

**IN THE COURT OF XLIX ADDL. CITY CIVIL &
SESSIONS JUDGE AND SPECIAL COURT FOR NIA
CASES, BENGALURU (CCH-50)**

DATED THIS THE 8th DAY OF DECEMBER 2020

PRESENT

Sri. VENKATESH.R.HULGI

LI Addl. City Civil & Sessions Judge,
C/C. of XLIX Addl. City Civil & Sessions Judge
(CCH 50) Bengaluru.

Crl. Misc.No.5318/2020

PETITIONER-1/ ACCUSED NO. 20	: Mohammed Arif, S/o Md. Jaffar Ali Aged about 26 years, R/at No.83, Shampur Maim Road, Near D.J. Halli Police Station, D.J. Halli, Bangalore North, Arabic College, Bengaluru-560 045.
PETITIONER-2/ ACCUSED NO. 21	: Syed Mubarak, S/o Syed Zikriya, Aged about 20 years, R/at No.742, 1 st Floor, 7 th Cross, Modi Road, D.J. Halli, Bangalore North, Bengaluru 560 045
PETITIONER-3/ ACCUSED NO. 34	: Syed Akmal, S/o Syed Afroz, Aged about 23 years, R/at No.17, Opp: Al Quba Masjid Street, 3 rd Cross, Chikkanna Layout, Shampur Main Road, Bangalore North, Arabic College, Bengaluru- 560 045.

PETITIONER-4/ ACCUSED NO.38	: Hussain Shariff, S/o Asgar Shariff, Aged about 23 years, R/at No.331/21, Soap Factory, D.J. Halli, Bangalore North, Arabic College, Bengaluru 560 045
PETITIONER-5/ ACCUSED NO. 90	: Mohammed Arabaaz, S/o Mujahid Pasha, Aged about 23 years, C/o No.224, 11 th Cross, Williams Town, Beside Masjid-E-Farooq, Bangalore North, Benson Town, Bengaluru 560 045.
PETITIONER-6/ ACCUSED NO. 93	: Mohammed Iftheqar, S/o Mohammed Yusuff, Aged about 35 years, R/at No.758, 1 st Cross, Malik Saheb Road, Jabbar Lane, D.J. Halli, Bangalore North, Arabic College, Bengaluru 560 045.
PETITIONER-7/ ACCUSED NO.94	: Fairoz Khan, S/o Babu B Khan, Aged about 30 years, Tank Mohalla, D.J. Halli, Bangalore North, Bengaluru 560 045.
PETITIONER-8/ ACCUSED NO. 95	: Syed Fazeel, S/o Syed Hafeez, Aged about 23 years, R/at No.92, Muslim Street, Jameya Masjid, Dinnahalli,

	Kollegal, Chamarajnagar 571 444.
PETITIONER-9/ ACCUSED NO.103	: Ajaz Pasha, S/o Mohammed Anwar, Aged about 35 years, R/at No.26, Modi Road, Arabic Collee, D.J. Halli, Bangalore North, Bengaluru-560 045. (dismissed as withdrawn vide order dt:20.10.2020)
PETITIONER-10/ ACCUSED NO.39	: Mubarak, S/o Babu, Aged about 21 years, R/a No.34, Modi Road, Kouser Masjid, Roushan Nagar, D.J. Halli, Arabic College, Bangalore North, Bengaluru 560 045. (By Sri. S.V., Advocate)

V/s

COMPLAINANT	: State Represented by D.J.Halli Police Station, Bengaluru, (By the learned Spl P P)
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ORDER

The petitioners who are arrayed as accused Nos. 20, A-21, A-34, A-38, A-90, A-93, A-94, A-95 and A-39 respectively in Cr. No. 195/2020 of D.J.Halli Police Station registered for the offences punishable under

Sections 143, 147, 148, 353, 333, 332, 427, 436 and 307 of IPC R/w Section 149 of IPC and under Section 4 of Prevention of Damage to Public Properties Act 1984 and under Sec. 15, 16, 18 and 20 of Unlawful Activities (Prevention) Act 1967 have filed the instant petition under Section 439 of Cr.P.C. seeking regular bail.

2. The petitioners No.1 to 4 and 10 have been in judicial custody since 12.8.2020. The petitioner No.5 has been in judicial custody since 16.8.2020. The petitioners No.6 to 8 have been in judicial custody since 19.8.2020

3. The contention of the petitioners seeking bail under the above said provision of law in brief is as under:-

That the petitioners/accused No.20, A-21, A-34, A-38, A-90, A-93, A-94, A-95 and A-39 are very innocent and law abiding citizens. They have valid and tenable defence to make, during the trial to prove their innocence. The petitioners have been falsely implicated in the present case by the Police without any prima facie

material indicating commission of any offences much less the offences as alleged in the FIR. The petitioners were arrested by the Police from their house in the early morning when they were sleeping. Infact the petitioners have not at all participated in any crime as alleged and they have not shared any criminal conspiracy with any of the accused. There is no iota of proof regarding involvement of the petitioners in committing rioting, assaulting the police men or burning public property including the police vehicles. They were not at all the members of unlawful assembly to commit the alleged offences. They were not holding any lethal weapon nor attempted to flee away from the Police. The petitioners have been added as accused in the present case by the police only for statistical purpose. The petitioners being the permanent residents of address shown in the cause title of the petition have not even a single bad antecedents so far. They are having a big family to maintain consisting of their aged parents, wives and minor children. The

family members are depending upon the earnings of the petitioners for their day to-day livelihood. The petitioners are the only earning members in the family. Therefore, if they are kept in custody, their entire family would be thrown to street. The petitioners are not members of any organization or any political party having criminal background. They have no connection with any anti-social elements and they are not involved in any anti-social activities. They have been in judicial custody for the last 4 months. Therefore their pre-bail detention is not at all required any more in the facts and circumstances of the present case. The petitioners are ready and willing to offer surety to the satisfaction of the Court and ready to abide by any conditions imposed by the Court for grant of bail. Thus, on the above grounds Petitioners/accused No. 20, A-21, A-34, A-38, A-90, A-93, A-94, A-95 and A-39 have prayed for grant of regular bail under Section 439 of Cr.P.C.

4. In response to the notice, the learned SPP representing NIA has appeared for respondent and filed

objections and additional objections resisting the above petition.

5. In his objections the learned S.P.P. has denied the entire petition averments as false and far away from truth. It is denied as false that petitioners have no connection with any anti-social organization and they are not involved in any anti-social activities. It is denied as false that the petitioners were arrested from their home at 3.30 a.m. when they were sleeping. It is stated by the prosecution that there are sufficient prima-facie materials available on record indicating involvement of the present petitioners in commission of alleged offences and to show that they were members of unlawful assembly to commit the alleged criminal acts. They have committed the offence of rioting, assaulting police officials and setting fire to the public property including the police van, police station etc., The investigation so far indicate the involvement of the present petitioners in the commission of the alleged offences. The offences punishable under Section 307 of

IPC and under Section 15,16,18 and 20 of UA(P) Act are very serious offences where in the petitioners cannot seek bail as of right. As the petitioners were members of a gang consisting of more than 5 to 600 persons, therefore their presence is required for test identification parade. Hence, if at this stage bail is granted to the petitioners, the valuable rights of the investigating agency would be defeated. It is also contended that as per proviso to Sec. 43D of UA(P) Act, the petitioners are not entitled to be released on bail as there are reasonable grounds to believe that accusation made against them are prima-facie true. If the petitioners are granted bail, it may send a wrong signal to the society and the petitioners may tamper with witnesses for prosecution and also they may hamper further investigation of the case. The petitioners may flee away from the jurisdiction of the Court to hamper the trial to be conducted. Hence, on the above grounds it is prayed to reject the petition.

6. I have heard the arguments of both the sides and perused the materials placed on record in the light of the relevant Provisions of Law and also in the light of arguments advanced by both the sides.

7. The only point which emerges for my consideration is:

Whether the petitioners/accused No. 20, A-21, A-34, A-38, A-90, A-93, A-94, A-95 and A-39 are entitled for bail under Section 439 of Cr.P.C ?

8. My findings on the aforesaid point is in the “**Negative**” for the following:

REASONS

9. Before appreciating the contention of both sides it is necessary to note the facts of prosecution case in a nutshell.

10. The reason for entire incident as per the prosecution is a Facebook post posted by one Naveen nephew of sitting MLA of Pulikeshi nagara constituency

under which K.G.Halli and D.J. Halli PS are located. It is stated that the nephew of Pulikeshi nagar MLA by name "Naveen" had made certain derogatory remarks about Prophet Mohammed on his Facebook post alleging some vulgar words. The persons from a particular community by noticing the said Facebook article, took a screen shot and circulated the same to the community members of the locality. This lead to filing of a complaint against the said Naveen in K.G.Halli PS. A group of 100-200 persons approached the S.H.O. K.G.Halli with a complaint against Naveen and insisted for registration of crime against him and his immediate arrest. It is further alleged that the mob had pre-meditated to commit the offence of rioting, arsoning etc., and by the time, Ajay Sarathi the P.I. of K.G. Halli PS reached the Police station at 11 p.m., they started shouting slogans against the said Naveen and also uttering vulgar words against police some of the mob members shouted to assault the police people and to kill them. Despite the warning given by the Police

officials the mob did not stop its illegal activities of shouting slogans against the police and they went on destroying the government vehicles kept in the police station and also the vehicles of private persons involved in other case and they set fire to the entire Police station and the vehicles. Thus, the mob went on rampage over a derogatory social media post made by said Naveen and riot turned most violent in front of K.G.Halli PS as well as D.G.Halli PS. It is alleged that the said unlawful assembly of people had per-planned to commit the offence of rioting, attempt to murder etc. and in furtherance of common object, they assaulted few of police officials and attempted to murder them. It is further alleged that it is a pre-planned and commonly motivated incident and when riot turned most violent, the police started lobbing tear gas shells to control the mob. It is alleged that the mob had determined to cause damage to the public property to the maximum extent and also injuries to the police officials. They attempted to get a forceful entry in to the Police Station

and also they set fire to the house of local MLA. It is alleged that the accused No. 20, A-21, A-34, A-38, A-90, A-93, A-94, A-95 and A-39 being the members of said unlawful assembly started pelting stones and throwing petrol bottles on the police station and caused damages to the public properties which is noticed by Police Constables Sri. Naveen, Sri. Ranganatha.J, Sri. Beeresh, Sri. Umran Khan Suhali, Sri. Akshay Kumar, Sri. Praveen Basappa Kotyal Sri. Allabakash Yaligar, Sri. Ananda G, Sri. Fayaz Ahmed Khan of D.J.Halli PS. Therefore, looking to the aforesaid incident, the Police Inspector of D.J. Halli PS submitted a suo-moto complaint before the SHO of D.J. Halli which is registered in Crime No.195/2020 for various offences under IPC and also offence under the provisions of Damage to Public properties Act 1984.

11. However, looking to the ghastly and gruesome nature of the offences and the way in which the accused have caused damage to the public as well as private properties and also the police people, the

government has decided to invoke the provision of UA(P) Act and also offence under Section 307 of IPC. Looking to the nature of the offences and also its background, the government had decided to hand over investigation of the case initially to CCB and later on noticing the manner of violence which can be defined as “Terror Attack” has made the government to entrust further investigation to NIA. Thus, at present the NIA is investigating the matter. Therefore, with these background facts let me appreciate the arguments of both sides.

12. The learned advocate for the petitioner would submit that the petitioners are very innocent and law abiding citizens and they have been falsely implicated by the police with ulterior motive. Referring to the remand requisitions and other documents, the learned advocate would submit that mere perusal of these documents is sufficient to show that innocent persons have been arrested by the police when they were at home. According to the counsel, the prosecution

papers would indicate that the offences under UA(P) Act has been deliberately included only to ensure that the petitioners have denied bail. It is pointed out that no materials are produced to indicate the overt act of the petitioner and also to satisfy the ingredients of offence under section 307 of IPC. It is submitted that the petitioners are native of Bengaluru and having good background. Therefore, they shall be granted bail.

13. Per contra, the learned public prosecutor has vehemently opposed the petition by pointing out that the petitioners are not innocent as they pretend to be. There are ample materials to indicate that the petitioners have attacked the police officials and also damaged the public property. It is submitted that though the police officers made all efforts to restore law and order, however they were assaulted by the petitioner and other culprits as a result of which they suffered serious injuries. The petitioners and their henchmen attempted to murder few of the police officials by shouting vulgar words. Such acts of

vandalism according to the learned Spl. P.P. should not be encouraged and bail may not be granted to the petitioners. In addition to the aforesaid submissions, he has further submitted that there is a clear bar in granting bail under Section 43D (5) of the UA(P) Act once the accusation made is found to be prima-facie true and on this ground also the petitioners does not deserve the privilege of bail. Hence, on the above ground, he prayed to dismiss the application.

14. In the light of the above arguments, I have gone through the materials placed on record. It is pertinent to mention that upon the directions of this Court, the Investigating Agency (NIA) has produced the case diaries and the photographs depicting the damage done to the police as well as the public properties.

15. A perusal of the materials placed on record more particularly the complaint averments and remand application, it becomes very clear that the alleged incident took place in between 11 p.m. to 12.30 a.m. in

the mid night of 11.8.2020. It appears that initially a mob of 600-800 persons gathered in front of K.G.Halli PS and they started shouting slogans against the police officials as well as the aforesaid Naveen who had posted a derogatory post against Prophet Mohammed. If at all the intention of the group was only to file a complaint, they would have filed a complaint and disbursed from the spot leaving it to the police to take appropriate action against the culprit Naveen. But, unfortunately that did not happen. From the police records it appears that the mob remained on the spot and they started shouting abusive words against the police and they started assaulting the police officials holding weapons like club, Iron rod, petrol bombs etc., As this was a sudden attack on the police, the police were taken by surprise and they were not in a position to counter attack the mob. The records reveal that the police made all efforts to restore the law and order position by lobbing tear gas shells on the mob, but it did not stop at that. The mob started rioting and

created a rampage by setting fire to the police vehicles as well as public property. The learned Spl.P.P. during his submission has brought to the notice of the Court that in the afore said rioting the culprits have damaged 73 government vehicles and 98 private vehicles apart from burning 2 vehicles completely. It is also brought to the notice of the Court by learned Spl.P.P. that the said mob has even attacked the house of Naveen and local MLA and both houses are burnt down.

16. The afore said facts explain the ghastly and gruesome nature of the offences. As rightly pointed out by the Spl.P.P. the said violence can be defined as a terror attack compelling the government to invoke the provision of UA(P) Act. During the course of arguments, the counsel for petitioner would submit that bail is a rule and its rejection is an exception. The petitioners have been in judicial custody for the last 3 months in deprivation of their personal liberty guaranteed under Art. 21 of Constitution. A pre-trial detention of the petitioner is not at all required as the

prosecution at this stage has not placed any prima-facie materials indicating involvement of the accused in the crime.

17. By refuting the said arguments, the learned Spl.P.P. would submit that the petitioners have been noticed by the Police constables referred to above and the petitioners are guilty of pelting stones on the police station and damaging the private property. They are also guilty of attacking the police officials. It is stated that the attack on the police officials is nothing but attack on law and order situation in the state. The police force is meant to safe guard the interest of the public and also law and order situation in the State. If they are attacked, it is nothing but heinous crime. To support his arguments the learned Spl.P.P. has referred to the decision of Hon'ble High Court of Allahabad in the case of **Suneel Roy Vs. State of U.P. and others(1999 Crl.L.J. 697)** In the said decision it is held by Hon'ble High Court “ if the police from whom the public at large expects protection and Security is

subjected to the treatment like in the present case, in our opinion, it is bound to disturb the even tempo of life and morale of the public at large. It is also not a case of simple attack on an individual police officer or a group of them but it went much ahead of it. The authority of the police administration stood undermined to such an extent that it was bound to disturb the public order and tranquility.”

18. The learned Spl. P.P. has also referred to another decision of Hon'ble High Court of Allahabad in the case of **Suresh Jaiswal Vs. DM, Lucknow & Ors. (1986 SCC Online All 462.)** Wherein it is held that the attack on Police personnel is a matter relating not only law and order, but to public order. In the said decision it is observed that the “ The police is a custodian of law and order and has also responsible for maintenance of public order. Opening of fire on the police in the middle of the day in a thickly populated place has much wider spectrum than ordinary law and order situation in our view it has the potentiality of

generating a sense of fear in the society and disturb the even tempo of the public life and affect the normal flow of the public life in the locality. It concerns public order...”

19. The Hon'ble Apex Court in the case of **Rahul R Nath & Anr. Vs. State of Kerala** has held that there are sufficient materials as of now to show that petitioners mounted an attack on police force interfering with the performance of their duties. The petitioners do not appear to be as innocent as they claimed to be. Under such circumstances, it may not be just and proper for this Court to exercise its extraordinary jurisdiction to grant bail.

20. A perusal of aforesaid principles in the light of the case file and other materials available on record it is clear that the alleged act of the mob including the petitioner is nothing short of a “terror attack” which has created a kind of fear in the mind of public. If we look at Section 15 of UA(P) Act it becomes very clear

that whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in the nation by using explosive substances or fire arms and lethal weapon commits a “terrorist act” made punishable under Section 16 of the Act.

21. If we look at the facts and circumstances of the present case in the light of the definition of Terrorist Act, it is evident that here also there are sufficient materials available indicating the involvement of the accused in the act defined as Terrorist Act. In this back ground it is necessary to examine the provision of Section 43D of UA(P) Act. A reading of said Section indicates that the accused shall not be released on bail, if the Court on perusal of the case diary or the report made under section 173 of Cr.P.C. is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima-facie true.

22. The Apex Court in the case of “**NIA Vs.**

Zahoor Ahmed Shah Watali” while considering the scope of provision of law held that “A Priori, the exercise to be undertaken by the Court at this stage- of giving reasons for grant or non-grant of bail- is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise.”

23. If we look at the case on hand, in the light of the ratio laid down in the above decision, I find ample materials on record indicating the involvement of the petitioners in the alleged crime and therefore I am of the opinion that there are reasonable grounds for believing that accusation made against the petitioner are prima-facie true. Therefore, though the petitioner seek bail by virtue of Art. 21 of the constitution of India, in view of Section 43D (5) of UA(P) Act the

petitioner is not entitled for bail for the above reasons. Even as per Art. 21 no person shall be deprived of his life or personal liberty, except according to the procedure established by law, however this is an exceptional case where the provision of Section 43D (5) of UA(P) Act applies. Hence looked from any angle at this stage petitioners have failed to make out any grounds for grant of bail. Therefore, I answer the point raised above in the “**Negative**” and in the result, I proceed to pass the following:

ORDER

Petition filed by the petitioners/ accused No.20 Mohammed Arif, A-21 Syed Mubarak, A-34 Syed Akmal, A-38 Hussain Shariff, A-90 Mohammed Arbaaz, A-93 Mohammed Iftheqar, A-94 Fairoz Khan, A-95 Syed Fazeel and A-39 Mubarak under Section 439 of Cr.P.C. is hereby dismissed.

(Dictated to the Stenographer transcript revised by him, corrected by me and then pronounced in open Court on this the 8th day of December 2020)

(VENKATESH R. HULGI)
LI Addl. C C & S Judge,
C/C XLIX Addl. C C & S Judge,
Bengaluru

Orders pronounced To-day in
open Court, vide separate orders.

O R D E R

Petition filed by the petitioners/
accused No.20 *Mohammed Arif*, A-
21 *Syed Mubarak*, A-34 *Syed*
Akmal, A-38 *Hussain Shariff*, A-90

*Mohammed Arbaaz, A-93
Mohammed Ifthekar, A-94 Fairoz
Khan, A-95 Syed Fazeel and A-39
Mubarak under Section 439 of
Cr.P.C. is hereby dismissed.*

(VENKATESH R. HULGI)

LI Addl. C C & S Judge,
C/C XLIX Addl. C C & S Judge,
Bengaluru