure statement, *prima facie* there is nothing on record to connect the applicant with the commission of crime in this case. The applicant has also been enlarged on bail in connected case being case FIR No.116/2020, PS Dayalpur by this Court vide detailed order dated 29.09.2020. Admittedly, the applicant has neither been named in the present FIR nor there are specific allegations against him. There is no CCTV footage available on record to corroborate the prosecution's case. There is no independent eye witness corroboration of the incident in question. Besides the case(s) of rioting, the prosecution has not been able to point out any previous involvement of applicant in any other case(s). It is further a matter of record that applicant is resident of the same locality/area and as such, the CDR location of applicant is also not of much consequence to the prosecution. The investigation in the matter is complete and chargesheet has already been filed. The trial in the matter is likely to take long time. The applicant cannot be made to incarcerate in jail for infinity merely on account of the fact that other persons who were part of the riotous mob have to be identified and arrested in the matter.

7. Considering the facts and circumstances of the case in totality, applicant Gulfam is admitted to bail on his furnishing a Personal Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one surety in the like amount to the satisfaction of Ld.CMM/Ld.Illaka MM/Ld.Duty MM, subject to the condition that he shall not tamper with the evidence or influence any witness in any manner; he shall maintain peace and harmony in the locality and that he shall

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appear before the Court on each and every date of hearing to attend the proceedings in accordance with the terms of Bail Bond, which would be executed by him; he shall furnish his mobile number to SHO, PS Dayalpur upon his release from the jail and will ensure the same to be in working condition and further he shall also get installed “*Aarogya Setu App*” in his mobile phone.

8. The application stands disposed off.

9. It is hereby clarified that anything stated hereinabove shall not be construed as expressing any opinion on the final merits of the case, as the case is at “*pre-cognizance/pre-committal stage*”.

10. A copy of this order be sent to Superintendent Jail concerned as also to the learned counsel for the applicant through electronic mode.

VINOD
YADAV
(VINOD YADAV)

Digitally signed
by VINOD YADAV
Date: 2020.10.14
12:55:09 +05'30'

DUTY JUDGE/ASJ-03(NE)/KKD/14.10.2020