

State V/s Sameer Khan: FIR No.65/2020: PS Dayalpur (Crime Branch)

Bail Application No.1282/2020

## **State V/s Sameer Khan**

FIR No.65/2020

U/s 109/114/147/148/149/436/153-A/505/365/302/201/120-B/34 IPC

PS: Dayalpur (Crime Branch) (*Ankit Sharma murder case*)

22.10.2020

### **THROUGH WEBEX VIDEO CONFERENCING**

Present: Shri Manoj Chaudhary, Ld. Special PP for the State alongwith IO, Inspector Amleshwar Rai and ACP Surender Kumar Gulia.

Shri Dinesh Tiwari, Ld. Counsel for accused Sameer Khan/applicant.

### **ORDER**

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

2. The learned counsel for the applicant has very vehemently argued that the applicant has been falsely implicated in the matter by the investigating agency. He has been in judicial custody since 10.04.2020. He is a young boy, aged about 25 years and is the sole bread earner of his family, which consists of his old aged parents. It is further argued that there has been an “*unexplained delay*” in registration of FIR in the matter in as much as information about death of IB Officer Shri Ankit Sharma was received at Police Station Dayalpur at about 18:06 hours on 25.02.2020; whereas the FIR was registered at around 23:54 hours on 26.02.2020 and this time gap period was used by the investigating agency to fill in the lacunas and stage manage the circumstances of the incident. The applicant has not been specifically named in the FIR. No recovery of any fire-arm/weapon has been effected from the applicant. No site plan of the alleged presence of applicant at the scene of crime has been filed on record. It is next argued that none of the witnesses in their evidence has stated about the applicant being involved in the murder of IB Officer Shri Ankit Sharma, although the incident has not been

denied. It is emphasized that PW Gyanender Kumar Kochar and Vikalp Kochar have given very minute details about the murder of Shri Ankit Sharma, but they have not named the applicant therein. Even PW Shamshad Pradhan did not say a word about the applicant being involved in the murder of Shri Ankit Sharma. The applicant has not been named by witness Pradeep Verma in his statement recorded U/s 164 Cr.P.C. There is no direct evidence in the matter against the applicant. For want of “*Test Identification Parade*” (TIP) of the applicant through PW Akash, Shri Gyanender Kumar Kochar and Vikalp Kochar, the applicant cannot be implicated in this case. PW Akash is a “*planted witness*”, as he did not disclose about the incident to the police till 11.03.2020. The applicant has been arrested in the matter on the basis of disclosure statement dated 11.03.2020, made by co-accused Salman @ Haseen @ Mullaji. In the end, it is argued that the investigation in the matter is complete; chargesheet has already been filed; the applicant is no more required for custodial interrogation; and no useful purpose would be served by keeping him behind bars in the matter. It is also claimed that the applicant has clean past antecedents.

3. Per contra, the learned Special PP for the State has very vehemently argued that 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 main accused Tahir Hussain and his goons*, who had gathered in his office and after killing his son, his body was thrown into the nala from the masjid.

4. 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 Nagar 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.

5. Further, during the course of investigation, on inspection of the building of main accused Tahir Hussain, 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 main accused Tahir Hussain had been used by rioters/miscreants/other persons (including the applicant) 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 main accused Tahir Hussain's house.

6. 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.

7. 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 main accused Tahir Hussain at the scene of crime, instigating the rioters of a particular community and exhorting them to kill the peoples of other community.

8. It is next argued that a curious analysis of the two statements of PW Akash dated 11.03.2020 and 09.04.2020 recorded in the matter clearly and unerringly establishes that the applicant was part of riotous mob which had

indulged in arsoning, looting and torching of public and private property and on the instigation of main accused Tahir Hussain, the said mob had committed the murder of IB Officer Ankit Sharma.

9. It is emphasized that the applicant is resident of Nand Nagri and his presence at the time of incident at the spot was not natural. His CDR location clearly establishes that on 25.02.2020 he was present at or around Chand Bagh puliya from 05.00 PM till 6.35 PM. After recording the disclosure statement of co-accused Salman @ Haseen @ Mullaji, when the police tried to apprehend him, the applicant was found absconding and he could be ultimately apprehended on 09.04.2020. As regards the argument of learned counsel for the applicant that why PW Akash did not approach the police prior to 11.03.2020, it is argued that the witness might have got scared after seeing the murder of a young IB Officer and he might not have mustered the courage to report the matter to the police out of fear. Thereafter, he came forward to report the matter to the police only on 11.03.2020. The delay aforesaid cannot be attributed to the police.

10. It is next contended that CDR location/movement of the applicant is a corroborative evidence. The TIP of the applicant was not required in the matter as there was clear identification of the applicant by eye witness. The learned Special PP has taken me through page 28 of chargesheet; wherein, in para 10, it has been mentioned that the rioters had broken down virtually every CCTV in the vicinity and had damaged the DVRs thereof and as such, the applicant could not be captured in the CCTV footage.

11. It is further argued that the bail application of principal accused Tahir Hussain has already been dismissed by this Court vide detailed order dated 13.07.2020; whereas bail application of co-accused Shoaib Alam was dismissed by this Court vide order dated 04.08.2020 while bail applications of co-accused Firoz and Mohd. Javed was dismissed by this Court vide common order dated

28.08.2020; while bail application of another co-accused namely Gulfam was dismissed by this Court vide detailed order dated 08.09.2020 and the role attributed to the applicant in the matter being on the same/identical footing as that of co-accused Shoaib Alam, Firoz, Mohd. Javed and Gulfam, as such the present bail application also deserves dismissal.

12. As regards the contention of the learned counsel for the applicant that there is delay in recording of FIR in the matter, it is argued that the riots at or around the Chand Bagh Pulia were “*very fierce*” from 23.02.2020 till 26.02.2020. Several persons were injured; public and private property(ies) worth crores of rupees were vandalized, arsoned and torched. There was curfew like atmosphere at or around the area. The police officials of PS Dayalpur remained busy in law and order duty and as such, delay in recording of FIRs took place. In support of his aforesaid contention, the learned Special PP has relied upon the *decision dated 06.07.2020*, passed by the Hon’ble High Court of Delhi in *Bail Application No.922/2020*, titled as, “*Raiees Khan V/s State of NCT of Delhi*”. Para 11 of the said decision is re-produced hereunder:

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*11. No doubt, there was a delay in registration of the FIR, but it was only because of the circumstances prevalent at that time. On the day of incident, I am told about 18689 PCR calls were received on a single day; 3450 calls were from the Dayalpur area itself and then it took time to register the FIRs; the last FIR being registered on 28.03.2020. Pandemic Covid-19 further delayed the investigation.*

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13. It is very vehemently argued that the offence alleged against the applicant is very serious in nature; further investigation in the matter is still on and if released on bail at this stage, the applicant can hamper the further investigation. It is next contended that the public witness Akash is resident of the same locality and if released on bail, the applicant may threaten or intimidate him to desist from giving evidence in the matter.

14. I have given thoughtful consideration to the arguments advanced at bar. Before proceeding to discuss the rival arguments, it is worthwhile to note that Section 149 IPC creates a specific and distinct offence. Its two ingredients are:

- (i) *Commission of an offence by any member of an unlawful assembly and;*
- (ii) *Such offence must have been committed in prosecution of the common object of that assembly or must be such as members of that assembly knew it be likely to be committed.*

15. Furthermore, in “*Masalati V/s State of UP*”, AIR 1965 SC 202, the Hon’ble Supreme Court has been pleased to lay down as under:

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*What has to be proved against a person, who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entered alongwith the other members of the assembly. The common object is defined by Section 141 IPC. Section 142 provides as whoever being aware of the facts which run any assembly is unlawful assembly, intentionally joins that assembly or continues in it is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons, actuated by and entertaining one or more of the common objects specified by five clauses of Section 141 IPC is unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified by Section 141 IPC. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons, who were nearly passive witnesses and had joined the assembly as a matter of idle curiosity, without intending to entertain the common object of the assembly.”*

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*(emphasis supplied)*

16. From the evidence of a number of witnesses recorded in the matter, it is *prima facie* apparent that the “**riotous mob**” armed with “**lethal weapons**” had

engaged in vandalism, looting and torching of public and private properties and their *main objective was to cause maximum damage to the lives and properties of persons belonging to other community*. Therefore, at this stage it cannot be said with certainty that the applicant did not have a common object with the other persons of unlawful assembly. The “*common object*” of this kind of riotous mob can be easily inferred therefrom. This Court is conscious that at this stage the trial is not being dealt with. We are at pre-cognizance stage and this Court has limitations in making in-depth analysis of the statements of witnesses, which are yet to be tested on the anvil of trial. Whether he can be convicted in the matter with the aid of Section 149 IPC is a preposterous conclusion at this stage, as the evidence is yet to be led in the matter. However, from the aforesaid behavior of “*riotous mob*”, the “*common object*” can be inferred at this stage.

17. It is apparent on record from the statements of several witnesses that the applicant and other similarly placed persons had been instigated on communal lines by main accused Tahir Hussain, as a consequence whereof they were lying charged to attack all and sundry from the other community.

18. I find substance in the arguments of learned Special PP that there is enough material on record at this stage which clearly identifies the *applicant to be part of “riotous mob”* which had indulged in arsoning, looting and vandalizing public and private property; chanting communal slogans and attacking the persons of other community. It is part of record that several persons were injured by suffering gunshot injuries, namely Ajay Goswami, Ajay Jha and Prince Bansal; whereas, IB Officer Ankit Sharma lost his life.

19. PW Akash has categorically identified the applicant to be part of the riotous mob that had brutally murdered IB Officer Ankit Sharma (supplementary statement of this witness recorded U/s 161 Cr.P.C by the IO on 09.04.2020; page 603 of the chargesheet).



20. In my considered opinion, we are at “*pre-cognizance/pre-committal stage*” in the matter and at this stage, the Court considering the bail matter has to consider the material collected by the investigating agency at its face value and at this stage, “*mini trial*” cannot take place. Even the issue of TIP, whether it was required in the matter or not shall be considered at the stage of trial.

21. It is clearly apparent that the CDR location of the mobile phone bearing number 9911275010, allegedly being used by the applicant was at or around the scene of occurrence on the date of incident. It is not at all the case of applicant that the aforesaid mobile does not belong to him. As regards the non-filing or otherwise qua Certificate U/s 65-B of Indian Evidence Act alongwith the CDR of the applicant is concerned, it is clarified that this is not the appropriate stage to venture into the said field and the effect thereof would be seen during the course of trial. For the present, the delay in recording of FIR in the matter has been explained by the prosecution.

22. The bail application of principal accused namely Tahir Hussain has already been dismissed by this Court vide detailed order dated 13.07.2020; whereas bail applications other co-accused persons namely Shoaib Alam, Firoz, Mohd. Javed and Gulfam have also been dismissed by this Court vide detailed orders dated 04.08.2020, 28.08.2020 and 08.09.2020 respectively and the role attributed to the applicant in the matter being on the same/identical footing as that of aforesaid four co-accused persons, the present bail application also deserves dismissal.

23. Considering the facts and circumstances of the case in totality, I do not find it to be a fit case for grant of bail. The bail application accordingly stands dismissed.

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24. 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*”.

25. A copy of this order be sent to learned counsel for the applicant through electronic mode.

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by VINOD YADAV  
YADAV Date: 2020.10.22  
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(VINOD YADAV)

ASJ-03(NE)/KKD COURTS/DELHI/22.10.2020