

IA No.06/2021 in SC No.120/2020

State V/s Salman @ Haseen @ Mullaji

FIR No.65/2020

U/s 109/114/147/148/149/436/153-A/505/365/302/201/120-B/34 IPC

PS: Dayalpur (Crime Branch) (**Ankit Sharma murder case**)

05.05.2021

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri Manoj Chaudhary, Ld. Special PP for the State alongwith
IO, Inspector Amleshwar Rai.

Ms.Afshan Pracha, Ld. Counsel for accused Salman @ Haseen @
Mullaji/applicant.

ORDER

This is an application seeking custody parole for a period of 31 days, filed on behalf of applicant. It is pertinent to mention here that vide order dated 19.04.2021, the application under consideration was treated as an application for interim bail.

2. It is submitted on behalf of applicant that he is young boy, aged about 20 years, who has been falsely implicated in the matter without there being any direct evidence available against him. It is contended that applicant has been in judicial custody in the matter since 12.03.2020, which in turn is causing him mental agony, anxiety, resulting in degradation of his mental health.

As a sequel to the aforesaid contention, it is further submitted that on account of applicant being in judicial custody for more than a year, his social and family relations are being impacted/affected severely. Being a young person of sensitive age, it is very dangerous for the applicant to spend time with hardcore criminals in the jail and as such, it is prayed that interim bail for a period of one month may be granted to him during the pious time of Holy Ramdan. In this regard, the learned counsel laid heavy stress upon the personal liberty of the individual guaranteed under [Article 21](#) of the Constitution.

3. Report/reply in the matter has been filed by the investigating agency. The learned Special PP while opposing the application under consideration has very vehemently argued that the present case pertains to the **brutal murder of Shri Ankit Sharma, a young officer of Intelligence Bureau (I.B)**. While emphasizing upon the role of applicant in the matter, he has placed heavy reliance upon paragraphs No.12 to 15 of the reply filed in the matter, which are re-produced under:

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*12. That on 12.03.2020, accused Haseen @ Mullaji @ Salman was arrested by Special Cell u/s 41.1 CrPC on the basis of the interception of his mobile number 9891167837 which linked him to the murder of Ankit Sharma. In the phone call to his friend Md. Nadeem and his sister-in-law (bhabhi) Saira and one other person, which was intercepted by Special Cell, accused Haseen @ Salman allegedly spoke about the murder of a person and disposing off his dead body in the nala besides other details. Accused Haseen @ Salman was produced in the court on 13.03.2020 by Special Cell. He was formally arrested in this case on 13/03/2020 after taking permission from the court and was taken on P/C remand for 4 days. **Haseen @ Mullaji @ Salman was instrumental in the murder of Ankit. He is the person who had assaulted Ankit Sharma with a knife.** During his interrogation, he disclosed that he had heard about the killing of a 4 years old Muslim Boy by a Hindu and became angry. He took a knife and along with his accomplices namely Sameer r/o Sunder Nagri, Delhi, Nazim r/o Mustafabad, Delhi, Kasim r/o Mustafabad, Delhi and Sabir r/o Old Mustafabad, Delhi and others reached Chand Bagh Pulia on 25.02.2020. He further disclosed that he had stabbed Ankit Sharma a number of times with his knife. His accomplices also stabbed Ankit with knives and hit him with dandas and after killing him, threw his dead body in the nala.*

13. During police custody remand, the weapon of offence i.e. blood stained knife and the blood stained clothes of the accused which he had worn at the time of incident were recovered at his instance from the almirah kept in his room at the 2nd floor of the house. Recovered knife and the clothes of the accused Haseen @ Salman have been sent to FSL,

Rohini for comparison with the blood of the deceased. Report in this regard has been collected. As per report received vide FSL No. SFSL(DLH)/2634/BIO/542/2020, dated 09.06.2020, DNA profile generated from the source of exhibits i.e knife and clothes of accused Haseen @ Mullaji @ Salman did not match with DNA profile generated from the blood of the deceased.

*14. Opinion of the concerned doctor regarding the injuries sustained by the deceased by the recovered weapon was obtained. During investigation, both the weapons of offence i.e knives recovered at the instance of accused Haseen @ Mullaji @ Salman and Nazim were sent to Autopsy Surgeon, GTB Hospital, Delhi for obtaining subsequent opinion of the concerned doctor regarding the injuries sustained by the deceased by the recovered weapon. Subsequent opinion has been collected vide No. 76/20, dated 14.07.2020. **As per report, injuries bearing Nos. 1, 10, 17, 25, 27, and 29 are possible by both / either of the weapons examined.***

15. During the course of investigation, one CCTV footage of the incident in which three persons are seen throwing body of a person in the khajuri nala near Chand Bagh Pulia from F-Block, Khajuri Khas side had been received through some unknown source in this case. In the video footage, a person wearing red colour shirt is visible along with 2 other persons and they are throwing the body of Ankit Sharma in the drain near Chand Bagh Pulia. Though the faces of the persons throwing the body of Ankit Sharma in the nala are not clearly visible in the footage. It is important to mention here that in the available footage which was made by Neeraj Kasana on 25.02.2020 at 5.39 PM on his mobile from about 300 mtrs away from Chand Bagh Pulia, a person wearing red colour shirt is visible in the video footage along with 2 other persons and they are throwing the body of Ankit Sharma in the drain near Chand Bagh Pulia. In the footage, the faces of the persons throwing the body of Ankit Sharma in the nala are not clear and visible. It is important to mention again that one red colour shirt had been recovered from the accused Haseen at his instance which he had worn at the time of incident. Further, accused Haseen had disclosed that he along with his associates and others had thrown the body of Ankit Sharma in the drain after killing him. All these circumstances shows that the accused Haseen @ Mullaji @ Salman is the same person who is seen in the

footage with red colour shirt in the nala near Chand Bagh Pulia, Main Karawal Nagar Road, Delhi at the time of dumping the body of Ankit Sharma.

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4. In view of the role of applicant being crystallized vide detailed reply filed in the matter, outright dismissal of the application under consideration has been strenuously prayed for.

5. I have considered the rival contentions and also gone through the police report.

6. I find substance in the arguments of learned Special PP that allegations against the applicant are very serious in nature, as the present case pertains to the brutal murder of young officer of Intelligence Bureau (I.B) namely Shri Ankit Sharma by the riotous mob in the evening of 25.02.2020, solely on account of the fact the he belonged to a different community.

7. Considering the seriousness of the offence involved, it is a matter of record that regular bail application(s) of several co-accused persons already stood dismissed in the matter, the details whereof are as under:

Details of accused persons whose bail applications stood dismissed by this Court	Details of accused persons whose bail applications stood dismissed by Hon'ble High Court of Delhi
(a) Regular bail application of principal accused Tahir Hussain stood dismissed vide detailed order dated 13.07.2020;	(a) Regular bail application of accused Gulfam dismissed by Hon'ble High Court of Delhi vide order dated 23.11.2020
(b) Regular bail application of applicant stood dismissed vide order dated 04.08.2020;	(b) Regular bail application of accused Firoz dismissed as withdrawn by Hon'ble High Court vide order dated 14.01.2021.
(c) Regular bail application(s) of accused persons Firoz and Mohd. Javed stood dismissed vide common order dated 28.08.2020;	(c) Regular bail applications of two accused persons namely Sameer Khan and Kasim stood dismissed by Hon'ble High Court of Delhi vide detailed

(d) Regular bail application of Gulfam stood dismissed vide order dated 08.09.2020;	judgment dated 03.05.2021.
(e) Regular bail application of accused Sameer Khan stood dismissed vide order dated 22.10.2020;	
(f) Regular bail application of accused Kasim stood dismissed vide order dated 26.02.2021.	
(g) Regular bail application of accused Nazim stood dismissed vide order dated 04.05.2021.	

8. Even, interim bail to two co-accused persons namely Gulfam and Nazim was declined by this Court vide order(s) dated 21.11.2020 and 26.02.2021 respectively. Moreover recently, the Hon'ble High Court of Delhi while dismissing the bail applications of two co-accused persons namely Sameer Khan and Kasim (who are related to the applicant) in the case in hand vide detailed judgement dated 03.05.2021 (passed in Bail Applications No.1344/2021 & 1166/2021) has been pleased to observe as under:

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19. This Court is conscious that while dealing with bail applications of Liyakat Ali, Arshad Qyauum @ Monu, Gulfam @ VIP and Irshad Ahmad pertaining to FIR No. 116/2020, registered at police station Dayalpur, Delhi, with regard to eye witness Pradeep Verma, this Court had made an observation as to why he had not made any PCR call regarding the incident, but in the facts and circumstances of the present case, his failure to having made a call to the PCR cannot be made fatal to the case of the prosecution wherein life of a young Intelligence Officer has been lost. Moreover, every case has to be seen in the peculiar facts and circumstances of each case and observation in one case may not be binding in another case.

20. With regard to petitioner Sameer Khan, trial court in the impugned order has noted that he is a resident of Nand Nagri and his presence at the place of occurrence was not natural and therefore, it cannot be said that he did not have a common object of unlawful assembly. Regarding petitioner

Kasim, learned trial court has observed that he was absconding and could be apprehended from Sambal, UP and eye witnesses have rightly identified him. Trial court has further observed that these petitioners were a part of riotous mob and were involved in looting and vandalizing public and private property and in the said riots, several persons were injured and Ankit Sharma had lost his life. This Court finds force in the observations made by the court below.

21. It is a matter of fact, in such like cases where large mob is involved in riots and illegal activities causing harm to public property, peace and life, statement of eye witnesses and corroborative evidence plays a vital role and at the time of considering the bail application of accused, it would be too soon to analyse the testimony of eye witnesses and public witnesses to arrive at a conclusion as to whether any case is made out against the accused or not. Non availability of technical evidence such like CCTV footage etc. cannot be accepted as a ground for non-availability of direct evidence, as it is a matter of record that CCTV cameras installed in the areas in question were either broken or hidden by the mob. At the time of grant of bail only a prima facie opinion has to be formed and the facts and circumstances of this case do not persuade this Court to keep a lenient view towards the petitioners. Petitioners have been playing hide and seek with the prosecution. Charge sheet in the FIR in question has already been framed and trial is in progress. Petitioners will have an opportunity to make their case at the appropriate stage during the course of trial.

22. With aforesaid observations, these petitions are dismissed, while making it clear that any observation made herein shall not influence trial of the prosecution case.

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9. The allegations against the applicant are grave in nature. Recently, the Hon'ble High Court of Delhi vide order dated 07.07.2020, passed in **Criminal Misc. Case No.1499/2020**, titled as, "**State of NCT of Delhi V/s Deepak Dabas**" has been pleased to emphasize that the "**gravity of offence has to be taken into consideration while considering the application for interim bail**". In that case, the interim bail granted by the learned Duty Judge was set aside by the Hon'ble

High Court.

Furthermore, the Hon'ble Supreme Court of India in a recent pronouncement in case titled as, "**Sudha Singh V/s State of UP & Ors.**", **Criminal Appeal No.448/2021**, date of decision **23.04.2021** has been pleased to lay down that "***there is no doubt that liberty is important, even that of a person charged with crime, but it is important for the Courts to recognize the potential threat to the life and liberty of victims/witnesses, if accused is released on bail***".

10. The public witness(es) in the matter are residents of the same locality and the possibility of applicant threatening or intimidating them, if released on bail at this stage cannot be ruled out. Considering the facts and circumstances of the case in totality, I do not find it to be a fit case for enlarging the applicant on interim bail. The application for interim bail is accordingly dismissed.

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

(VINOD YADAV)
ASJ-03(NE)/KKD COURTS/05.05.2021