

Bail Application No.746/2021

State V/s Siraj Ahmad Khan

FIR No.94/2020

U/s 147/148/149/324/307/427/188/120-B IPC

PS: New Usmanpur

29.04.2021

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri Saleem Ahmed, Ld. Special PP for the State alongwith IO,
SI Amit Kumar.

Shri Shadab Khan, Ld. Proxy Counsel for Mohd. Salim,
Ld.Counsel for accused Siraj Ahmad Khan/applicant.

ORDER

This is an application seeking anticipatory bail filed on behalf of applicant.

2. I have heard arguments advanced at bar from both the sides and perused the report filed in the matter.

3. The learned counsel for the applicant has very vehemently argued that applicant is aged about 46 years and permanent resident of Delhi. He has been falsely implicated in the matter merely on the basis of disclosure statement(s) of co-accused persons; no specific role has been assigned to him in the matter and in fact he has nothing to do with the alleged offence. It is further submitted that co-accused Mohd. Javed @ Shanu has already been enlarged on bail in the matter by Hon'ble High Court of Delhi vide order dated 09.12.2020 (passed in Bail Application No.3376/2020) and based upon the observations of Hon'ble High Court, this Court has also admitted three accused persons namely Faisal, Shahzad Khan @ Montu and Mohd. Anas on regular bail vide order(s) dated 11.12.2020, 24.12.2020 and 08.01.2021 respectively. Even another co-accused namely Mobin Ali had also been enlarged on bail by this Court vide order dated 07.08.2020. It is

argued that the official(s) of PS New Usmanpur have been threatening his family members to arrest him in the matter and in this regard they have visited his house several times, that too in odd hours. No notice, as contemplated under Section 160 Cr.P.C has ever been given/issued by the investigating agency, either against the applicant or his family members. It is further very strenuously argued that the applicant is not a previous convict or involved in any other criminal case. In the end, it is argued that investigation in the matter is complete; chargesheet has already been filed; applicant is permanent resident of Delhi and there are no chances of his absconding or tampering with the prosecution witnesses; he is ready to join further investigation in the matter as and when called by the IO/SHO concerned and as such, grant of anticipatory bail to him in the matter has been prayed for.

4. Per contra, the learned Special PP for the State has very vehemently argued that in the present case, complainant Raman S/o Shri Vijay Chauhan was brutally attacked with “**swords and dandas**” by the riotous mob consisting of about 15-20 hooligans on 25.02.2020, when he had gone to fetch vegetables from Hotel Pahari Wali Gali, near Kartar Nagar, Delhi, as a result of which he/complainant sustained severe injuries on his head, back and feet. It is submitted that 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 “**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. It is further very vehemently argued that presence of applicant has been duly established at the spot/scene of crime (SCO) in group of rioters in CCTV footage dated 25.02.2020, wherein he is clearly seen/visible carrying a **spear (bhaala)** in his hands.

6. It is submitted that several efforts were made to join the applicant in investigation, but in vain and he is deliberately absconding in the matter. It is submitted that several raids were conducted at the residence of applicant in Delhi, but everytime he was found absconding and thus, could not be apprehended in the matter. It is further argued that left with no option the investigating agency was compelled to initiate coercive measures against the applicant and in this process he was declared “**Proclaimed Offender**” by the court of learned Duty MM (North-East), Karkardooma District Courts vide order dated 23.12.2020. It is further argued that the custodial interrogation of applicant is very much necessary to unearth the entire conspiracy in the matter and if anticipatory bail is granted to him in the matter then there is very bleak chance of recovery of **spear (bhaala)** from him. It is further argued that two other co-accused persons in the matter namely Arman @ Arbaaj and Aman @ Suhail Khan, both of whom are sons of applicant are still absconding and yet to be arrested in the matter. It is further contended that although the chargesheet in the matter has been filed, but further investigation in the matter is still on to identify and nab the other rioters/rabble-rousers. It is emphasized that based on somewhat similar material, this Court has already dismissed the anticipatory bail application(s) of other two co-accused persons namely Irfan and Iqbal Khan vide order(s) dated 07.01.2021 and 16.01.2021 respectively and as such, dismissal of instant application has been prayed for.

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

8. It is common knowledge that the dreary day(s) of 24/25.02.2020 saw parts of North-East Delhi gripped by a communal frenzy, reminiscent of carnage during the days of partition. Soon, the riots spread like wildfire across the smoke-grey skyline of Capital, engulfing new areas and snuffing out more and more innocent lives. In the present matter, a young innocent boy namely Raman was brutally attacked by the riotous mob merely on the ground that he belonged to a different community. It is not in dispute that applicant has already been declared “**Proclaimed Offender**” by the court of learned Duty MM (North-East), Karkardooma Courts vide order dated 23.12.2020. It is prima facie apparent that applicant was called several times by the investigating agency to join the investigation in the matter, but for the reasons best known to him he is still evading his appearance before the investigating agency and as such, the investigating agency was constrained to take coercive measures against him for securing his attendance. The factum that co-accused Mohd. Javed @ Shanu has been enlarged on bail by Hon’ble High Court of Delhi and thereafter 2-3 other co-accused persons also having been enlarged on bail by this Court will not water down the conduct of applicant which he has displayed in the matter by absconding right from the day when his name cropped in the matter. From the reply filed by IO in the matter, it is clearly apparent that applicant is clearly seen/visible in the CCTV footage dated 25.02.2020, carrying a **spear (bhaala) in his hands** and his two sons namely Arman @ Arbaaj and Aman @ Suhail Khan, who are also accused in the instant matter are still absconding. It is a matter of record that based on somewhat similar material, this Court has already dismissed the anticipatory bail application(s) of other two co-accused persons namely Irfan and Iqbal Khan vide order(s) dated 07.01.2021 and 16.01.2021 respectively.

9. I find substance in the submissions of learned Special PP for the State that the custodial interrogation of applicant is very much necessary to ***unearth the conspiracy for planning, instigating and executing riot action plan***. The applicant has been absconding in the matter right from the day his name/role cropped in the

matter. In case reported as, “**(2012) 8 SCC 730**”, titled as, “**Lavesh V/s State (NCT of Delhi)**”, decided on 31.08.2012, the Hon’ble Supreme Court has been pleased to lay down that interim protection should not be granted to a person who is absconding or concealing himself to avoid execution of Warrants.

10. The allegations against the applicant are grave in nature. ***The presence/appearance of applicant is very much necessary to unearth the conspiracy involved in planning, instigating and fanning the flames of communal conflagration.*** Considering the facts and circumstances of the case in totality and the conduct exhibited by applicant during the course of investigation, I do not find it to be a fit case for grant of anticipatory bail to the applicant. The application for anticipatory bail is accordingly dismissed.

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

12. A copy of this order be sent to learned counsel for the applicant through electronic mode.

(VINOD YADAV)
ASJ-03(NE)/KKD COURTS/29.04.2021