

State V/s Shah Alam: State V/s Rashid Saifi And State V/s Mohd. Shadab:  
All in FIR No.109/2020: PS Dayalpur

Bail Application No.1502/2020 <b>State V/s Shah Alam</b> FIR No.109/2020 U/s 147/148/149/427/436/120-B IPC: PS Dayalpur	Bail Application No.1504/2020 <b>State V/s Rashid Saifi</b> FIR No.109/2020 U/s 147/148/149/427/436/120-B IPC: PS Dayalpur	Bail Application No.1509/2020 <b>State V/s Mohd. Shadab</b> FIR No.109/2020 U/s 147/148/149/427/436/120-B IPC: PS Dayalpur
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28.10.2020

**THROUGH WEBEX VIDEO CONFERENCING**

Present: Shri Amit Prasad, Ld. Special PP for the State alongwith  
Inspector (Investigation), PS Dayalpur.

Shri Dinesh Tiwari, Ld. Counsel for all the accused persons  
namely Shah Alam, Rashid Saifi and Mohd. Shadab/applicants.

**COMMON ORDER**

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

2. All the aforesaid three bail applications in the matter are being disposed  
off by way of a common order, as the facts involved therein are common.

3. Before proceeding further, it would be appropriate to note down the  
facts which led to registration of FIR in the matter. The case FIR in the matter was  
registered on 04.03.2020 on the written complaint of one Shri Om Singh, S/o Shri  
Sumer Singh, wherein he stated that he had been running a paan-bidi shop at E-5,  
Khajuri Khas, at Karawal Nagar, which was vandalized and burnt by the riotous  
mob on 24.02.2020, as a result of which he suffered loss to the tune of approximate  
Rs.55,000/- to Rs.60,000/-. He further stated cash amounting to Rs.6,000/- was also  
looted from his shop. During investigation, it was revealed that the riotous mob had  
also looted, vandalized/damaged and set on fire several other shops and vehicles in  
the said area on 24.02.2020. Besides complainant Om Singh, seventeen (17) other  
complaints of similar nature were also received in the PS, which were later on  
clubbed in the present case FIR.

**Common Arguments qua all the applicants**

4. The learned counsel has very vehemently argued that all the applicants have been falsely implicated in the matter by the investigating agency, being residents of the same area. All of the them have been in judicial custody since 10.03.2020. It is argued that none of the applicants has been specifically named in the FIR by any of the complainant(s). There is an “*unexplained delay*” of about eight days in registration of FIR as the alleged incident in the matter took place on 24.02.2020; whereas, the case FIR in the matter was registered on 04.03.2020. The investigation in the matter has not been conducted in an impartial and fair manner and persons belonging to a particular community have been falsely roped in by the investigating agency. No recovery of any sort has been effected from any of the applicants. The TIP of the applicants was not got conducted in the matter. No CCTV footage of the alleged incident is available on record which could depict the presence of applicants at the scene of crime on the date of alleged incident. It is further argued that the CDR location of the applicants relied upon by the police is of no help to it because they are residents of the same locality/area. PW, Constable Pawan is a “*planted witness*” and identification of applicants by him is hardly of any consequence as the alleged incident in the matter occurred on 24.02.2020 and as per the story propounded by the prosecution this witness had witnessed the alleged incident; then why he waited till 05.04.2020 (when his statement U/s 161 Cr.P.C was recorded by the IO) to name the applicants, when he had categorically seen and identified the applicants indulging in riots on the date of incident, i.e 24.02.2020. Being a police official, what stopped him from reporting the matter then and there in the PS or to bring the same in the knowledge of higher police officers. This casts a serious doubt on the credibility of this witness. Similarly, question marks have also been raised qua the statements of public witnesses namely Rajbir Singh, Shahbuddin Malik, Pradeep Kumar Verma, Surender Singh, Irshad and Nitin by arguing that their alleged statement(s) under Section 161 Cr.P.C have been recorded by the IO recently after filing of the chargesheet; whereas the alleged incident took

State V/s Shah Alam: State V/s Rashid Saifi And State V/s Mohd. Shadab:  
All in FIR No.109/2020: PS Dayalpur

place on 24.02.2020; what made the aforesaid alleged eye witnesses to wait for such a long period to narrate the incident to IO does not appeal to senses and the same smacks of malafide intention on the part of investigating agency. He has further argued that “*pre-trial detention has been deprecated by the Courts*” and “*bail is the rule and jail is an exception.*” In the end, it is argued that the investigation in the matter is complete; chargesheet has already been filed; the applicants are no more required for custodial interrogation; and no useful purpose would be served by keeping them behind bars in the matter, as trial of the case is likely to take long time. It is claimed that the applicant has clean past antecedents.

5. It is argued that applicant Shah Alam is aged about 29 years; applicant Rashid Saifi is aged about 23 years while applicant Mohd. Shadab is aged about 26 years and all of them are the sole bread earner(s) of their respective families. Applicants Shah Alam and Mohd. Shadab are stated to be married.

6. Per contra, learned Special PP for the State has very vehemently argued that the protests against Citizenship (Amendment) Act (CAA) were going on for last one and half month in the area of PS Dayalpur at Chand Bagh and Brijpuri Puliya alongwith the other area of North East Delhi. On 23.02.2020, protests turned violent and protesters at Chand Bagh spread on Wazirabad Road and Karawal Nagar Road as well, upto Sherpur Chowk and Mahalaxmi Enclave. The communal riots continued till 26.02.2020. During this period, a number of cases of riots have been registered at PS Dayalpur and other police stations of North East District. A heavy damage to government and public property and loss of life was reported and paramilitary forces had to be deployed to control law and order situation in the area.

7. It is submitted that all the applicants are accused in several cases of rioting registered at various police stations of North-East District of Delhi. They were “*active members*” of the “*riotous mob*”, which was instigated by principal

State V/s Shah Alam: State V/s Rashid Saifi And State V/s Mohd. Shadab:  
All in FIR No.109/2020: PS Dayalpur

accused Shri Tahir Hussain. They also remained involved in the act of communal violence, rioting, chanting of communal slogans, arsoning, looting and vandalizing the shops at or around the scene of crime. It is further argued that all the aforesaid applicants were initially arrested in case FIR No.101/2020, PS Khajuri Khas. The applicants were formally arrested in the present case on 22.04.2020 at Mandoli Central Jail. All the aforesaid applicants have been categorically identified by Constable Pawan (No.1139/NE), who was present on duty at the scene of crime on the date of incident. It is further argued that during the course of further investigation, statements of independent public witnesses namely Rajbir Singh, Shabuddin Malik, Pradeep Kumar Verma, Surender Singh, Irshad and Nitin were recorded in the matter U/s 161 Cr.P.C, who have categorically named the applicants to be part of the riotous mob on the date of incident. It is further argued that from 23.02.2020 till the first week of March' 2020, the police remained busy in controlling the riots, the number of IOs in the Police Station was meagre and most of the police officers were busy in law and order duty and as such, the FIR upon the complaints of complainants in this case could not be recorded in time. There was curfew like atmosphere at or around the area. In support of his 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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8. In the end, it is argued that although the chargesheet in the matter has been filed, yet further 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 applicants may threaten the witnesses, who are residents of the same locality and as such, the dismissal of the applications in question have been prayed for.

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

10. The applicants have neither been named in the FIR nor there are any specific allegations against them by any of the complainants. Admittedly, no CCTV footage/viral video capturing the presence of applicants at the scene of crime on the date of incident is available on record. The identification of applicants by Beat Constable Pawan is hardly of any consequence, as this Court is not able to understand as to why said Beat Constable waited till 05.04.2020 (when his statement U/s 161 Cr.P.C was recorded by the IO) to name the applicants, when he had categorically seen and identified the applicants indulging in riots on the date of incident, i.e 24.02.2020. There is gap of about 40 days between the date of incident and recording of statement of Beat Constable Pawan in the matter by the IO and no plausible explanation in this regard has been given by the IO. Being a police official, what stopped Beat Constable Pawan from reporting the matter then and there in the PS or to bring the same in the knowledge of higher police officers. This casts a serious doubt on the credibility of this witness. It is further relevant to note here that the applicants are residents of the same locality/area and as such, it is not surprising that their CDR location is being depicted at or around the scene of crime on the date of incident. Furthermore, even the statements under Section 161 Cr.P.C of public eye witnesses namely Rajbir Singh, Shabuddin Malik, Pradeep

State V/s Shah Alam: State V/s Rashid Saifi And State V/s Mohd. Shadab:  
All in FIR No.109/2020: PS Dayalpur

Kumar Verma, Surender Singh, Irshad and Nitin have been recorded by the IO recently much after the filing of chargesheet. Their statements identifying the applicants to be part of riotous mob is also doubtful, as a mute question still stares this Court as to why the aforesaid eye witnesses/public witnesses did not name the applicants on the date of incident itself and what made them to wait for so long. Further, from among the riotous mob consisting of several hundred persons, till date the investigating agency has been merely able to identify and chargesheet the aforesaid three applicants only.

11. The Hon'ble High Court of Delhi vide *order dated 07.10.2020*, passed in *Bail Application No.2696/2020*, titled as, "*Irshad Ahmed V/s State of NCT of Delhi*", has been pleased to observe in paragraphs No.3 and 4 as under:

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*3. It is not in dispute that there is no electronic evidence such as CCTV footage or photos to implicate the petitioner in the present case. As per the statement of Constable Pawan and Constable Ankit (both are eye witnesses and were present at the spot), they had identified the petitioner and other co-accused. However, they have not made any complaint on the date of incident, i.e 25.02.2020, whereas the FIR was lodged on 28.02.2020. Thus, the said witnesses seem to be planted one.*

*4. Chargesheet has already been filed. Trial of the case shall take substantial time. However, without commenting on the merits of the case, this Court is inclined to grant bail to the petitioner.*

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12. Duly bound by the observations made by Hon'ble High Court of Delhi while deciding the bail application of *Irshad Ahmed* (supra) vis-à-vis considering the fact that investigation in the matter is complete and chargesheet has already been filed; trial in the matter is likely to take long time; the applicants cannot be made to incarcerate in jail for infinity merely on account of the fact that other

State V/s Shah Alam: State V/s Rashid Saifi And State V/s Mohd. Shadab:  
All in FIR No.109/2020: PS Dayalpur

persons who were part of the riotous mob have to be identified and arrested in the matter. The argument of learned Special PP that besides the present matter the applicants are also involved in several other cases of rioting is of no help to the prosecution, as it is settled law that the present bail application(s) have to be decided in the context of the present FIR and the investigation so concluded.

13. Considering the facts and circumstances of the case in totality, all the applicants namely Shah Alam, Rashid Saifi and Mohd. Shadab are admitted to bail on their furnishing a Personal Bond in the sum of Rs.20,000 (Rupees Twenty Thousand Only) each with one surety in the like amount each to the satisfaction of the Ld.CMM/Ld.Illaka MM/Ld.Duty MM, subject to the condition that they shall not tamper with the evidence or influence any witness in any manner, they shall maintain peace and harmony in the locality and that they shall appear before the Court on each and every date of hearing to attend the proceedings in accordance with the terms of Bail Bond(s), which would be executed by them; they shall furnish their mobile number(s) to SHO, PS Dayalpur upon their release from the jail and will ensure the same to be in working condition and further they shall also get installed “*Arogya Setu App*” in their mobile phone(s).

14. All the applications stand disposed off.

15. A copy of this order be placed in all the aforesaid case files.

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

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

VINOD  
YADAV

Digitally signed  
by VINOD YADAV  
Date: 2020.10.28  
15:04:00 +05'30'

(VINOD YADAV)

ASJ-03 (NE)/KKD COURTS/28.10.2020