

State V/s Salim Malik @ Munna: FIR No.136/2020: PS Dayalpur

Bail Application No.1689/2020

State V/s Salim Malik @ Munna

FIR No.136/2020

U/s 147/148/149/427/423/436/120-B IPC

PS: Dayalpur

25.11.2020

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri D.K Bhatia, Ld. Special PP for the State alongwith IO,
SI Shiv Charan.

Shri Salim Malik, Ld. Counsel for accused Salim Malik @ Munna/
applicant.

ORDER

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

2. Before proceeding further, it would be appropriate to have a brief synopsis of the facts which led to registration of FIR in the matter. The case FIR in the matter was registered on 05.03.2020 on the complaint of one Shri Rajesh Singh, S/o Shri K.M.P Singh, owner of Fair Deal Cars Pvt. Ltd. (Maruti Authorized Showroom), who in his written complaint dated 28.02.2020 stated that his aforesaid car showroom was completely damaged, vandalized and thereafter set on fire by the riotous mob on 25.02.2020 as a result of which six cars, accessories, computers, printers, air-conditioners, furniture etc. were completely burnt and he suffered a loss to the tune of around Rs.3.50 Crores (approximately) on this account.

3. At the outset, the learned counsel for the applicant has pointed out that four co-accused persons namely Imran, Dildar, Faraza and Rafat have already been enlarged on regular bail at the initial stage even before filing of chargesheet in the matter and interim protection has also been accorded to another co-accused

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Ashraf Ali. He has further pointed out that recently co-accused Mohd. Ayub has also been enlarged on regular bail by this Court vide detailed order dated 24.11.2020 and as such, the applicant is also entitled for grant of bail on the ground of parity because role assigned to him in the matter is on same/identical footing as that of co-accused Mohd. Ayub.

4. Besides pressing into service the ground of parity, the learned counsel has very vehemently argued that applicant has been falsely implicated in the matter by the investigating agency. He has been in judicial custody in the matter since 30.10.2020. Initially he was arrested in case FIRs No.59/2020 (being investigated by Special Cell) and 60/2020 (PS Dayalpur) and thereafter IO got issued his Production Warrants, took his two days' PC remand and thereafter got him falsely implicated in the present matter. It is further argued that there is an "*unexplained delay*" of about nine (09) days in registration of FIR in this case, as the alleged incident took place on 25.02.2020; whereas, the case FIR in the matter was registered on 05.03.2020. The applicant is neither named in the FIR nor any specific role has been alleged against him in the matter. It is further argued that the applicant was not present at the alleged scene of crime (SOC) on the date of incident. His CDR location is of no help to the investigating agency as he is resident of the same locality/area. It is next argued that the applicant has not been subjected to judicial TIP and the alleged identification of applicant by PW Zahid Hasan from a large mob in absence of TIP, that too after lapse of around two and a half (2½) months of the alleged incident cannot be relied upon. The applicant cannot be roped in the matter merely by invoking Section 149 IPC, as the applicant never shared any "*common object*" with the rioters. In the end, it is submitted that 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, as trial of the case is likely to take long time. It is claimed that the applicant has clean past antecedents.

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5. Per contra, learned Special PP has very vehemently argued that the communal riots in North-East Delhi were of a very high magnitude, wherein 53 innocent lives were lost and a lot of public and private property was damaged/vandalized and looted and several vehicles, houses and business establishments were set on fire. These riots were part of large scale conspiracy hatched at various levels all over Delhi in the aftermath of enactment of ***Citizenship Amendment Act, 2019*** (in short “CAA”) and the same did not take place spontaneously. These riots were result of a well-planned and meticulously executed action by the anti-CAA protesters. In continuation of the aforesaid, it is further argued that the protests against CAA were going on for the last one and a half month in the area of PS Dayalpur at Chand Bagh and Brijpuri Puliya alongwith the other areas of North-East Delhi. 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 innocent lives were reported and paramilitary forces had to be deployed to control law and order situation in the area.

6. It is further argued that during the course of investigation twelve accused persons were arrested and one juvenile was also apprehended. The applicant has been categorically identified by one public witness namely Zahid Hasan, S/o Shri Deen Mohammed (vide his statement recorded under Section 161 Cr.P.C on 20.05.2020) as part/member of the riotous mob, who was present at the scene of crime (SOC) on the date of incident and taking active part in the rioting. His identity has further been established by Constable Mukesh, who was Beat Constable of the area in question on the date of incident. It is further submitted that the CDR location of mobile phone number 7042513776 belonging to applicant has been found to be at or around the scene of crime (SOC) on the date of incident.

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7. 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 scene of crime 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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8. The learned Special PP has referred to the below mentioned judgments, which go on to show that the overt act on the part of a person who was member of unlawful assembly is not required. He can be fastened with liability with the aid of Section 149 IPC. The following are the judgments in this regard.

(a) **Lalji & Ors. V/s State of UP; AIR 1989 SC 752;**

(b) **State of UP V/s Ravinder @ Bablu & Ors.; Crl.Appeal No.1887/1999** (decided by the Hon’ble Supreme Court on 18.12.1999);

It is submitted that in this case the “**overt act**” on part of the applicant has been established through the statement of public witness namely Shri Zahid Hasan.

9. In the end, it is argued that although the chargesheet in the matter has been filed, yet 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 public witness, who is resident of the same locality and as such, the dismissal of the instant application has been prayed for.

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

11. The applicant has neither been named in the FIR nor there are any specific allegations against him. Admittedly, no CCTV footage of the incident in question is available on record. The prosecution in this case is opposing the bail application of applicant on the strength of his categorical identification by PW Zahid Hasan (vide his statement recorded under Section 161 Cr.P.C on 20.05.2020) as also on the identification of applicant by Beat Constable Mukesh. The arrest of applicant in the present matter has been effected by the investigating agency on 30.10.2020, i.e. after lapse of about eight months of the date of incident and that too after obtaining his Production Warrants [as the applicant has already been in judicial custody in case FIRs No.59/2020 (investigated by Special Cell) and 60/2020 (PS Dayalpur)] and taking his two days’ PC remand. I have gone through the statement of said PW Zahid Hasan (recorded under Section 161 Cr.P.C on 20.05.2020). Admittedly, by the time the statement of this witness under Section 161 Cr.P.C was recorded, the main chargesheet in the matter had already been filed in the Court. Though, the investigative agency is within its right to record statement of any witness even after filing of main chargesheet, if specific evidence comes within its domain, however, this Court cannot loose sight of the timing of recording of statement of PW Zahid Hasan, which admittedly was recorded after almost expiry of three months of the date of incident. Even in his

aforesaid statement, PW Zahid Hasan has not levelled specific allegations of putting on fire the showroom in question by the applicant and the same pertains to incendiary speeches being delivered by the riotous mob. Be that as it may, *prima facie*, his aforesaid statement appears to be general one, which may be useful for the prosecution in case FIRs No.59/2020 (investigated by Special Cell) and 60/2020, PS Dayalpur; however, on the basis of said statement of PW Zahid Hasan, applicant cannot be made to incarcerate in jail for infinity in the present matter. Furthermore, the identification of applicant by Constable Mukesh (who was posted as Beat Constable in the area at the relevant time) is hardly of any consequence, as this Court is not able to understand as to why said Beat Constable waited till the arrest of the applicant to name the applicant, when he had categorically seen and identified the applicant indulging in riots on the date of incident, i.e 25.02.2020. Being 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 cast a serious doubt on the credibility of this witness also. 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. As regards the CDR location, I find substance in the submissions of learned counsel for the applicant that he is resident of the same area/locality and that's why his CDR location is being shown at or around the scene of crime (SOC) on the date of incident. It is a matter of record that four co-accused persons namely Imran, Dildar, Faraza and Rafat have already been enlarged on regular bail at the initial stage even before filing of chargesheet in the matter and interim protection has also been accorded to another co-accused Ashraf Ali. Even co-accused Mohd. Ayub has also been enlarged on bail by this Court vide detailed order dated 24.11.2020 and *prima facie*, the role assigned to the applicant in the matter appears to be on same/identical footing as co-accused Mohd. Ayub. As such, I am of the considered opinion that applicant is also entitled for grant of bail in the matter on the ground of parity. Needless to say, the investigation in the matter is complete; chargesheet has also been filed; trial in the matter is likely to take long time; 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.

13. Considering the facts and circumstances of the case in totality, applicant Salim Malik @ Munna is admitted to bail in the matter 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 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.

14. The application stands disposed off.

15. 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*”.

16. 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

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by VINOD YADAV
Date: 2020.11.25
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(VINOD YADAV)

ASJ-03(NE)/KKD COURTS/DELHI/25.11.2020