

\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 20.10.2020

Pronounced on: 02.11.2020

+ CRL.M.C. 1521/2020 & CrI.M.A.8046/2020

STATE

..... Petitioner

Through Mr.Aman Lekhi, ASG with Mr.Amit Mahajan, CGSC and SPP, Mr.Rajat Nair, SPP with Mr.Shantanu Sharma, Mr.Ujjwal Sinha, Mr.Aniket Seth, Mr.Dhruv Paride & Mr.Ritwiz Rishabh, Advs.

Versus

FAISAL FAROOQ

.....Respondent

Through Mr. Ramesh Gupta, Sr. Adv. With Mr.Gaurav Kochar, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Present petition has been filed under section 482 and 439(2) Cr.P.C. for setting aside the impugned order and consequential bail granted to accused/respondent vide order/judgment dated 20.06.2020 passed by Sh.Vinod Yadav, learned ASJ, Karkardooma Courts, Delhi in pursuance to FIR No.134/2020 dated 05.03.2020 registered at Police Station Dayal Pur, Delhi for the offences punishable under sections 147/148/149/307/395/436/

455/201/114/505/153-A/120-B IPC.

2. The case of the respondent/accused is that he is an Educationist and is involved in imparting education to the various sections of the population. He runs and manages various schools like the Rajdhani Public School and Victoria Public School and has no criminal antecedents at all. This fact had been enquired from the Investigating Officer during the course of the Bail hearing and has been admitted by the Investigating Officer and duly recorded in the Bail Order dated 20.06.2020. The Learned Sessions Judge also recorded that as per the statement of the Investigating Officer, the Respondent has been running the said Schools for last 18 years without any complaint so far. However, to only stall his release from the jail, the Police authorities have falsely implicated him in another FIR No.73/2020 and arrested him on 22.06.2020, the day, the Respondent was to be released on Bail. These actions of the police authorities are illegal and malafide. The Respondent is seeking redressal of such illegal action separately.

3. Mr.Ramesh Gupta, learned Senior Advocate appearing on behalf of the respondent/accused submitted that the learned Metropolitan Magistrate had also rejected the request of police remand in case FIR No.73/2020 by a detailed order dated 24.06.2020. In addition, the Respondent had never

absconded. As per the Charge Sheet, the respondent had come to the office of the Crime Branch office for interrogation on being called by the Police. The Accused had always been present during the investigation and had joined investigation.

4. Further submitted, the learned Sessions Court while granting the Bail vide the Impugned Order had looked into the records and recorded that the CDR Records of the Mobile Phone of the Respondent showed that on the date of the alleged incident on 24.02.2020, he had called 6 times from his mobile phone to the Police Authorities for help and made complaint about the damage caused to his School.

5. Mr.Gupta submitted that the Respondent had been arrested on 09.03.2020 by the police authorities and after investigation the Charge Sheet has been filed on 03.06.2020. The trial of the case is likely to take time, therefore, the Respondent ought to be granted bail in the present case. Moreover, it is well-established law that there is a distinction between rejection of bail and cancellation of bail already granted. The normal rule is that if bail is granted then it should not be cancelled. Only in case of "*cogent*" and "*overwhelming*" reasons, a bail granted can be cancelled. The present petition does not make out any ground let alone any "*cogent*" or

"overwhelming" ground for cancellation of bail. Thus, the present petition deserves an immediate and forthright dismissal.

6. To strengthen the case of respondent/accused, learned senior advocate has relied upon the case of ***Myakala Dharmarajam & Ors. vs. The State of Telangana: 2020 (2) SCC 743*** wherein the Hon'ble Supreme Court has held as under:

"9. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail."

7. Further, the Hon'ble Supreme Court in the case of ***Dolat Ram & Ors. vs. State of Haryana: 1995 SCC (1) 349***, had laid down the legal position as under:

"4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade

the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a nonbailable case in the first instance and the cancellation of bail already granted.”

8. In addition, this Court in the case of ***Firoz Khan vs. State (Bail Application No. 945 of 2020 dated 29.05.2020)*** had, in a case of riots, held as under:

“17. Prison is primarily for punishing convicts; not for detaining undertrials in order to send any 'message' to society. The remit of the court is to dispense justice in accordance with law, not to send messages to society. It is this sentiment, whereby the State demands that undertrials be kept in prison inordinately without any purpose, that leads to overcrowding of jails ; and leaves undertrials with the inevitable impression that they are being punished even before trial and therefore being treated unfairly by the system. If at the end of a protracted trial, the prosecution is unable to bring home guilt, the State cannot give back to the accused the years of valuable life lost in prison. On the other hand, an accused would of course be made to undergo his sentence after it has been awarded, after trial.”

9. Also, this Court in the case of *State vs. Rupak Rana and Ors.: 2016 (226) DLT 605* has reiterated the above stated principle and held as under:

“17. It is true that once bail granted should not be cancelled in a mechanical manner without considering any supervening circumstances which is not conducive to fair trial. It is also settled law that once bail is granted, it cannot be considered barely on a request from the side of the complainant unless and until the complainant shows that the same is being misused and it is not no longer conducive in the interest of justice to allow the accused any further to remain on bail. The bail can be cancelled only in those discerning few cases where it is shown that a person to whom the concession of bail has been granted is misusing the same.”

10. The Hon'ble Supreme Court in the case of *Sanjay Chandra vs. CBI: 2012 (1) SCC 40* had held as under:

“When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case. There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State

exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.”

11. Further submitted, the Charge Sheet established the position that the Respondent is not present at the spot at the time of the occurrence. This is evident from the following paragraphs:

- a. In paragraph 27 (Internal Pages 32-33 of the Chargesheet, Page 77-78 of the Paper Book), the various persons who were allegedly seen in the school during the riots shown to PW Roop Singh, however, the Respondent is not one of them.
- b. In paragraph 23 (Internal Pages 34-35 of the Chargesheet, Page 78-79 of the Paper Book), a set of images of rioters is given by ESL Rohini and identified by the witnesses. This list also does not have the Respondent's name.

Therefore, the Prosecution's case is that the Respondent was not present at the time of the riots. None of the witnesses also say that the Respondent was present at the time of the riots at the spot.

12. Further submitted that the Photographs annexed at Pages 158-164 do not support the case of the prosecution at all. A Photograph shows that the Respondent reaches the Front Gate of the School on 24.02.2020 at 02:08:03 pm. The next photograph at Page 163 shows that the Respondent is sitting in his motorcycle on 24.02.2020 at 02:08:43PM and the last photograph on 24.02.2020 at 02:08:49 pm shows that the Respondent has already left the premises. Therefore, the photographs, establish that the Respondent had left the spot almost 1 hour before the alleged occurrence of the event. As per the prosecution, the incident had taken place much after 03:00 pm. The said Photographs annexed at Pages 158-164 further falsifies the statement of PW Roop Singh (recorded under Section 161 Cr.P.C.) (which is provided by the Petitioner at E-Page 140-141 of the Petition) recorded on 08.03.2020. The said witness stated that a lot of people assembled and there was hue and cry. Further stated that at that time the respondent asked his guard Manoj that "*En saab Ko Andaar Jane Do. Yeh sab Mussalman Bhai. Aaj Hindu ko dekh lenge*". However, the photograph shows that there was no one except Manoj and there was certainly no hue and cry. It also shows that there is no discussion by the Respondent with anyone. This completely falsifies the case of the Prosecution. Thus, present petition deserves to be dismissed.

13. On the other hand, case of the petitioner/the State is that one of the case arising out of the riots which occurred in north-east district of New Delhi. It pertains to the riots which occurred in DRP school which was completely destroyed in the said incident. From the investigation, it has emerged that the respondent who owned a Rajdhani Public School in close vicinity and was a very influential person in the area, had allowed the rioters to enter his school and the said mob created havoc from the terrace of Rajdhani Public School. Consequently, irreparable damage was caused to DRP Public School and other surrounding structures by the Rajdhani School mob. Further evidence gathered by the petitioner manifests that the rioters in Rajdhani Public School and outside it had opened indiscriminate fire upon the other party and had caused loss of life and limb and property. During the investigation, huge quantity of stones, bricks, petrol bombs, ropes, one large catapult (Gulel) etc. was found already stored on the terrace of Rajdhani Public School and hundreds of rioters used these provisions to catastrophic effect. The riots continued for two days unabated resulting in large number of deaths of innocent people and loss of property worth crores of rupees. Irreparable loss to a large number of poor people was caused due to these riots.

14. Mr.Aman Lekhi, learned Senior Advocate and Additional Solicitor General appeared on behalf of the petitioner/the State and submitted that the respondent was found as the kingpin and mastermind of the said incident and, as stated in the charge-sheet, he had deliberately facilitated the entry of the rioters from the main gate of his school and in turn these rioters caused huge damage to the nearby DRP Public School. The damage was caused in a very systematic manner to the extent that rioters climbed down from the terrace of Rajdhani Public school to the DRP school with the help of ropes, which were also prearranged in the premises of the Respondent/Accused. It is further established beyond reasonable doubt that at the very onset of the riots, Respondent/ accused was present at the school premises, instigating his people to damage and destroy DRP school. Furthermore, it has also been established that during investigation lot of bullets were fired from the terrace of Rajdhani Public School resulting in death of two innocent people. The present case is a case of rioting, attempt to murder, dacoity, causing enmity against the state etc which are considered to be the gravest of offences cutting the very root of secular fabric of our country. Therefore, bail of the Respondent/ accused in this case will adversely affect the investigation of other related cases too. The nature of the offence the brazenness and

impunity with which the accused has committed these offences disentitles him from seeking bail. Looking at the character of the accused there is every likelihood that he would evade the process of law and threaten the witness who have been named in the charge-sheet.

15. Further submitted that while granting bail to the respondent the Ld. ASJ incorrectly recorded that in none of the CCTV footages, the presence of respondent was there. However, Ld. ASJ failed to consider that the respondent / accused was clearly seen in CCTV footage near Rajdhani School on 24.2.2020 at about 01:43 pm, which evidence was part of the charge-sheet. The Ld. judge also incorrectly recorded that *prima facie* it is noticeable that accused was not present at the scene of occurrence then naturally, the evidence against him in respect of sections 397/395/436/455 IPC will fall short.

16. Learned ASG submitted that while rendering the said finding the Id. judge failed to appreciate that the respondent / accused was present in Rajdhani Public School till about 01:45 pm on 24.02.2020 and thereafter left Rajdhani Public School. Furthermore, he allowed his school premises to be used by rioters to attack the opposite party. He was not only the kingpin of the entire incident but was also the key conspirator under whose instance the

said riot occurred. The Ld. Trial Court also erred in recording that the Statement of Roop Singh, guard of DRP School, u/s 164 Cr.P.C. was recorded by the Ld.MM on 11.03.2020, wherein, he did not say a word about he having seen the respondent/accused at the scene of occurrence or having heard stating anything to the guard of the school. It is submitted that the Id. ASJ failed to appreciate that the said witness had clearly stated in his statement as under:

“1:45 मैं जब बजे maingate बंद करने लगा तब मैंने देखा कि राजधानी स्कूल के पास काफी लोग खड़े थे और मोटर साइकिल पर बैठे हुए राजधानी स्कूल के (.....) guard मनोज को निर्देश दे रहे थे कि इस लोगों को ऊपर जाने देना और आज हिन्दुओं को देखना है।”

17. Furthermore, the Ld. ASJ also failed to appreciate the factum that the respondent/accused was present at the Rajdhani Public School and had left the school on a motorcycle as stated by other witnesses too, in addition, stated by Roop Singh and guard of DRP school. The Id. ASJ also completely misread the testimony of witnesses Geeta and Manoj and erred in holding that big gulel was found on 11.03.2020 i.e. more than 16 days after the incident. Learned ASG submitted that the said gulel(catapult) was an industrial size which was constructed on the terrace of Rajdhani School. The case was registered on 05.03.2020 and the gulel was found immediately

and was seized on 06.03.2020 but not on 11.03.2020.

18. Furthermore, the Id. ASJ also erred in holding that the respondent/accused was entitled for bail as the investigation in the matter was complete. It is submitted that the investigation in the case qua the respondent/accused was not complete. Further investigation was being conducted into the larger conspiracy behind the riots and the role played by respondent accused. Moreover, Id. ASJ failed to appreciate that the charge-sheet itself stated that the investigation was underway on the following issues:

- a. The persons identified through CCTV footage are to be traced and arrested.
- b. The alleged person namely Akil, who used rope to climb down from Rajdhani to DRP Public School has to be arrested.
- c. The alleged persons namely Babloo and Ramillahi, who mounted catapult on a rickshaw have to be identified and arrested.
- d. The alleged person Ali Hassan who sold dandas during the riots has to be located and arrested.

- e. The intermediaries (persons) connected to fundamentalist groups, PFI, JCC, Pinjaratod working as links between accused Faisal and these organizations have to be interrogated for unearthing the conspiracy link.
- f. Few persons of western UP, who are present at and near the scene of crime as per their CDR locations have to be identified and their role is to be investigated.
- g. Dump data analysis is under process and efforts are being made to identify the suspect persons and their role is to be investigated.
- h. The investigation qua other accused persons and a deep rooted conspiracy behind these riots of North-East District resulting in deaths of 53 persons, injury to countless innocent persons, destruction of properties worth crores of rupees and tear in the social fabric of the nation will continue.
- i. Further evidence, both oral and physical, is being collected and the same will be filed in the Court under the provisions Section 173(8) Cr.P.C. by filing supplementary charge sheet.

Thus, the present petition deserves to be allowed in the interest of

justice.

19. I have heard learned counsels for the parties at length and perused the material on record.

20. On perusal of record available, there is evidence that the rioters entered the school on 24.02.2020 in the afternoon and continued pelting stones, petrol bombs through catapult already installed at the roof top of Rajdhani Public School (RPS) where huge quantities of bricks and stones were already there on the roof top and even rioters managed to climb down from RPS to DRP Public School by using a rope which was already there in roof top. Rioters continued unabated till 25.02.2020. DVRs installed at the premises of RPS were made non-functional around 6 pm in the evening on 24.02.2020. It is established by the witnesses as well as CCTV footages in which Respondent is clearly seen around 1.24 pm in the school premises.

21. Moreover, it seems the riots were carried out in such an organized manner that a large size iron catapult was manufactured and installed at rooftop of the school of respondent for pelting stones and petrol bombs downwards, this sort of instrument can never be made in a spur of moment.

22. As per CDR analysis of respondent/accused, he was in continuous

contact with various members of other groups involved in other offences.

23. Admittedly, chargesheet against the respondent has been filed, however, investigation in the present case is pending and supplementary chargesheet is to be filed as stated in the chargesheet.

24. In the case of *Myakala Dharmarajam (supra)*, the Hon'ble Supreme Court has observed that *it is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice and the Court has ignored relevant material indicating prima facie involvement of the accused.*

25. In the case of *Dolat Ram (supra)*, the Hon'ble Supreme Court has observed that *'cogent' and 'overwhelming circumstances are necessary for an order directing the cancellation of bail, already granted.*

26. In the case in hand, the findings of facts rendered by the learned ASJ in the impugned order dated 20.06.2020 are contrary to the record for the following reasons:

S.No.	Finding in the impugned order	Reason why the said findings are perverse
1.	Admittedly, in none of the CCTV footages, the presence of applicant is there.	The respondent / accused is clearly seen in CCTV footage behind Rajdhani School on 24.2.2020 and in front of Rajdhani School till 02:08 pm.
2.	If it is <i>prima facie</i> noticeable that accused was not present at the scene of occurrence then naturally, the evidence against him in respect of sections 397/395/436/455 IPC will fall short.	The respondent / accused was present till about 02:08 pm on 24.2.2020 and thereafter left Rajdhani School. He allowed his school premises to be used by rioters to attack the opposite party. He was arrested for criminal conspiracy in this regard.
3.	Statement of Roop Singh, guard of DRP School, u/s 164 Cr.P.C. was recorded by the Ld.MM on 11.03.2020 wherein he did not say a word about he having seen the applicant at the scene of occurrence or having heard stating anything to the guard of the school.	<p>The statement verbatim is "1: 45 जब बजे मैं main gate बंद करने लगा तब मैंने देखा कि राजधानी स्कूल के पास काफी लोग खड़े थे और मोटर साइकिल पर बैठे हुए राजधानी स्कूल के (. . . .) guard मनोज को निर्देश दे रहे थे कि इस लोगों को ऊपर जाने देना और आज हिन्दुओं को देखना है।</p> <p>The respondent/Faisal had left the school on a motorcycle, a fact which has been stated by other witnesses too.</p>
4.	Another witness, namely, Geeta also did not say a word about she having seen the applicant at the spot. Her statement was recorded on 24.04.2020.	She was on the terrace of DRP School. She had identified Parvez as a rioter. Parvez is related to Faisal and also drives his car sometimes. She is Roop Singh's wife. Roop Singh is guard of DRP School.

<p>5.</p>	<p>PW Manoj who was admittedly the guard at the school of applicant has merely stated that the applicant had come to the school at the main gate and had spoken to some of the persons outside the school and had left the scene of occurrence at about 1.30 p.m. whereas the riots took place at around 3.00 p.m.</p>	<p>Admitted fact is that Faisal left the spot with instructions that the rioters should be allowed inside the school building. Riots started after he had left the spot.</p>
<p>6.</p>	<p>If the applicant was not present at the scene of occurrence then his involvement in the offences u/s 307/395/436/455 IPC cannot be made out.</p>	<p>The respondent / accused has been charged with criminal conspiracy. His absence at the spot does not absolve him of his liability in this case.</p>
<p>7.</p>	<p>Till date there has not been any FIR against the applicant with Enforcement Department about him having acquired properties worth several crores.</p>	<p>Letters have been written to the Income Tax Department and the Enforcement Directorate on 09.06.2020 and 10.06.2020 respectively. However, sent after filing of the charge sheet.</p>
<p>8.</p>	<p>The charge sheet is bereft of material showing the links of the applicant with PFI, Pinjratob group and Muslim clerics.</p>	<p>This aspect is still being investigated u/s 173(8) Cr.P.C. Flowcharts showing the links are part of the charge sheet.</p>
<p>9.</p>	<p>A huge gulel was found installed at the roof of Rajdhani Public School through which miscreants had thrown petrol bombs at the school of complainant. A perusal of the record reveals</p>	<p>On 06.03.2020, SI Rajiv visited the adjacent school i.e. Rajdhani Public School, Delhi, and found only superficial damages to the building. He seized the following material evidence from the premises of Rajdhani Public school</p>

	that the said big gulel was found on 01.03.2020 i.e. more than 16 days after the incident.	i.e. one rope, 7 DVRs, one Iron Catapult (Gulel), broken Bricks & stones along with glass bottles filled with petrol, one laptop and six empty shells of .315 bore bullets. All the above items were taken into police possession through seizure memos, and deposited in to Police station malkhana.
10.	It is a good case for grant of bail in the matter particularly on account of the fact that the investigation in the matter is complete.	Investigation in the case qua the respondent / accused is not complete. Further investigation is being conducted into the larger conspiracy behind the riots and the role played by Faisal. Other accused persons identified in the case remain to be arrested. Prominent among these is the person(s) who had installed the industrial size gulel (catapult) on the terrace of Rajdhani School.

27. In view of above facts, the Ld. ASJ has failed to appreciate that while deciding an application for bail, the interest of the society is also to be safeguarded. The entire country is aggrieved by the action of such offenders who tarnish the basic secular fabric of the nation and needs to be punished severely. Personal liberty of an individual though precious, is of little value if the larger interest of the people and nation are at stake.

28. Regarding apprehension of flee from India, to avoid that appropriate directions can be issued, moreover, there is no evidence on record, therefore, I am of the opinion that the respondent/accused is not a flight risk.

29. However, keeping in view the fact that respondent/accused is wealthy and he has reputation and roots in the society, therefore, since investigation in the present FIR is pending and the prosecution is likely to file supplementary chargesheet, therefore, the respondent/ accused may influence the witnesses and hamper the investigation and trial.

30. In view of above discussion and the settled law, I am of the view that learned Trial Court has granted bail to the respondent/accused at pre-mature stage while ignoring the relevant material on record.

31. Accordingly, I hereby set aside the impugned order dated 20.06.2020 and consequently allow the present petition.

32. It is pertinent to mention here that vide order dated 22.06.2020, this court granted stay on release of the respondent/accused, thereafter, vide order dated 02.07.2020 stay was vacated. Being aggrieved, the petitioner had approached the Hon'ble Supreme Court in SLP(Crl.) No. 3385/2020 wherein vide order dated 04.08.2020 granted stay on order dated 02.07.2020

passed by this Court and consequent to the said order, the respondent has not been released in the present case. Therefore, no further direction to surrender is required to be passed.

33. In view of above, the present petition is allowed and disposed of.

34. I hereby make it clear that the Trial Court shall not get influenced during trial by the observations made by this Court while passing this order.

35. Pending application also stands disposed of.

36. The judgment be uploaded on the website forthwith.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 02, 2020
ab

सात्यमेव जयते