

\$~

WWW.LIVELAW.IN

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 10.03.2021

Pronounced on: 16.03.2021

(i) + BAIL APPLN. 3039/2020

LIYAKAT ALI

..... Petitioner

Through: Mr.Dinesh Kumar Tiwari,
Advocate

Versus

STATE NCT OF DELHI

..... Respondent

Through: Mr.S.V. Raju, ASG with
Mr. Amit Mahajan & Mr.
Rajat Nair Special Public
Prosecutor for State with
Mr. Dhruv Pande, Ms. Sairica
Raju, Mr. A Venkatesh,
Mr.Guntur Pramod Kumar,
Mr. Shaurya R Rai, Ms. Zeal
Shah, Ms. Aarushi Singh &
Mr. Anshuman Singh,
Advocates

(ii) + BAIL APPLN. 3040/2020

ARSHAD QAYYUM @ MONU

..... Petitioner

Through: Mr.Dinesh Kumar Tiwari,
Advocate

Versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr.S.V. Raju, ASG with

Mr. Amit Mahajan & Mr.
Rajat Nair Special Public
Prosecutor for State with
Mr. Dhruv Pande, Ms. Sairica
Raju, Mr. A Venkatesh,
Mr. Guntur Pramod Kumar,
Mr. Shaurya R Rai, Ms. Zeal
Shah, Ms. Aarushi Singh &
Mr. Anshuman Singh,
Advocates

(iii) + **BAIL APPLN. 3623/2020**

GULFAM @ VIP Petitioner
Through: Mr. Salim Malik, Advocate

Versus

THE STATE GOVT. OF NCT OF DELHI Respondent
Through: Mr. S.V. Raju, ASG with
Mr. Amit Mahajan & Mr.
Rajat Nair Special Public
Prosecutor for State with
Mr. Dhruv Pande, Ms. Sairica
Raju, Mr. A Venkatesh,
Mr. Guntur Pramod Kumar,
Mr. Shaurya R Rai, Ms. Zeal
Shah, Ms. Aarushi Singh &
Mr. Anshuman Singh,
Advocates

(iv) + **BAIL APPLN. 120/2021**

IRSHAD AHMAD Petitioner
Through: Mr. Anurag Jain, Advocate

Versus

STATE (GOVT OF NCT OF DELHI) Respondent

Through: Mr.S.V. Raju, ASG with
Mr. Amit Mahajan & Mr.
Rajat Nair Special Public
Prosecutor for State with
Mr. Dhruv Pande, Ms. Sairica
Raju, Mr. A Venkatesh,
Mr.Guntur Pramod Kumar,
Mr. Shaurya R Rai, Ms. Zeal
Shah, Ms. Aarushi Singh &
Mr. Anshuman Singh,
Advocates

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

%

1. The petitioners in the above captioned four petitions are accused in FIR No. 116/2020, registered at police station Khajuri Khas, Delhi. The FIR in question has been registered for the offences under Sections 109/114/147/148/149/153A/323/392/395/427/436/454/505/120B/34 IPC. However, besides the aforesaid offences, petitioner-*Liyakat Ali* in above captioned first petition [Bail Appln. 3039/2020]; petitioner- *Arshad Qayyum @ Monu* in the above captioned second petition [Bail Appln. 3040/2020] and petitioner- *Gulfam @ VIP* in the above captioned third petition [Bail Appln. 3623/2020] have been booked for the offences under BAIL APPLN.3039/2020; 3040/2020; 3623/2020 & 120/2021

Sections 25/27 of Arms Act and petitioner - *Irshad Ahmad* in the above captioned fourth petition [Bail Appln. 120/2021] has been booked for offences under Sections 3 & 4 of Prevention to Damage to Public Property Act, 1984. Petitioners in first three petitions, namely, *Liyakat Ali*, *Arshad Qayyum @ Monu* and *Gulfam @ VIP* were arrested on 23.03.2020, whereas *Irshad Ahmad* (petitioner in fourth petition) was arrested on 18.03.2020 in this case.

2. These petitions pertain to North-East Delhi riots, which took place in the last week of February, 2020 and spread over the entire North-East District of Delhi.

3. The fulcrum of these petitions is a common FIR and therefore, with the consent of learned counsel for the parties, these petitions have been heard together and are being disposed of by this common judgment.

4. The foundation of the FIR in question rests upon the incident of riots which occurred on 24.02.2020 at about 02:15 p.m. in the area of Chand Bagh Pulia, E Block, Khajuri Khas, Delhi. The FIR was registered at the instance of complainant- *Tejveer Singh @ Tejpal Singh*. In the complaint, he has alleged that marriage of his

brother's daughter was fixed for 25.02.2020 and on 24.02.2020, food was being prepared on the first floor of Bharat Vatika, Main Karawal Nagar, Khajuri Khas, Delhi. On the said day i.e. 24.02.2020, a large mob was present on the roof of Tahir Hussain, Councilor, and around the area and they were pelting stones and petrol bombs on the passer bys. A few of them, broke open the shutter of the parking lot of Bharat Vatika and robbed the inmates. The mob burnt one of the parked vehicle and broke the motor cycle of complainant. Thereafter, the mob reached on the first floor of Bharat Vatika, where food was being prepared for the marriage ceremony and destroyed the food and robbed of Rs.62,000/- from Rajvir Yadav who was taking care of the food preparation. The complainant further alleged that he can identify the accused persons along with Tahir Hussain and prayed for legal action against them. On the complaint of the complainant, the FIR in question was registered on 27.02.2020.

5. After completion of investigation, charge sheet has been filed and name of petitioner-Liyakat Ali is appearing at Serial No.7, Arshad Qayyum @ Monu at serial No. 2; Gulfam @ VIP at serial

No. 3 and *Irshad Ahmad* at serial No.4. However, in the charge sheet filed all the petitioners have been booked for the offences under Sections under Sections 109/114/147/148/149/153A/323/392/395/ 427/436/ 454/505/120B/34 IPC and Sections 25/27 of Arms Act.

6. The role attributed to petitioner-*Liyakat Ali* is that he was found promoting enmity and disharmony by rioting, burning the vehicles, destroying the food preparation at Bharat Vatika, stone pelting and instigating the mobs. Eye witness Pradeep Verma, Surender Singh and Rajbir Singh Yadav in their statement recorded under Section 161 Cr.P.C. have identified him being involved in riots and instigating the mobs in riots. Constable Sangram Singh has also identified him being present on the terrace of Tahir Hussain along with his associates and instigating the mob of rioters to pelt stones on the persons of other community. As per his call detail record, he is found to be present at the place of the occurrence on the said day. Petitioner-*Liyakat Ali* was initially arrested on 07.03.2020 in FIR No. 101/2020, registered at police station *Khajuri Khas* and besides the present FIR, he is also accused in FIR No.

88/2020, registered at police station Dayalpuri, and in this way, three different FIRs are pending to his credit pertaining to Delhi riots in the month of February, 2020.

7. The role attributed to petitioner-*Arshad Qayyum @ Monu* is similar to that of petitioner-*Liyakat Ali*. He has been identified by eye witnesses Pradeep Verma, Surender Singh and Rajbir Singh Yadav. Not only Constable Sangram Singh, but he has also been identified by Head Constable Vikram Singh and Head Constable Virender that he had broken the lock of shutter of parking of Bharat Vatika and instigating the rioters. His call detail record also shows his presence at the time of occurrence. *Arshad Qayyum* was initially arrested on 18.02.2020 in FIR No. 101/2020 and in this case he has been arrested on the basis of identification and statement of public witnesses.

8. Petitioner- *Gulfam @ VIP* has also has been identified by eye witnesses Pradeep Verma, Surender Singh and Rajbir Singh Yadav as well as police officials on duty, namely, Constable Sangram Singh, Head Constable Vikram Singh and Head Constable Virender. His call detail record also shows his presence at the time of

occurrence. The role attributed to him is of breaking the lock of shutter of parking of Bharat Vatika, burning the vehicles, robbery and instigating the rioters.

9. The allegations leveled against the petitioner- *Irshad Ahmad* are also exactly similar to that of petitioner- *Liyakat Ali*. Eye witness Pradeep Verma, Surender Singh and Rajbir Singh Yadav in their statement recorded under Section 161 Cr.P.C. have alleged that he was involved in riots and instigating the mobs in riots and have identified him. He has also been identified by Constable Sangram Singh, as being present on the terrace of Tahir Hussain along with his associates and instigating the mob of rioters to pelt stones on the persons of other community. As per his call detail record, he is also found to be present at the place of the occurrence on the day of the incident.

10. At the hearing, Mr.Dinesh Kumar Tiwari, learned counsel appearing for petitioner-*Liyakat Ali* submitted that petitioner is an old man of 63 years of age and is the sole bread earner of his family and he has been falsely implicated in this case. With regard to petitioner- *Arshad Qayyum @ Monu*, Mr. Dinesh Kumar Tiwari,

learned counsel submitted that he is a young boy of 24 years and having responsibility of his old aged parents and is the sole bread earner of the family and he has also been falsely implicated in this case.

11. Learned counsel further submitted that the alleged incident had taken place on 24.02.2020 and statement of eye witnesses *Surender Singh, Pradeep Verma and Rajbir Singh* was recorded on 14.03.2020 in which they stated that they had seen these petitioners at the spot but no PCR call was made by them nor any DD entry to this regard was made till 14.03.2020, and therefore, it is apparent that these are planted witnesses. Learned counsel next submitted that statement of Constable Sangram Singh recorded on 23.04.2020 is highly unbelievable as the alleged incident had happened on 24.02.2020 and no PCR call was made nor DD entry was made till 06.03.2020 and this shows that he was not present at the spot at the time of the alleged incident. It is further submitted that call detail record of these petitioners do not match with that of Tahir Hussain and nothing incriminating has been recovered from their possession. Learned counsel submitted that petitioners- *Liyakat Ali* and *Arshad*

Qayyum @ Monu are languishing in jail and investigation in this case is over, as charge sheet has already been filed and that they will prove their innocence at trial, and, therefore, they deserve to be released on bail.

12. Mr. Salim Malik, Advocate, appearing for petitioner- *Gulfam @ VIP*, submitted that petitioner is innocent and has clean antecedents. The petitioner has not been named in the FIR, however, his name has been brought into picture only during investigation on the basis of suspicion. Moreover, there is a delay of three days in registration of the FIR in question. There is no direct evidence of electronic media such like CCTV footage, video clip etc. on the basis of which presence of petitioner could be established at the spot of incident. The petitioner is behind bars since 23.03.2020 on the grounds of false allegations; he deserves to be released on bail.

13. Mr. Anurag Jain, Advocate appearing for petitioner- *Irshad Ahmad* submitted that it is highly doubtful that the complainant of the FIR is an eye witness to the incident, as he has not specifically named anyone in the FIR. The petitioner has been roped in this case, as he is a resident of the same locality where the alleged incident

had taken place. There is an unexplained delay in registration of FIR and witnesses have been planted by the prosecution and no recovery has been made from the petitioner. The petitioner is behind bars since 18.03.2020 in this case. Pertinently, petitioner has been granted bail in three other FIRs [FIR No. 80/2020, 120/2020 and 117/2020, registered at Dayalpur, Delhi] and in the present case, charge sheet has already been filed. Thus, petitioner deserves to be released on bail.

14. On the other hand, learned ASG appearing on behalf of respondent/State has opposed the present petitions while submitting that the alleged incident had not taken place on the spur of the moment but it was a deep rooted and pre-devised strategy by the main accused Tahir Hussain, who along with petitioners and other accused persons instigated the rioters. The role of petitioners in the alleged incident has been vividly described by the eye witnesses and the police officials, who are also witnesses to the incident in question. Learned ASG pointed out that besides the instant FIR, two more FIRs [FIR No. 101/2020, registered at police station Khajuri Khas and FIR No. 88/2020, registered at police station Dayalpur]

are pending to the credit of petitioner- *Liyakat Ali*.

15. Learned ASG next submitted that petitioner- *Arshad Qayyum @ Monu* in his disclosure statement has admitted to have received his share of Rs.5,000/- out of the looted amount by *Gulfam @ VIP* from Bharat Vatika. Similarly, *Gulfam @ VIP* in his disclosure statement has accepted to having robbed Rs.62,000/- from the person present at the first floor of Bharat Vatika and Rs.22,000/- from the galla of parking on the day of the incident and of having spent the looted money. Learned ASG pointed out that besides the present case, FIR No. 153/2018, under Sections 186/353/332/308/427/34 IPC, was registered at police station Khajuri Khas and also four FIRs being FIR No. 101/2020, registered at police station Khajuri Khas and FIR Nos. 117/2020; 120/2020 and 80/2020, registered at police station Dayalpur are pending against petitioner - *Arshad Qayyum*.

16. Learned ASG submitted that call detail record of these petitioners show their presence in the area where communal riots had taken place.

17. Learned ASG further submitted that the police

officials/witnesses Constable Sangram Singh, Head Constable Vikram Singh and Head Constable Virender have identified the petitioners among the photographs of various accused persons and suspects. He submitted that in the alleged incident of riots, 53 innocent persons had lost their life and if the petitioners are released on bail, there is every likelihood that they will again get involved in criminal activities and so, these petitions deserve to be dismissed.

18. The rival contentions raised by both the sides have been heard in detail and I have gone through the material placed on record.

19. It is not dispute that in the FIR in question, none of the petitioners have been particularly named. Rather the complainant has specifically stated that he can identify a few of the rioters. It is a matter of record that alleged incident took place on 24.02.2020 but the FIR in question has been registered on 27.02.2020. The testimony of eye witnesses, namely, Pradeep Verma, Surender Singh and Rajbir Singh Yadav under Section 161 Cr.P.C. has been recorded on 14.03.2020 and none of them neither made any PCR call nor any DD entry was made. Similarly, the statement of another eye witness Constable Sangram was recorded on 23.04.2020 and

this Court fails to understand as to why despite having good understanding of law and order, a police official who is witness to riots would neither call PCR nor will make a DD entry in this regard. Besides, it is not disputed that the call detail record of prime accused Tahir Hussain does not match with those of petitioners. Moreover, there is no evidence against the petitioners such like CCTV footage, video clip or photo to connect the petitioners with the incident in question and nothing incriminating has been recovered from their possession. This Court is informed that charge sheet in this FIR case has already been filed and trial is in progress.

20. In view of the above, without commenting on the merits of the case, *prima facie* I am of the opinion that petitioners cannot be made to languish behind bars for a longer time and the veracity of allegations leveled against them can be tested during trial.

21. Accordingly, petitioners are directed to be released on bail forthwith in this FIR case upon their furnishing personal bond in the sum of Rs.20,000/- each, with one surety each in the like amount, to the satisfaction of the trial court, subject to the condition that petitioners shall not directly or indirectly influence the witnesses or

tamper with the evidence and they will appear before the court as and when directed.

22. It is made clear that any observation made herein shall not influence the trial court on the merits of the prosecution case.

23. With aforesaid directions, these petitions are allowed and accordingly disposed of.

24. A copy of this order be transmitted the trial court and Jail Superintendent concerned for necessary compliance.

(SURESH KUMAR KAIT)
JUDGE

March 16, 2021

r