

IN THE COURT OF Dr. KAMINI LAU: PO (MACT)-01,
CENTRAL DISTRICT: TIS HAZARI COURTS: DELHI

Bail Application No. 912/ 2021

FIR No. 96/2021

PS Kotwali

**U/s. 147/148/149/152/186/269/ 279/353/332/307/308/395/397/427/188/
452/201/120-B/34 IPC r/w Section 25/27/54/59 of Arms Act r/w 3**

PDPP Act r/w 30 AMASR Act

State vs. Khempreet Singh

02.07.2021

Present: Sh. Pankaj Bhatia, Ld. Addl. PP for the State (*through Video Conferencing*).

Sh. Jaspreet Singh Rai and Jagdeep Singh Dhillon
Advocates for the applicant/ accused (*through Video Conferencing*).

IO Inspector Pankaj Arora (*through Video Conferencing*).

Heard arguments on the application under **Section 439 Cr.P.C.** filed by the accused who is in JC since 09.03.2021.

The IO to send clear copies of the photographs and video
relied upon by them by 2:00 PM.

Be listed for orders at 4:00 PM.

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(Dr. Kamini Lau)
PO (MACT)-01, Central,
Tis Hazari Courts, Delhi
02.07.2021



4:00 PM

Present: Sh. Pankaj Bhatia, Ld. Addl. PP for the State (*through Video Conferencing*).

Sh. Jaspreet Singh Rai and Jagdeep Singh Dhillon
Advocates for the applicant/ accused (*through Video Conferencing*).

IO Inspector Pankaj Arora (*through Video Conferencing*).

Vide a detailed order passed separately, the accused Khempreet Singh has been granted bail on certain terms and conditions as noted in the order.

Application is **disposed off**.

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(**Dr. Kamini Lau**)

PO (MACT)-01, Central,
Tis Hazari Courts, Delhi

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Sh. Jaspreet Singh Rai and Jagdeep Singh Dhillon
Advocates for the applicant/ accused (*through Video Conferencing*).

IO Inspector Pankaj Arora (*through Video Conferencing*).

This is an application under **Section 439 Cr.P.C.** filed by the accused **Khempreet Singh** aged 23 years, a permanent resident of Delhi, for grant of bail. The accused was arrested in the present FIR on **09.03.2021** and is in Judicial Custody since 11.03.2021.

According to the accused, he has been falsely implicated in the present matter and he has no role to play, as alleged in the present FIR and in fact there is not even an iota of evidence to satisfy even the basic ingredients of the offences as alleged in the FIR and has been involved for the reasons best known to the IO. It is submitted that even otherwise the investigations qua the applicant /accused are complete and

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ne is not required for carrying out investigation in the aforesaid matter or for any other purpose by the investigating agencies as such, his further detention would not serve any fruitful purpose. It is also submitted that no recovery has been effected from the applicant/ accused and several co-accused have already been granted bail in the present case FIR and the applicant is also pleading parity as a ground for grant of bail.

It is pointed out that the co-accused namely **Harjit Singh** and **Dharmender Singh** have already been enlarged on bail vide order dated **27.02.2021** and co-accused **Akashpreet Singh, Mandeep Singh, Mohinder Singh** and **Dharmender Singh @ Harman** have granted bail vide order dated **22.03.2021** whereas the co-accused **Sukhdev Singh** has been granted bail vide order dated **27.03.2021**, by the Court of Ms. Charu Aggarwal, Hon'ble Addl. Sessions Judge, Tis Hazari Court, Delhi and accused/applicant is also entitled to bail on the ground of parity. It is further submitted that the pre-trial incarceration of the applicant/accused would frustrate the very objective of **Criminal Jurisprudence** that "**Bail is a rule & Jail is an exception**" as such, the applicant/ accused ought not to be detained in as much as the personal liberty of the applicant is too precious as enshrined under **Article 21** of the **Constitution of India** and the power to negate this personal liberty must be exercised judiciously and not casually. It is further submitted that deprivation of personal freedom must be founded on most serious considerations relevant to the welfare objectives of society. It is also submitted that there has been considerable and unexplainable delay in registration of the FIR and the Applicant has not been named in the FIR.

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In this regard, the Ld. Counsel for the applicant / accused has placed his reliance on Hon'ble Apex Court, holding that **mere existence of power to arrest does not justify the arrest of each accused** (*reliance is placed upon the judgment in the case of "Joginder Kumar vs. State of U.P."*, reported as **1994(4) SCC 260**). It is submitted that the applicant/accused undertakes to abide by any condition(s) that this Court may deem fit to impose and further undertakes to join investigation or attend trial on every date of hearing and to appear before the investigating agencies.

In so far as the Investigating officer is concerned, he has filed a detailed report submitting that as per the facts of the case on 26.01.2021 law and order arrangement was enforced in and around the Red Fort in respect of **Republic Day Celebration 2021** and adequate deployment of local police and outer force was made under the supervision of Inspectors & ACPs at Zone/Sector level. It is submitted that in protest of 03 Agriculture Bills, demonstrations were being organised at various borders of capital Delhi by the different groups of Kisan Organisations and as the matter was not sorted out after several rounds of discussions between Kisan Organisations and Central Government, these organisations proposed a Tractor Rally on 26th January, 2021 in Delhi. It is further submitted that in order to maintain law & order, police authorities accorded permission for Tractor Rally with the conditions that rally may be held from 12 Noon to 5 PM on prescribed routes and the timing of rally and route was decided during discussions with Kisan Organisations. It is further submitted that as per

the agreed upon route of tractor rally proposed from different borders, the area of PS Kotwali was not specified for Tractor Rally of Kisan Organisations and at about 12 Noon, North District Control Room informed that around 1000 – 1200 persons in 40 – 50 Tractors, 125 – 150 motorcycles and private vehicles reached at **Shanti Van Red Light** and trying to break the barricades, in order to reach Red Fort. It is submitted that Police apprised them through loud hailers that they are not allowed to go to Red Fort, as it was not the prescribed route for tractor rally and they were also asked to maintain social distancing, in view of Covid-19 pandemic guidelines, but they ignored all these directions and broke the barricades with the blunt force of tractors and drove their tractors rashly, negligently and even tried to hit the police personnel deployed on duty. Thereafter, unruly mob broke the barricading at *Subhash Marg* T-Point, upper and lower *Subhash Marg* and even hit the ambulance stationed at *Nishad Raj Marg* and reached *Lal Qila Chowk* and started shouting slogans against government and indulged themselves in creating nuisance. It is submitted that they reached at *Gyan Path* (*Lal Qila* Premises) and in the meanwhile, some more tractors and persons, after breaking the barricading at *Chhata* Rail reached at *Lal Qila Chowk*. It is further submitted that ACP, Inspectors also reached at *Gyan Path* and tried to pacify the mob but as large numbers of protestors gathered there and started entering inside the Red Fort from Lahore Gate and started beating the police personnel. According to the IO, the mob climbed the Rampart and unfurled the religious flag at the Pole of Rampart and even on domes at the sides of Rampart and these people were shouting

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slogans, demonstrating sword skills and created much nuisance at Rampart. It is alleged that they also attacked on police staff by hurling stones, beating the policemen by sticks and even attacked with swords and the riotous mob caused damage to the government vehicles and public property and forced police and security personnel to jump into the moat to save their lives. It is submitted that the mob used dangerous weapons viz. *swords, lathis, spears, pharsey*, etc. against the police personnel and mob robbed chains, ropes, sticks & various other articles used for barricading. According to the IO, they also robbed body protecting gears like cane stick, shields, helmets etc. from the staff deployed there, for guarding the Red Fort. It is alleged that the members of the unlawfully assembled riotous mob also tried to snatch the MP-5 weapon and a SLR, though the attempt was thwarted by the police personnel, but still they managed to snatch away a magazine of MP-5 and SLR containing 20 live cartridges each. It is also alleged that he members of unruly mob completely disregarded and violated the conditions laid down in the permission / NOC for Tractors Rally by reaching Red fort illegally, with the common object to hurt policemen, cause damage to Red Fort and public property and the said unlawfully assembled riotous mob caused hindrance in discharge of official duties by police personnel and also injured them by the weapons they were carrying including *sticks, swords, bhaale, pharsey* etc. It is also alleged that the riotous mob also pelted stones over the police personnel deployed on their duties at Red Fort and also damaged the tableau of Republic Day, 2021 stationed at Red Fort. On the aforesaid, allegations,

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the present case was registered and further investigation of the case was transferred to Special Investigation Unit – I, Crime Branch, Delhi.

According to the IO, during the course of investigation, it has come on record that the above unruly mob attacked the police and security personnel and by causing them injuries with deadly weapons, destroyed public property at large, robbed arms and ammunition etc, caused hindrance in the celebration of Republic Day and also caused damage to tableau and during this riot at Red Fort a total 167 individuals sustained injuries, out of which 144 were policemen (Delhi Police / CRPF / CISF & SSB) and 23 were civilians including media persons. Further, the riotous mob (carrying *spears, swords, lathis* etc.) indulged into such act of terror, that created mayhem at Red Fort and in furtherance to which riotous mob ransacked/ sabotaged/robbed the government/ public property and also damaged the building Red Fort, a national heritage site and pride of India.

It is reported by the IO that during investigation from the replies received from Government / civic agencies, the following damages / robbery / loot came to light:

- A) (1) QRT Gypsy of CISF bearing registration No. DL-1CM-1543; (2) Bus (Private) bearing registration No. DL-1PD-2069; (3) CPWD Office inside Red Fort viz. Doors, Tables, lights, Computer system alongwith printer, mirrors, locks, ceiling fan, land light phone etc.; (4) Central verge on *Netaji Subhash Marg*; (5) Footpath near entry of Red Fort, Iron pole near *Machan* at entry gate; (6) Boundary wall grill of Red Fort near Red Fort



Metro Station Gate No. 04; (7) Park Grill & Gate Near Ticket Counter; (8) Police Post Red Fort viz. one DFMD, AC, Police Post, Chairs, Barricades etc.; (9) Front gate and lock of gate, *Angoory Bagh* side of Red Fort; (10) CCTV Camera inside Red Fort and outside as well; (11) Chairs; (12) Ticket Counter viz. ticket counter, lights, walls, Toilets, store rooms etc.; (13) Lahore Gate; (14) Lift, windows, doors, lights, iron *morchas* etc. in well of Red Fort; (15) Barricades at *Shanti Van Red Light, Nishad Raj* T-points etc.; (16) Main Lahore Gate entry, both gates, grill gate as well as iron-gate broken; (17) Machines and other equipment which were installed at entry checking point for entering inside the Red Fort; (18) Magazine having 20 live cartridges of MP-5; (19) Magazine having 20 live cartridges of SLR; (20) Three Magazines alongwith 60 live cartridges of INSAS RIFLE; (21) Upper hand Guard of Insas Rifle; and (22) Butt plate crack etc.

B) Furthermore, the following articles were robbed / looted by the riotous mob on the date & time of incident viz. 90 plastic sticks, 25 helmets, 105 ropes, 48 can shields, 80 body protectors green jackets, 28 tyre killers, 04 loud hailers, 01 box containing 15 Tear Gas Shells (8 long range and 7 short range), PTZ Camera etc. apart from damaging various other articles.

The IO who is present in the Court has also confirmed the release of 14 accused out of the 18 arrested. He has further admitted that complete charge-sheet has been filed against the present applicant/ accused and a complaint under **Section 95 Cr.P.C.** Has also been filed



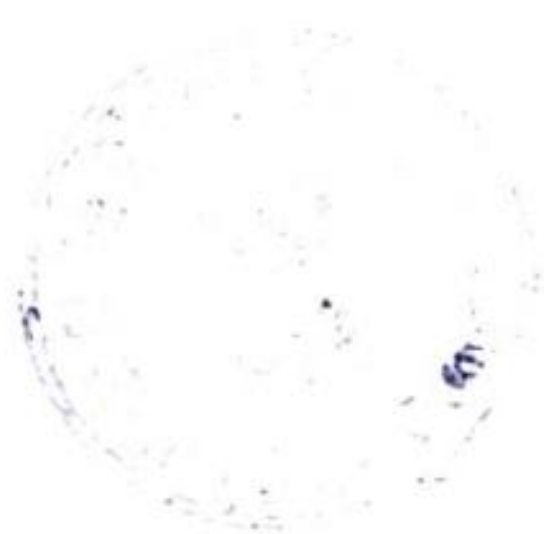
of which cognizance has been taken by the Ld. CMM, Central.

The IO has opposed the regular bail application of applicant/accused Khempreet Singh on the following grounds:

1. That first and above all, the present case is very serious & sensitive in nature involving commission of offence.
2. That the applicant accused has been arrested in the present case, after having sufficient & concrete evidence against him, which in itself is one of the conclusive evidences against the arrestee and the same cannot be ruled out.
3. That during interrogation both the accused namely Maninder Singh @ Moni and Jaspreet Singh @ Sunny Bawa have identified applicant accused Khempreet Singh as one & the same person, who accompanied him to Red Fort alongwith the unruly mob.
4. That there're videos available on record, wherein accused Khempreet Singh is seen entering the walls of Red Fort through Lahore Gate alongside the unlawfully assembled riotous & unruly mob **carrying a big spear-cum-pharsa in his hand.**
5. That in these videos available on record, applicant accused is seen very much present at the Well Area & Rampart of Red Fort, carrying a *spear-cum-pharsa* in his hand. **Accused is waiving the *spear-cum-pharsa* from the Rampart of Red Fort.**
6. That furthermore, applicant accused in one of the videos available on record is seen **severely attacking & assaulting**

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the policemen on duty inside the walls of Red Fort (Well Area) with his spear-cum-pharsa.

7. That in the en-route videos available on case records, wherein applicant accused is seen walking / moving alongside the unruly mob, carrying deadly weapons in their hands (*accused was carrying spear-cum-pharsa*), breaching the barricading done by the police at *Majnu-ka-Teela*, whereat the police personnel on duty tried to stop the unruly mob (*amongst which accused was also present*), but the riotous mob didn't stop and moved ahead towards Red Fort – meaning thereby that the riotous mob (*of which applicant accused is an active part*) acted in a pre-planned manner with the object to take over the control of Red Fort at any cost, for which purpose they were carrying spears, axes, iron rods etc. right from the beginning.
8. That applicant accused alongwith the riotous mob was purposely carrying weapons with them and they were very well in the know that they have to take the charge of Red Fort to make it a new protest site, which is not possible with bare hands, weapons were the pre-requisite of the time and hence, weapons were carried by the riotous mob including applicant accused.
9. That the applicant accused was the part of the very first batch which reached Red Fort from Sanjay Gandhi Transport Nagar after breaching the barricades at different points. This was the batch of unruly mob which broke open the main iron gate of



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Lahore Gate and entered the Red Fort.

10. That the presence of applicant accused Khempreet Singh is also evidenced from his CDR, as per which the mobile phone of applicant accused was very much active at Red Fort on the date & time of incident.
11. That furthermore, the common intention & sole object of conspirators is also evidenced from the fact that accused Khempreet Singh joined the riotous mob from Sanjay Gandhi Transport Nagar (*this was the very first batch of the riotous mob which broke open the Lahore Gate and entered the walls of Red Fort*). This batch of riotous mob of which Khempreet Singh was the part & parcel, firstly breached the barricading at Sanjay Gandhi Transport Nagar, created mayhem over there and moved further to reach Burari, whereat also they breached the barricading and then again moved ahead. The riotous mob then also breached the barricading done by Delhi Police at *Chhatta Rail* and finally reached Red Fort, armed. All this time from *Mukarba Chowk* to Red Fort, accused Khempreet Singh was carrying a *spear-cum-pharsa* and was moving alongside this riotous mob (*carrying various lethal weapons like swords, spears, axes etc.*) to reach Red Fort. Apart from the above the intentions & object of the unruly & riotous mob is clear from the very fact that they all are fully aware that the route they have taken was not agreed for and they are disregarding the guidelines issued by the Delhi Police for their tractors rally on

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26.01.2021. All the above act done by the members of unlawfully assembled riotous mob is an act for which each of member of it is squarely, wholly & equally liable.

12. That raids were made at the possible / available hideouts / whereabouts of applicant accused, but he was not found available at any of these places. Accused was willfully & deliberately absconding and evading his skin from the clutches of law land.
13. That the unruly mob (*of which applicant accused was a part*) violated the conditions laid down in the permission, accorded them to carry out the Tractor Rally, reached at Red fort illegally, with the common object to cause damage to Red Fort, Public Property, broken barricading through their Tractors, caused hindrance in discharge of duties of police personnel and also caused injuries to staff by *sticks, swords, bhaale, farse* and even pelted stones over the police personnel deployed on duties at Red Fort, robbed Government property and weapon, anti-riot gears of staff, damaged the tableau of Republic Day, 2021 stationed at Red Fort.

I have considered the submissions made and the various authorities placed before me as under:

1. ***Rakesh Kumar Pandey Vs. Munni Singh, @ Mata Bux Singh & Anr.***, SLP (Crl) No. 4059/2000 dated 12.03.2001



2. *Gajendra Singh vs. State of UP, Crl. Misc. Bail Application No. 2554 of 2019 dated 23.07.2020 (Allahabad High Court).*
3. *Anil Kumar Yadav Vs. State*, reported in *2018 12 SCC 129*.

Ld. Addl. Public Prosecutor has not only opposed the bail application but has also pointed out that bail application of the co-accused namely Maninder Singh @ Munni was dismissed vide order dated 01.06.2021 and hence no indulgence should be granted to the present accused.

I have given my careful consideration to the various issues raised before me. I may observe that recently the Hon'ble Delhi High Court while dealing with the bail applications of Natasha Narwal, Devanganakaleta and Asif Iqbal who were arrested for unlawful activities in relation to North-East riots, observed that at a time when the society is polarized and fractured across various lines and ideology reached vanishing point, the Court will do all within their mandate to prevent the misuse of the law and alleviate the anxiety which has come to surround these individuals. It was further observed by placing reliance on Amartiya Sen that “... in order to exercise the rights and entitlements we associate with legal progress. Freedom is both primary objective of development and principle means of development. Development is enhanced in democracy by protection of Human Rights specially Freedom of Press, Speech, Assembly and so forth increase the likelihood of good governance...”. The Hon'ble Delhi Court observed that the Courts do not function in a vacuum and our judges surely have a

view on what is happening around them and that the India democracy is undergoing metamorphosis.

The charge-sheet against the applicant/ accused has already been filed and he is no longer required for investigations. The photographs and the videos placed on record and relied upon by the prosecution are not very clear nor the presence of the applicant/ accused attacking anyone can be seen. Also, I have repeatedly asked the Investigating Officer if carrying a *Pharsa* or *Talwar* by Sikhs and Nihangs are prohibited upon which they are not very sure. Further, I have asked the Investigating Officer if the presence of the accused at the Red Fort was a very grave offence and non bailable. The Investigating Agency is also not sure of the same. To my mind, most of these offences are bailable and 14 accused out of 18 arrested have been granted bail. In fact, the main conspirators as per the Delhi Police namely Deep Sandhu and Iqbal Singh have already been granted bail. The applicant/ accused who is a young boy of 23 years is a resident of Delhi and is not involved in any other case. It is settled law that an accused is deemed innocent till proved guilty.

This being the background and without making any observations on merits of the grounds raised, the applicant/ accused **Khempreet Singh** is admitted to bail on his furnishing a personal bond to the tune of **Rs.50,000/-** with one local surety of the like amount to the satisfaction of the Ld. MM / Link MM / Duty MM, subject to the following conditions:



1. That the accused / applicant shall appear before the SHO concerned i.e. SHO Kotwali on last Saturday of next four months and in case if he leaves Delhi, he shall intimate the same to the SHO Kotwali on phone;
2. That the accused / applicant shall intimate the court in case of change of his address.

If the accused / applicant is found to be violating any of the above conditions, the State shall be at liberty to move an application for cancellation of bail.

I may observe that certain guidelines had been laid down by the Hon'ble Delhi High Court in the case of **"Ajay Verma Vs. Government of NCT of Delhi"** WP (C) 10689/2017 dated 08.03.2018 wherein it was observed and I quote as under:

"..... The trial courts should not only be sensitive but extremely vigilant in cases where they are recording orders of bail to ascertain the compliance thereof....."

1. When bail is granted, an endorsement shall be made on the custody warrant of the prisoner, indicating that bail has been granted, along with the date of the order of bail.
2. In case of inability of a prisoner to seek release despite an order of bail, it is the judicial duty of the trial courts to undertake a review for the reasons thereof.
3. Every bail order shall be marked on the file.
4. It shall be the responsibility of every judge issuing an order of bail to monitor its execution and enforcement.



5. *In case a judge stands transferred before the execution, it shall be the responsibility of the successor judge to ensure execution.....”*

I note that in the present case the bail bonds have been directed to be furnished before the Ld. Trial Court/ Ld. MM and hence in terms of the above observations, the Ld. MM is impressed upon to inform this court about the following:

1. *The date on which conditions imposed by this court are satisfied;*
2. *The date of release of prisoner from jail;*
3. *Date of ultimate release of prisoner in case the prisoner is in jail in some other case.*

A copy of this order be sent to **Ld. MM** and also to the **Superintendent Jail** who shall also inform this court about all the three aspects as contained in the para herein above. The Superintendent Jail is also directed to inform this court if the prisoner is willingly not furnishing the personal bond or in case if he is unable to furnish the surety or any other reason given by the prisoner for not filing the bonds.

The bail application is accordingly disposed off.

Announced in the open court
Dated 02.07.2021

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State Vs. K Fempreet Singh, FIR no. 96/2021, PS Kotwali

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