

Bail Application No.1673/2020

State V/s Tabassum

FIR No.60/2020

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U/s:186/353/332/333/323/109/144/147/148/149/153-A/188/336/427/307/308/397/
412/302/201/120-B/34 IPC r/w 3 & 4 PDPP Act & Section 25/27 Arms Act

PS: Dayalpur (Crime Branch) (**HC Rattan Lal murder case**)

08.01.2021

*Ld. Special PP for the State and Ld. Counsel for the applicant
have made a request that they may be heard through Video Conferencing.*

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri Amit Prasad, Ld. Special PP for the State alongwith IO,
Inspector Gurmeet Singh.

Shri S.U Mirza, Ld. Counsel for accused Tabassum/applicant.

ORDER

I have heard arguments advanced at bar from both the sides and perused the report as well as the chargesheet filed in the matter. I have also seen various screen shot(s) of the video-footages.

2. The learned counsel for the applicant has very vehemently argued that applicant applicant is a lady, aged about 38 years and permanent resident of Chand Bagh, Delhi. The applicant is having two minor school going children, whose future/career is at stake as they have been deprived of the care and custody of their mother. She has been falsely implicated in the present matter by the investigating agency; she was not present at the scene of crime (SOC) on the date and time of incident and as such she has nothing to do with alleged incident. It is very fairly submitted that her anticipatory bail application was dismissed by this Court vide order dated 26.09.2020 and thereafter she had surrendered before the

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Crime Branch on 02.10.2020, pursuant where to she was taken on two days' police custody remand and thereafter remanded to JC on 05.10.2020 and since then she has been in judicial custody . The investigating agency has not been able to bring out any incriminating evidence against the applicant during her PC remand. It is further argued that the applicant has not been named in the FIR and there is an “*unexplained delay*” of about 24 hours in registration of FIR, as the alleged incident occurred in the afternoon (at about 1.00 PM) on 24.02.2020; whereas, the FIR in the matter came to be registered on 25.02.2020. The chargesheet filed by the investigating agency is based on conjectures, pre-conceived and pre-decided conclusions as the true facts leading to the death of HC Rattan Lal have not been investigated properly and instead a deliberate attempt has been made by the investigating agency to conceal the same. There is no electronic evidence available against the applicant, either in the form of any CCTV footage(s) or her CDR location, which could *prima facie* show her presence at the scene of crime on the date of incident. It is further argued that the applicant was never subjected to judicial “*Test Identification Parade*” (TIP) either by the alleged eye witness Vishal Chaudhary or by Constable Sunil. It is further argued that no reliance can be placed upon the statements of so called public witnesses namely Salman @ Guddu, Nazamul Hassan and Tauqir, as their statements U/s 164 Cr.P.C were recorded by the investigating agency after lapse of about three months of the registration of FIR in the matter. The police witnesses (three beat constables) cited in the matter are “*interested witnesses*”, whose statements are verbatim and a cut and paste version of each other.

3. It is next contended by learned counsel for the applicant that though the applicant has admitted having participated in the protest, however, it is reiterated that protesting against some legislation is a “**legal and fundamental right**” of the applicant and the same cannot be snatched away from her as it is her

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legitimate belief and perception that **Citizenship Amendment Act, 2019 (CAA)** and **National Register for Citizens (NRC)** are against a particular religion. As a corollary thereof, it is submitted that the investigating agency has not been able to establish the contents of her speech(es), i.e, whether they were inflammatory or instigating and as far as conspiracy under Section 120-B IPC is concerned, it is submitted that participating in the protest against a particular law/enactment does not amount to conspiracy of incitement of violence where HC Rattan Lal had died. It is next argued that the statements under Section 164 Cr.P.C of the witnesses have been recorded after three months of the alleged incident and there is no audio or video recording of the so called provocative speeches of the applicant.

4. 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; the applicant is no more required for custodial interrogation; and no useful purpose would be served by keeping her 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 communal riots in North-East Delhi were of a very high magnitude, wherein 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. These riots were part of large scale conspiracy hatched at various levels all over Delhi in the aftermath of enactment of **Citizenship Amendment Act, 2019** (in short “CAA”) and the same did not take place spontaneously. These riots were result of a well-planned and meticulously executed action by the anti-CAA protesters. It had in fact been planned before the

visit of US President Donald J. Trump to India, as one group of particular community was aware of the fact that police system would be busy in handling arrangements for Trump's visit to Ahmedabad in Gujarat on 24.02.2020 and 25.02.2020 and hence, the very timing of riots just prior to the visit of US President Donald J. Trump to India points towards a very deep-rooted conspiracy behind the entire scenario. In continuation of the aforesaid, it is further argued that the protests against CAA were going on for the last one and a half month in the area of PS Dayalpur at Chand Bagh and Brijpuri Puliya alongwith the other areas of North-East Delhi. On 23.02.2020, the protest turned violent and protestors at Chand Bagh spread on Wazirabad Road and Karawal Nagar Road upto Sherpur Chowk, including Moonga Nagar. The communal riots continued till 26.02.2020. During this period, a number of cases of riots have been registered at PS Dayalpur and other police stations of North-East District. A heavy damage to government and public property and loss of innocent lives were reported and paramilitary forces had to be deployed to control law and order situation in the area.

6. As regards the case in hand, it is very vehemently argued that the FIR in the matter was registered on the statement of Constable Sunil Kumar, wherein he stated that he was deployed as Beat Constable in the area of Chand Bagh, PS Dayalpur and from the last one and half month, a protest against the Citizenship Amendment Act (in short "CAA") was going on at the service road, main Wazirabad road, near 25 foota road, Chand Bagh, Delhi. On 24.02.2020, he was on law and order arrangement duty with other staff at Chand Bagh, Delhi and ACP Gokulpuri Shri Anuj Kumar alongwith staff was present at the spot. Shri Amit Sharma, DCP/Shahdara was also present alongwith his staff. Protest was peacefully going on at the service road but at around 1.00 PM, protesters carrying danda/lathies, baseball bat, iron rod and stones started gathering at the main

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Wazirabad road. He further stated that though senior officers tried to stop them and asked to return at service road, but the protestors did not pay any heed to their directions and became violent. The gathering got uncontrolled and started pelting stones on the police on duty. Protesters were raising slogans against the said Bill as well as Government of India. The gathering was given due directions and warning by loud speaker, informing them that they can't block the main road, but the protest took violent shape. He further stated that the protestors were again warned, but instead of retreating, they became more aggressive and later on again started throwing stones on police party. After repeated warning and finding no alternative, mild force and gas shells were used to disperse the crowd. Violent protestors started beating people as well as police personnel, due to which he (Constable Sunil) sustained injury on his right elbow and hand and protestors also attacked upon DCP Shahdara, ACP Gokulpuri, and HC Rattan Lal due to which they fell on the road and sustained grievous injuries and started bleeding. He further stated that the mob burnt government vehicles as well as private vehicles parked at the roadside. In order to control further damage to public property, reserve force reached at the spot and after continuous confrontation for couple of hours, the police was able to contain the violent mob. All the injured persons were taken to hospital, where it was found that HC Rattan Lal had already died due to injuries sustained and DCP Shahdara was unconscious and had sustained head injuries.

7. It is further argued that during the course of investigation, MLCs of 50 injured police persons were collected. Later on, SIT was constituted and investigation of the case was transferred to Inter State Cell, Crime Branch, Chankyapuri, Delhi. It is further stated that during the course of investigation, witnesses were examined and their statements U/s 161 Cr.P.C were recorded. Notice was also sent to PWD to produce CCTV footage of the camera installed by

Delhi Government at various locations of Chand Bagh. It is further stated that CCTV footage of the camera installed nearby the place of incident was obtained, number of DVRs were taken into police possession and same were sent to FSL for expert opinion. Moreover, an appeal was made to the general public for proving the relevant footage related to the incident. A number of people who actively indulged in the riots were identified, local intelligence was collected about the incident and the culprits, spot was visited and inspection of the spot was got conducted by the crime team. It is further stated that place of incident was also visited by FSL team and on its directions, exhibits, i.e petrol bombs, raw material used to make improvised petrol bombs, empty cartridges alongwith a live cartridge were taken into police possession.

8. It is further argued that the applicant used to share stage with other protestor(s) and instigate the gathering against the Government of India which ultimately led to violence on 24.02.2020, thereby resulting in death of more than 50 people in North-East District of Delhi, including HC Rattan Lal.

9. It is further argued that the Call Detail Records (CDRs) qua the mobile phone of applicant bearing number 8375010984 reveals that she was in touch with co-accused persons namely Shadab, Raveesh (since PO), Athar, Upasana and Saleem Khan (arrested in case FIR No.59/2020, being investigated by Special Cell of Delhi Police). The flow-chart of the calls made by applicant to the aforesaid co-accused persons has been filed on record. It is submitted that initially the applicant deliberately avoided joining the investigation, pursuant whereunto NBWs were got issued against her and finally her anticipatory bail application was also dismissed by this Court vide detailed order dated 26.09.2020. Even during her police custody remand, the applicant did not co-operate in the investigation.

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10. It is further argued that independent public witnesses namely Tauqir (page 595 of the chargesheet); Najimul Hasan (page 586 of the chargesheet) and Salman (page 601 of the chargesheet) have categorically named her alongwith co-accused Ravish and Suleman Siddiqui (*since PO*) in their statements recorded under Section 164 Cr.P.C as one of the rioters/rabble-rousers, who were part of the riotous mob. Besides aforesaid public witnesses, the police witness namely ACP Anuj Kumar has also identified the applicant as one of the conspirators/organizers/rabble-rousers, who was part of the riotous mob on the date of incident.

11. It is further argued that a number of burqa clad ladies, who were attacking the police party with danda and stones have been captured by in the video prepared by Shri Vishal Chaudhary and it is not practically viable to identify any lady in burqa and the only means of identification is through CDRs.

At this stage, the learned Special PP has played the video filmed by Shri Vishal Chaudhary, where many burqa clad women are visible attacking the police party.

It is emphasized that from the CDR details of applicant, it is apparent that she has been moving from one point to another at the protest site/SOC, meaning thereby that she was highly active at the time of incident in this matter.

12. It is emphasized that this is a peculiar case, wherein the protectors of the life and liberty of general public were beaten black and blue by the so called protestors under a large-scale conspiracy and the applicant was a part thereof. It is emphasized that several murders had taken place at or around Shiv Vihar tiraha as well as near Chand Bagh puliya, which places are not far off from the scene of crime (SOC). There were several cases of attempt to murder and as such, a law and order situation had arisen. Large scale arson, looting and vandalizing of

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public and private property took place. The CCTV cameras were broken down. All this happened from 24.02.2020 to 26.02.2020. At that time, PS Dayalpur had only four Investigating Officers. There were thousands of calls which were received in the PS and as such, every single policeman in the PS was busy in law and order duty. At or around the time of murder of HC Rattan Lal, the murder of one person by the name of Shahid had taken place on the roof top of “***Saptrishi Building***” quite near to SOC (FIR No.84/2020, PS Dayalpur). The police officials of PS Dayalpur remained busy in law and order duty and as such, delay in recording of FIRs took place. In support of his aforesaid contention, the learned Special PP has relied upon the ***decision dated 06.07.2020***, passed by the Hon’ble High Court of Delhi in ***Bail Application No.922/2020***, titled as, “***Raiees Khan V/s State of NCT of Delhi***”. Para 11 of the said decision is re-produced hereunder:

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11. No doubt, there was a delay in registration of the FIR, but it was only because of the circumstances prevalent at that time. On the day of incident, I am told about 18689 PCR calls were received on a single day; 3450 calls were from the Dayalpur area itself and then it took time to register the FIRs; the last FIR being registered on 28.03.2020. Pandemic Covid-19 further delayed the investigation.

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13. As regards the delay in recording of statements U/s 164 Cr.P.C of the public witnesses in the matter, it is stated that it was Covid period and the Courts were taking up selected matters and as such, delay in recording of the statements was on account of prevalence of peculiar and unprecedented circumstances beyond the control of investigating agency.

14. I have given my thoughtful consideration to the arguments advanced at bar. Before proceeding to discuss the rival arguments, it is worthwhile to note

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that Section 149 IPC creates a specific and distinct offence. Its two ingredients are:

- (i) *Commission of an offence by any member of an unlawful assembly and;*
- (ii) *Such offence must have been committed in prosecution of the common object of that assembly or must be such as members of that assembly knew it be likely to be committed.*

15. Furthermore, in “**Masalati V/s State of UP**”, **AIR 1965 SC 202**, the Hon’ble Supreme Court has been pleased to lay down as under:

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17. xxxxx

What has to be proved against a person, who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entered alongwith the other members of the assembly. The common object is defined by Section 141 IPC. Section 142 provides as whoever being aware of the facts which run any assembly is unlawful assembly, intentionally joins that assembly or continues in it is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons, actuated by and entertaining one or more of the common objects specified by five clauses of Section 141 IPC is unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified by Section 141 IPC. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons, who were nearly passive witnesses and had joined the assembly as a matter of idle curiosity, without intending to entertain the common object of the assembly.”

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(emphasis supplied)

16. From the statements of a number of witnesses recorded in the matter as well as perusal of the relevant CCTV footages, it is prima facie apparent that on 24.02.2020 from at around 11.00 AM onwards there was some kind of buzz

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around and the persons of a particular community are clearly seen charged up. They were making very aggressive movement towards SOC, having weapons in their hands. Several persons can be seen exhorting the crowd in aggressive over tone. It is also evident that they formed a mob which proceeded towards SOC, may be under some plan or incitement. The video of witness Vishal Chaudhary depicts a very horrendous scene, wherein the aforesaid mobilized mob can be seen in large number from Chand Bagh Mazaar till near Khajuri Chowk and at around 1.00 PM when senior police officers as well as other police officials were trying to control the protestors not to block the main Wazirabad Road, then the mob became violent. This mob is clearly seen emanating from all over, i.e protest site and several galis at or around 25 feet road.

17. The Scene of Crime in the matter is from in front of the protest site at the edge of 25 feet road till the divider of road towards Yamuna Vihar. It is about more than 200-300 metres away from Chand Bagh Mazaar. The *galis* at or around the SOC are inter-connected as well as they culminate at or around the SOC.

18. It is clearly evident that the protestors and organizers had motivated persons in the mob and certain unscrupulous elements had surrounded the scene of crime and they appeared to be fully equipped with rioting material like stones, sticks, sharp-edged weapons and other sort of raw weapons. Even burqa-clad women are clearly seen attacking the police party with sticks and other material in their hands and they clearly appeared to be charged up. It has also come on record that some of the persons of the mob had taken possession of the rooftops of high-rise buildings at or around 25 feet road, having firearms and other rioting material with them. All this *prima facie* indicates that everything was being done under a well-hatched conspiracy, the common object whereof was to cause blockade of the main Wazirabad Road and if resisted by the police, then to go to

any extent to liquidate them by use of force. This Court is conscious that at this stage the trial is not being dealt with. We are at *pre-charge stage* and this Court has limitations in making in-depth analysis of the statements of witnesses, which are yet to be tested on the anvil of trial. Whether she can be convicted in the matter with the aid of Section 149 IPC is a preposterous conclusion at this stage, as the evidence is yet to be led in the matter. However, from the aforesaid behavior of “*riotous mob*”, the “*common object*” can be inferred at this stage.

19. In the supplementary chargesheet filed by the investigating agency, certain snapshots of the spot/SOC have been filed on record, wherein the applicant is clearly visible. She has further been categorically identified by independent public witness in their statements recorded U/s 164 Cr.P.C, namely Tauqir (page 595 of the chargesheet); Najimul Hasan (page 586 of the chargesheet) and Salman (page 601 of the chargesheet). Besides aforesaid public witnesses, the police witness namely ACP Anuj Kumar has also identified the applicant as one of the conspirators/organizers, who was part of the riotous mob on the date of incident.

20. Most importantly, the Call Detail Records (CDRs) qua the mobile phone of applicant bearing number 8375010984 reveals that she was in constant touch with several co-accused persons namely Shadab, Raveesh, Athar, Upasana and Saleem Khan (arrested in case FIR No.59/2020, being investigated by Special Cell of Delhi Police). From the said flowchart of her CDR details, it is apparent that applicant had made as many as 15 calls to co-accused Shadab between the period 25.01.2020 till 24.02.2020. Furthermore, from the analysis of her CDR record, it is quite apparent that the applicant has been constantly moving from one point to another point at the protest site/SOC, meaning thereby that she was quite active at that time. This Court cannot loose sight of the fact that applicant did not cooperate in the investigation right from the day her name cropped in the matter

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and instead absconded in the matter and the investigating agency was compelled to take coercive measures against her.

21. In my considered opinion, we are at “*pre-charge stage*” in the matter and at this stage, the Court considering the bail matter has to consider the material collected by the investigating agency at its face value and at this stage, “*mini trial*” cannot take place. Even the issue of TIP, whether it was required in the matter or not shall be considered at the stage of trial.

22. The charges against the applicant are serious in nature. The bail applications of several co-accused persons namely Mohd. Danish, Mohd. Ibrahim, Badrul Hasan and Mohd. Arif, Shadab Ahmed and Mohd. Saleem Khan have already been dismissed by this Court vide detailed orders dated 30.06.2020, 19.09.2020, 30.09.2020, 19.10.2020 and 08.12.2020 respectively.

23. Considering the facts and circumstances of the case in totality vis-à-vis gravity of offence, I do not find it to be a fit case for grant of bail to the applicant. The bail application is accordingly dismissed.

24. It is hereby clarified that anything stated hereinabove shall not be construed as expressing any opinion on the final merits of the case, as the case is at “*pre-charge stage*”.

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

(VINOD YADAV)

ASJ-03(NE)/KKD COURTS/08.01.2021

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