

State V/s Muntajim @ Musa: FIR No.65/2020: PS Dayalpur (Crime Branch)

Bail Application No.1359/2020

State V/s Muntajim @ Musa

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*)

29.10.2020

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri Manoj Chaudhary, Ld. Special PP for the State alongwith IO, Inspector Amleshwar Rai.

Mohd. Athar, Ld. Counsel for accused Muntajim @ Musa/applicant.

ORDER

This is an application filed U/s 438 Cr.P.C on behalf of applicant, seeking anticipatory bail in the matter.

2. I have heard arguments advanced at bar from both the sides and perused the report filed in the matter.

3. The learned counsel for the applicant has very vehemently argued that applicant has been falsely implicated in the present matter by the investigating agency and has nothing to do with alleged incident. The applicant was completely taken aback on seeing the Notice under Section 160 Cr.P.C, dated 28.09.2020, issued by the IO of the case, thereby directing him to appear before him on 30.09.2020. It is argued that since the medical condition of the wife of applicant was critical, as she had delivered a baby on 25.09.2020, therefore, he could not have been able to appear before the IO on 30.09.2020 and as such he sent a written request/application for exemption to him, however, to show his bonafides, he had duly mentioned his mobile number in the said application.

4. It is argued that applicant has been falsely roped in the matter merely on the basis of disclosure statements made by co-accused persons namely Sameer Khan and Nazim. He has not been captured/visible either in any CCTV footage or any viral video(s). His CDR location is of no help to the investigating agency as he is resident of the same locality/area. It is further argued that the applicant has not been identified by any of the public witnesses (viz. PWs Gyanender Kumar Kochar, Vikalp Kochar, Pradeep Verma and Shamshad Pradhan) cited in the matter. The applicant has not been specifically named in the FIR. There is no direct evidence available against the applicant to connect him with the commission of alleged crime in the matter.

5. It is further argued that the applicant has been a patient of intestine infection and had already undergone operation for the same; he has been advised by the doctor(s) to abstain from running or pulling any heavy weight. The applicant is the sole bread earner of his family; he has to look after his ailing wife and the infant, both of whom are presently under constant treatment of doctors. Some medical documents in support of aforesaid contention have also been filed on record. In the end, it is argued that the investigation in the matter is complete; chargesheet has already been filed; applicant is permanent resident of Delhi and there are no chances of his absconding or tampering with the prosecution witnesses and as such, grant of anticipatory bail to him in the matter has been prayed for. It is also claimed that the applicant has clean past antecedents.

6. Per contra, the learned Special PP has very vehemently argued that this is an unfortunate case of brutal murder of young officer of Intelligence Bureau (I.B) namely Shri Ankit Sharma by the riotous mob in the evening of 25.02.2020 and the applicant was an active member/part of the said riotous mob. It is emphasized that the applicant is resident of Nand Nagri and his presence at the scene of crime (SOC)/spot at the time of incident was not natural. His CDR location has been found to be at the scene of crime/spot on both days, i.e on

24.02.2020 and 25.02.2020, when the intensity of the communal riots was maximum. It is further argued that CDR analysis qua the mobile phone of applicant clearly establishes that he had been in regular touch/contact with co-accused persons namely Sameer Khan and Haseen @ Mullaji @ Salman, both of whom played active role in the murder of Shri Ankit Sharma. Co-accused Haseen @ Mullaji @ Salman in his disclosure statement had categorically admitted having stabbed Ankit Sharma number of times with his knife and his accomplices having hit him with dandas and thereafter throwing his dead body in the nala. It is further argued that the CDR analysis qua the mobile phone of applicant reveals that his movement was not at one particular place on the day of incident; he was constantly moving in and around the area, as sometimes his CDR location was found at Khajuri Khas and sometimes it was noticed at Karawal Nagar, which is sufficient indication qua his involvement in the present matter. The learned Special PP has also referred to the intercepted phone call(s) and transcripts thereof, where co-accused Haseen @ Mullaji @ Salman has referred his name in his conversation. It is further argued that applicant and aforesaid two co-accused persons namely Sameer Khan and Haseen @ Mullaji @ Salman are residents of Nand Nagri. It is further argued that the presence/custody of applicant is very much required to get him identified by way of judicial *Test Identification Parade* (TIP) from public witnesses namely Vikalp Kochar, Aakash, Bharat @ Kalu and Pradeep Verma. For conducting his judicial TIP, his custodial interrogation is must because once the name of an accused surfaces on record, then corroborating evidence has to be collected by the investigating agency.

7. Commenting upon the past antecedents of applicant, it is argued that it has been wrongly claimed in the application that applicant has clean past antecedents. It is argued that besides being an accused in the cases of communal riots, the applicant has also been previously involved in cases of heinous nature like kidnapping and rape in the area of PS Nand Nagri and case FIRs No.60/2014, 01/2017 and 22/2018 are already lying registered against him at PS Nand Nagri.

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8. It is further argued that considering the gravity/magnitude of offence involved, this Court has already dismissed the regular bail applications of principal accused Tahir Hussain and other co-accused persons namely Shoaib Alam, Firoz, Mohd. Javed, Gulfam and Sameer Khan vide various orders and as such, the instant application also deserves dismissal. In the end, it is submitted that the custodial interrogation of applicant is very much necessary to unearth the entire conspiracy in the matter.

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

10. It is common knowledge that the dreary days of 24.02.2020 and 25.02.2020 saw parts of North-East Delhi gripped by a communal frenzy, reminiscent of carnage during the days of partition. Soon, the riots spread like wildfire across the smoke-grey skyline of Capital, engulfing new areas and snuffing out more and more innocent lives. The present matter relates to the brutal murder of young IB official namely Shri Ankit Sharma by the riotous mob on the evening of 25.02.2020. The CDR analysis qua the mobile phone of applicant categorically reveals that he had been in regular touch with co-accused persons namely Sameer Khan and Haseen @ Mulla ji @ Salman, who were actively involved in rioting in the area. His name has duly surfaced/referred to in the intercepted phone call(s) and transcripts between co-accused Haseen @ Mullaji @ Salman and his friends/relatives. This Court also cannot lose sight of the fact that the applicant and both the aforesaid co-accused persons are residents of Nand Nagri and their CDR location being found at the scene of crime (SOC)/spot on the day of incident cannot be a mere coincidence. The learned counsel for the applicant has wrongly claimed in the application that applicant is resident of Chand Bagh area, instead it is quite clear from the record that he is resident of Nand Nagri and thus, his presence at the scene of crime (SOC)/spot on 24.02.2020 and 25.02.2020 cannot be termed as natural. Further, it has also been wrongly claimed

on part of the applicant that he has clean past antecedents. The “*previous conviction/involvement report*” filed by the investigating agency alongwith the reply clearly and unerringly reveals that besides the present case, applicant has also been previously involved in three cases of PS Nand Nagri, being case FIRs No.60/2014, 01/2017 and 22/2018, which all are of heinous offences.

11. I find substance in the arguments of learned Special PP for the State that the custodial interrogation of applicant is very much necessary to *unearth the conspiracy for planning, instigating and executing riot action plan*. The allegations against the applicant are grave in nature. His presence/custodial interrogation is also necessary for his identification by way of judicial Test Identification Parade (TIP) from public witnesses namely Vikalp Kochar, Aakash, Bharat @ Kalu and Pradeep Verma. This Court has already dismissed the regular bail application(s) of principal accused Tahir Hussain and co-accused Sameer Khan (with whom he has been regular touch and his name has also surfaced/cropped up in the intercepted phone calls/transcripts of co-accused Haseen @ Mullaji @ Salman).

12. I have also gone through the medical documents qua the wife of applicant filed alongwith the application. Most of the documents are prescription slips and one ultrasound report, all of which pertains to the year 2018 and are not recent ones. In any way, the said medical documents are of no help to the applicant, as the same do not *prima facie* establishes that the wife of applicant is suffering from any serious ailment or otherwise.

13. Considering the facts and circumstances of the case in totality vis-à-vis gravity of offence, I do not find it to be a fit case for grant of anticipatory bail to the applicant. The application for anticipatory bail is accordingly dismissed.

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14. 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*”.

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

VINOD
YADAV

Digitally signed
by VINOD YADAV
Date: 2020.10.29
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(VINOD YADAV)

ASJ-03(NE)/KKD COURTS/29.10.2020