

Bail Application No.223/2021

State V/s Amit Goswami

FIR No.121/2020

U/s 147/148/149/457/435/436/454/380 IPC

PS: Bhajanpura

23.03.2021

Present: Shri Naresh Kumar Gaur, Ld. Special PP for the State.

Ms.Mukta Arora, Ld. Counsel for accused Amit Goswami/applicant.

ORDER

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

2. Before taking up the application in question, it would be appropriate to have a brief overview of the facts which led to registration of FIR in the matter. The case FIR in the matter was registered on 02.03.2020 on the complaint of complainant Mohd. Aslam, S/o Shri Sagir which was regarding vandalizing, looting and putting on fire his shop at B-453, main market, Bhajanpura by the riotous mob on 25.02.2020.

3. At the very threshold, learned counsel for the applicant made a strong pitch by submitting that two co-accused persons namely Mukesh @ Kali and Sunil Sharma have already been enlarged on bail by this Court vide order(s) dated 18.09.2020 and 30.09.2020 respectively and as such, it is prayed that applicant is entitled for grant of bail in the matter on the ground of parity, as role assigned to him on the same page/identical footing.

4. Besides pressing into service the ground of parity, learned counsel has very vehemently argued that the applicant has been falsely implicated in the matter by the investigating agency. He has been in judicial custody since 16.04.2020. He has been arrested in the instant matter merely on the basis of disclosure statement made by him in case FIR No.125/2020, PS Bhajanpura. **The applicant has neither been specifically named in the FIR nor any specific role has been assigned to him in the matter. There is no CCTV footage/video-clip of the incident in question available in the matter.** Even the judicial **Test Identification Parade (TIP)** of the applicant was not got conducted in the matter. It is further argued that Constable Yogesh and Constable Bhagirath are “*planted witnesses*”, as had they witnessed the incident, then why they didn’t report the matter at the Police Station on 25.02.2020 itself and waited till their alleged statements were recorded by the IO. It is next contended that applicant is the sole bread earner of his family; he is permanent resident of the locality in question and as such, there is no possibility of his absconding in the matter. It is 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; 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.

5. Per contra, learned Special PP has very vehemently argued that the applicant was a member of the riotous mob which indulged in looting, arsoning, assaulting the complainant and other people and anti-national activities. It is further submitted that the applicant was actively involved in riots and chanting slogans against the other community. Learned Special PP further submits that

Beat Constables Yogesh and Bhagirath have categorically identified the applicant to be part/member of the riotous mob on the date and time of incident.

However, *at this stage*, **it is very fairly admitted by learned Special PP that the applicant has neither been specifically named by complainant in the matter nor there is any CCTV footage/video-clip of the incident available in the matter.** Furthermore, when a specific question was put to learned Special PP as to whether the role assigned to applicant in the matter is different from the role attributed to two co-accused persons namely Mukesh @ Kali and Sunil Sharma (who have already been enlarged on bail by this Court), **it was again fairly conceded that the role assigned is same and the material being relied upon in the matter against the applicant is also same.**

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

7. At the cost of repetition, it is noted that admittedly the **applicant has neither been specifically named in the FIR nor there is any CCTV footage/video-clip of the incident in question available on record.** The applicant appears to have been arrested in the matter merely on the basis of disclosure statement made by him in case FIR No.125/2020, PS Bhajanpura. As regards the identification of applicant by Constable Yogesh (No.1276/NE) and Constable Bhagirath (No.3239/NE) (who were posted as Beat Constables in the area in question at the relevant time), same is hardly of any consequence, as this Court is not able to comprehend as to why said Beat Constables waited till 17.04.2020, i.e the date of recording of their statements under Section 161 Cr.P.C by the IO to name the applicant, when they had categorically seen and identified

the applicant indulging in riots on the date of incident, i.e 25.02.2020. Being police officials, what stopped them from reporting the matter then and there in the PS or to bring the same in the knowledge of higher police officers. Even no PCR call was made by the said witnesses on the date of incident. This casts a serious doubt on the credibility of said police witnesses. I am fortified in my aforesaid view on the strength of specific observations made by 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*", whereby the Hon'ble High Court has been pleased to observe in paragraphs No.3 and 4 thereof 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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8. Keeping in view the aforesaid fact(s), I find that the applicant also deserves bail in the matter on the ground of parity with co-accused persons namely Mukesh @ Kali and Sunil Sharma.

9. Accordingly applicant Amit Goswami 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 Court, 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 Bhajanpura upon his release from the jail and will ensure the same to be in working condition and further he shall also get installed “*Arogya Setu App*” in his mobile phone.

10. Application stands disposed off accordingly.

11. It is hereby clarified that anything stated hereinabove shall not be construed as expressing any opinion on the merits of the case.

12. A copy of this order be given dasti to learned counsel for the applicant. A copy of this order be also sent to the Superintendent Jail concerned through electronic mode.

(VINOD YADAV)
ASJ-03(NE)/KKD COURTS/23.03.2021