

State V/s Sonu Saifi: FIR No.75/2020: PS Dayalpur (Crime Branch)

Bail Application No.1710/2020

State V/s Sonu Saifi

FIR No.75/2020

U/s 144/147/148/149/153-A/295-A/427/436/380/302/120-B/34 IPC

r/w Sections 25/27 Arms Act

PS: Dayalpur (Crime Branch) (**Rahul Solanki murder case**)

25.11.2020

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri Amit Prasad, Ld. Special PP for the State alongwith IO,
Inspector Vivekanand Jha.

Shri S. Hasan Zaidi, Ld. Counsel for accused Sonu Saifi/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. The FIR in the present case was registered on receipt of DD No.40-B, dated 24.02.2020, received at Police Station Dayalpur from Guru Teg Bahadur Hospital (GTB Hospital) regarding admission (vide MLC No.BD/542/02/2020) of a young boy namely Rahul Solanki, S/o Shri Hari Singh Solanki with the alleged history of “*gunshot injuries*”, who was declared “*brought dead*”. The said DD was entrusted to ASI Hemraj, who reached at the said hospital and got conducted the post-mortem upon the dead body of deceased. Considering the sensitivity of the case, investigation thereof was transferred to Crime Branch. During investigation, the scene of crime was visited; CCTV footages of the spot were collected and analyzed; statements of witnesses were recorded and subsequently accused persons were arrested in the matter.

3. The learned counsel for the applicant has very vehemently argued that the applicant has been falsely implicated in the matter. There is no legally sustainable evidence available against the applicant in the matter. He has been in judicial custody in the matter since 14.05.2020. There is an **inordinate and**

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unexplained delay in recording of FIR in the matter in as much as DD No.40-B regarding the death of Shri Rahul Solanki was received at PS at 11.15 PM on 24.02.2020; whereas, the FIR was registered at 01.20 PM on 28.02.2020. The learned counsel made a strong pitch that PW Rohit Solanki is a “**planted witness**” which is apparent from the fact that in his initial statement recorded by the investigating agency under Section 161 Cr.P.C on 26.02.2020 (page 181 of the chargesheet), this witness has not named even a single accused; however, in his subsequent statement recorded under Section 161 Cr.P.C on 08.03.2020 (page 317 of the chargesheet) he has categorically disclosed the name of applicant and other co-accused persons being part/member of the riotous mob on the date of alleged incident. It is submitted that the statement dated 08.03.2020 of PW Rohit Solanki is a “**dictated statement**” and it is clearly apparent from the record that this witness has been playing in the hands of investigating agency; whereas, in actual he had not witnessed either the alleged killing of his deceased brother or the applicant being resorting to rioting on the date of alleged incident. It is further argued that the alleged time of incident in the matter is about 6.00 PM and the investigating agency has filed many CCTV footages pertaining to the scene of crime and its adjoining areas of the date of incident, but the applicant is not visible in any of the said CCTV footage(s) and the only material available against him is his own disclosure statement. It is further argued that in the entire chargesheet, there is no clarity about the spot of incident, as DD No.40-B records the scene of crime to be “*Shiv Vihar Tiraha*”; MLC of deceased records the place of incident as “*C-Vihar*”; whereas, rukka shows the place of incident as “*Gali No.1, Pal Dairy Wali Gali, Mahalaxmi Enclave*”. 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, as trial of the case is likely to take long time. It is claimed that the applicant has clean past antecedents.

4. Per contra, the learned Special PP for the State has very vehemently argued that present is a case of brutal murder of a young, innocent boy namely

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“*Rahul Solanki*” by the “*riotous mob*”, merely on account of the fact that he belonged to a different community. During investigation, it has emerged that there was a “*deep-rooted conspiracy*” which triggered communal riots in Delhi. A web of conspirators, instigators and rioters has been identified and several of them have been arrested. It is further argued that the riots were not impromptu, but were conspired with the intent to create communal strife and to malign the image of the country under the garb of democratically opposing the Citizenship Amendment Act (in short “*CAA*”). The conspirators caused disruption by the dual scheme of spreading misinformation on CAA and causing “*Chakka-Jaam*” on main arterial roads, which ultimately triggered the communal riots. It is further argued that the accused persons in furtherance of criminal conspiracy committed the act of riots in the area of PS Khajuri Khas as well as PS Dayalapur and a “*sense of terror*” was created in the minds of general public. They not only mobilized the mob into a group of rioters by way of provoking their religious feelings, but also provided logistic support like lathis, dandas, stones, acids, knives, swords, fire arms, pistols etc., for committing riots in the area and to eliminate the members of other community. The “*common object*” of the accused persons was to cause maximum damage to the persons and property(ies) of other community. It is argued that in the said communal riots, 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.

5. 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 from the bare perusal of DD No.40-B, it is clearly apparent that on account of tense communal atmosphere prevalent in the area at the relevant time, no police official/officer was available in PS Dayalpur who could prepare rukka and make endorsement thereupon as every rank and file was made to march in the area for controlling/maintaining the law and order situation. In continuation of aforesaid, it is submitted that 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

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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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6. It is further argued that on 26.02.2020 PW Rohit Solanki (brother of deceased Rahul Solanki) could not name the applicant and other co-accused persons he was under tremendous shock and not in a good state of mind at that time on account of the sudden and brutal death of his brother. It is submitted that in Hindu mythology, the cremation of deceased marks the beginning of the mourning period, which lasts for 13 days. During this time, the family of the deceased generally prefer to stay at home and that period is used to cool off the feelings, so that the family could come out of the grief on account of bereavement of loved ones. It is argued that after observing the mourning period of 13 days, PW Rohit Solanki came out of the grief, composed himself and thereafter prepared himself to give his detailed statement to the investigating agency on 08.03.2020, whereby he not only categorically identified the applicant by name, but also told about his profession, i.e the applicant being a "**welder**" by profession and a famous character in the locality/area.

7. It is very vehemently argued that DD No.40-B as well as MLC of deceased bear recitals as told by some third person; whereas, in the rukka the place

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and time of incident has been correctly mentioned which is in conformity with the statement of eye witness namely Rohit Solanki. In response to the argument of learned defence counsel that PW Rohit Solanki was not at the scene of crime at or around the time of incident because his blood stained clothes were not seized by the IO and his name does not find mention in the MLC of deceased, it is argued that PW Rohit Solanki in his statement recorded on 08.03.2020 (page 317 of the chargesheet) has given the clear and cogent account of what had transpired at the scene of crime. It is emphasized that this Court at this stage, cannot brush aside the said statement. It is further submitted that the Test Identification Parade (TIP) of the applicant in the matter was not required as he has been clearly identified by public/eye witness Rohit Solanki through his name as well as profession.

8. It is further argued that during the course of investigation there has been an epochal development, as one country made pistol and four live cartridges were recovered at the instance of applicant (as per seizure memo dated 13.05.2020, at page 115 of the chargesheet) and as per the report of Ballistic Expert said firearm has been found to be in “**working condition**”. As regards the used cartridges recovered from the scene of crime (SOC), whether they were fired from the said firearm or not, it is submitted that FSL report in this regard is awaited.

9. It is further argued that during the course of investigation it came to fore that at the time of incident, applicant was using two mobile phones bearing SIM numbers 9958854661 and 7210272689. Mobile phone number 9958854661 was found registered in the name of one Shameem; whereas, the other mobile number 7210272689 was found registered in the name of applicant himself and the CDR location of both the said mobile phones have been found to be at our around the scene of crime (SOC) on the date of incident.

10. It is further argued that although the chargesheet in the matter has been filed, yet the investigation of the case is still in progress; many persons who

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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. In the end, it is submitted that in the first week of September’ 2020, the police had arrested co-accused Mustakeen @ Sameer Saifi, who is clearly visible in CCTV camera footage and from his possession a firearm has also been recovered which has been sent to FSL to have opinion as to whether the deceased was killed by that weapon. The investigation qua the said accused is underway and there is probability of getting some fresh material in this case.

11. 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.*

12. 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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17. xxxxx

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

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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)

13. 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/pre-committal 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.

14. From the statement of public/eye witness Rohit Solanki, dated 08.03.2020 (page 317 of the chargesheet), it is *prima facie* apparent that the applicant was part of the “**riotous mob**”, which had caused vandalism, arson and looting in the area and due to firing from the said mob, deceased Rahul Solanki got hit and later on died. The applicant has not only been categorically identified by PW Rahul Solanki by his name, but he has also stated about the profession of applicant being a “**welder**” and a famous character in the locality/area. **As regards not naming the applicant by PW Rohit Solanki in his initial statement dated 26.02.2020, I find force in the submissions of learned Special PP that this witness**

could be under tremendous mental shock, pain and agony on account of sudden death of his brother, certain amount of cool off period is usually required by any human being in such an extra-ordinary situation to regain his composure and it is not expected from a man of common prudence to give fine blow-by-blow account of the incident in such a situation. Furthermore, whether the identification of the applicant in the matter by PW Rohit Solanki is sufficient or not or whether judicial TIP was required or not is a matter which will be considered at the stage of trial. This court is conscious of the fact that applicant is not visible in any of the CCTV footage(s) made available on record, however, at this stage, the statement of PW Rahul Solanki dated 08.03.2020, whereby he has not only categorically identified the applicant by his name but has also stated about his profession of being a “welder” cannot be thrown into dustbin on this sole account.

15. The CDR location of two mobile phones (bearing SIM numbers 9958854661 and 7210272689) which were being used by the applicant have been found to be at or around the scene of crime (SOC) on the date and time of incident and no plausible explanation in this regard has come from the side of applicant. This Court also cannot loose sight of an epochal development in the matter, i.e recovery of one firearm (country made pistol) alongwith four live cartridges at the instance of applicant and as per the report of Ballistic Expert said firearm has been found to be in “**working condition**”.

16. The delay in recording of FIR has been *prima facie* explained by the prosecution. The spot of incident has also been clearly explained by the eye witnesses and site plan is on record. We are at *pre-cognizance/pre-committal stage* and this Court has limitations in making in-depth analysis of the statements of witness(es), which are yet to be tested on the anvil of trial. 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.

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17. The further investigation in the matter is going on. Public witness(es) in the matter are residents of the same locality and the possibility of applicant threatening or intimidating them, if released on bail at this stage cannot be ruled out. This Court has already dismissed the regular bail application of co-accused Sirajuddin vide detailed order dated 08.09.2020 and the role assigned to the applicant *prima facie* appears to be on same/identical footing.

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

19. 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*”.

20. A copy of this order be sent to 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/25.11.2020