



Argued by: Shri Tahir Hussain Devla, Advocate for the applicant-accused Tofik Mohammad.

Shri Dinesh Ambavta, Learned Public Prosecutor for State/respondent assisted by the Investigating Officer.

ORDER:

This application has been filed for regular bail by applicant-accused namely Tofik Mohammad son of Fateh Mohammad, resident of village Marora, Police Station Nagina, District Nuh, in a case FIR No.149 dated 01.08.2023, under Sections 148, 149, 153-A, 379-A, 436, 506, 201, 395 and 397 of I.P.C., Police Station Nagina, District Nuh. Reply filed. Arguments heard.

2. Brief facts of the case are that complainant Madan has got recorded this case FIR to the effect that he is running a grossery shop near Petrol Pump situated within the jurisdiction of Police Station Nagina. On 31.7.2023, a communal crowd of a particular community had damaged the shop of Hindus and had exhorted to set them ablaze and to kill. On noticing the mob going violent the complainant has closed the shutter of his shop and after locking had left from there. Around 5.00 P.M. in the evening time it came to know that crowd of a particular community had forcibly broken the shutter of his shop and had looted the grossery articles and thereafter put on fire. They had

also taken away two mobile phones from there. He can identify some of the rioter as Lukman son of Haroon, Waris son of Kamru, Ummar son of Khajru, Sabir son of Wahid and Mohammad Raffik son of Rujji. They had caused loss of his shop of Rs.3 lac and they did so in order to instigate the communal frenzy. On the basis of the complaint, present FIR was registered.

3. Learned Counsel for the applicant-accused has submitted that has been falsely implicated in the present case on account of party faction since he was the public servant and deputed as checker in checking staff of Haryana Roadways buses in Nuh Depot. On the date of incident he was on duty and he had gone from Nuh Depot with other team on Roadway bus bearing registration No.HR-74A-6714 with driver and conductor Kanwar Singh. When it came to their knowledge that riots and arson had occurred they had diverted their route via Badkali to Ferozpur Jhirka under instruction of Inspector Hakam Ali. The applicant was at Ferozpur Jhirka from 3.20 P.M. to 7.26 P.M. There was CCTV footage of his presence at Ferozpur Jhirka but depot. Moreso, the occurrence pertains to around 5.00 P.M. and he was at around 10-15 kilometers away. He was on government duty but has been implicated only on the basis of disclosure statement. He is in custody since 8.9.2023 but Investigating Officer has least bothered to enquire from his office regarding his presence. The applicant do not have any criminal antecedents. Had he was involved in such like offence then the government bus might have also comes under

the grip of violence of arson but no such public bus of his Depot had been damaged. Investigation qua him has been concluded. Conclusion of trial would take long time. In these circumstances, no purpose would be served by keeping the applicant further behind custody. Therefore, bail application of the applicant may be allowed.

4. On the other hand, Learned Public Prosecutor for the State/respondent assisted by the Investigating Officer, has submitted that during the time of occurrence the location of mobile phone of applicant was there at Badkali Chowk Nagina from 1.46 P.M. to 2.30 P.M. His mobile phone has been recovered. He has instigated the public and had made call to local MLA and disseminate message to incite violence through WhatsApp, however, message has been deleted by him. The mobile phone has been sent to DITEC Lab Gurugram for retrieving that message. Investigation of this case is still pending. Arrest of other co-accused is yet to be effected. No lenient view be taken. Therefore, bail application of the applicant may be dismissed.

5. I have heard Learned Counsel for the applicant-accused and Learned Public Prosecutor for the State/respondent assisted by the Investigating Officer and have perused the record carefully.

6. Since investigation qua the applicant has been concluded. The applicant is in custody since 9.8.2023. It has been conceded by the Investigating Officer that the applicant is working in Haryana Roadway Department. However, it has been submitted he was present as per his

mobile location at the spot of occurrence during the relevant period and he had incited the public through mobile phone post from his mobile phone number which has been recovered from him. However, it has also been alleged that he had called the local MLA on his mobile phone number. However, on the other hand, the applicant has claimed that he was on duty on directed route under instruction of Inspector Hakam Ali from Haryana Roadways on bus bearing registration No.HR-74A-6714. He has also shown CCTV footage installed at the bus stand at Ferozpur Jhirka on the date of occurrence at 3.20 P.M. to 7.26 P.M. Photocopy of attendance register and certificate of issued by Inspector Hakam Ali has also been annexed with the bail application. The Investigating Officer after looking his footage photo has neither affirmed nor denied regarding presence of applicant. He has also on asking by this Court regarding footage on the mobile phone of applicant counsel for identification but has again not sure. Hence, the applicant is the government employee who conceded his presence while crossing with his bus from the spot of occurrence on directed route to save bus being damaged on direction of his Inspector Hakam Ali through Nagina and Mandikhera road reach at Ferozpur Jhirka. The arguments is convincing since the present bail application is regular bail application. The applicant is in custody since 9.8.2023 i.e. for a period of around one month. It has been alleged that he has deleted the post which he has sent to other person but till dated why that alleged post from other end has not been traced. No justifiable explanation are there.

The applicant do not have any criminal antecedents. He has been booked only on the basis of call location which has already been with the Investigating Officer. Therefore, I deem it appropriate to grant the concession of regular bail to the applicant. Accordingly, his bail application is hereby allowed. The applicant-accused shall be released from custody, subject to his furnishing personal bonds in the sum of Rs.50,000/- with one local surety in the like amount, to the satisfaction of Learned Trial Court/Illaqa/Duty Magistrate. A copy of this order be sent to the Court of Learned Trial Court/Illaqa/Duty Magistrate. File be consigned to the record-room after due compliance.

Announced in open court.
Dated.06.09.2023.

Satish Kumar
Executive Assistant

(Sandeep Kumar Duggal)
Additional Sessions Judge,
Nuh. (UID-HR-0492)