

IN THE COURT OF LXXIII ADDL.CITY CIVIL AND
SESSIONS JUDGE, MAYOHALL UNIT, BANGALURU.
(CCH.74)

PRESENT:

Sri.Yamanappa Bammanagi, B.A., LL.B., (Spl.,)
LXXIII Addl. City Civil & Sessions Judge,
Mayohall Unit, Bangaluru.

Dated this the 9th day of October 2020.

Crl.Misc.No.25720/2020
(Cr.No.196/2020 of D.J.Halli P.S.)

Petitioner/

Accused No.7:

Nayaz Shariff,
S/o. Jaffer Shariff,
No.809, 2nd Floor, 3rd Cross,
S R Block, Near Masjid E Nimra,
D.J.Halli, Dubai Layout,
D.J.Halli, Bangaluru-45.

(Accused No.7)

(By Sri.Mohamme Tahir – Adv.)

V/S

Respondent:

State of Karnataka,
D.J.Halli P.S.

(By Sri.P.Prasanna Kumar,
Learned Spl. Public Prosecutor)

ORDER ON BAIL PETITION FILED U/S 439 OF CR.P.C.

The petitioner has filed this petition for grant of regular bail in Crime No.196/2020 of D.J.Halli P.S., registered on the complaint lodged by the complainant Raghavendra, PSI., for the offence p/u/sec.143, 147, 307, 353, 323, 427, 504, 332, 34 and 149 of IPC r/w. Sec.2B and 2A of the Karnataka Prevention of Distruction and Loss of Property Act, 1981, against the petitioner and others.

It is contended in the petition that, on 11.08.2020 at about 7.45 p.m., a person by name Firdaus Pasha came to the police station for registration of complaint against a person by name Naveen alleging that, said Naveen has posted a derogatory post in facebook against the prophet Mohammed, accordingly, respondent police has registered Crime No.194/2020, against the said Naveen, for the offence punishable u/S 153A and 295A of IPC. Further it is contended that, thereafter the first informant received a directions to enquire about the accused Naveen, accordingly,

the complainant and his staff went to the house of Naveen at about 8 p.m. along with HC 8611 Yoganand, said house situated in Kavalabyrasandra, Nagamma Layout. When the complainant and his staff went to the house of Naveen he fled from the place after seeing police persons. By the time police came out of the house and saw 100s of muslim peoples who gathered in front of house of Naveen. They were all carrying long, machettes, sticks and damaged the house of the Naveen and set fire to the house. Further the persons who gathered in front of the house of the Naveen have burnt several vehicles, which were parked near and around the said house.

The complainant has identified the persons who gathered in front of Naveen's house by name Nawaz, Naseer and Syed Ejaz and more others, who were involved in the crime. Thereafter, the complainant and his staff requested the mob to not to do illegal act, at that time, the mob has attacked on the complainant and his staffs by beating them with a sticks with a intention to kill the first informant and

his team. Thereafter, the senior officers and other police staffs had arrived. Thus, the petitioner and other persons who were gathered in front of Naveen's house has burnt Naveen's house and other public vehicles, at that time, when police personnel intervened and received injury from the hands of unlawful assembly members. Thus, the complainant has lodged the complaint against the petitioner and others and above said crime has been registered against the petitioner and others for the offences mentioned above. Thereafter, during the course of investigation the Investigation Officer has arrested the petitioner and produced before the jurisdictional Magistrate and petitioner is remanded to the judicial custody. Thus, the petitioner has filed this petition for regular bail on the following:-

GROUND

I. The petitioner is falsely implicated by the respondent for statistical purpose to show some

progress in the investigation.

II. The remand application itself shows that the respondent has arrested the petitioner on imaginary basis.

III. The respondent has not produced any mobile location, CCTV images, and seized the mobile as contended in the objection. There is no specific overtact alleged against the petitioner.

IV. The petitioner is working as a Tailor in Anwar Layout along with his old aged parents, having no criminal antecedent and petitioner is belongs to respectable family, having aadhar card.

V. Further contended that the petitioner name is not found in the FIR and complaint. No specific allegation has been made against the petitioner, there is no material

in the complaint and FIR to suspect reasonably that petitioner has involved in the commission of crime. The petitioner is ready and willing to abide by the conditions, which may be imposed by this court, while granting bail and petitioner is ready to furnish surety to ensure regular appearance before the court. With this, the petitioner prayed for grant of bail in Cr. No.196/2020 of D.J. Halli P.S.

2. On the other hand, the learned Special Public Prosecutor has filed objection to the petition contending that, the attack by the unlawful assembly on two police stations taken place on 11.08.2020, in respect of which the several crimes have been registered in D.J.Halli and K.G.Halli Police Station.

It is contended in the objection that, on 11.8.2020, at about 19-45, one Firdosh Pasha, resident of D.J.Halli,

approached the DJ Halli police and filed a complaint against one Naveen for having circulated derogatory message on prophet Mohammed Paigamber. On receipt of the complaint the DJ Halli SHO immediately registered an FIR in Cr.No.194/2020, against the Naveen for the offence punishable u/S 295-A and 153-A of IPC.

Further, contended in the objection that, about 300 peoples were gathered near DJ Halli P.S., as one Naveen has posted derogatory comments in his facebook about prophet Mohammed Paigamber, to confirm about the said Naveen and to assault him. The said miscreants formed unlawful assembly armed with knives, stones, bricks and iron rods in front of D.J Halli P.S., after notice of the unlawful assembly the police had warned them through mega phone to disperse from the spot, when miscreants did not heed the request of the police, the Commissioner of Police declared curfew u/S 144 of Cr.P.C. Despite of declaration of Section 144 of Cr.P.C., the miscreants started throwing stones at police

station, at police personnels and started to set fire on the platoon outside the police station. When situation went uncontrol and miscreants gave a life threat to police personnel, in order to protect themselves and protect the public property, the police personnel used minimum force.

Further contended in the objection that about 75 police officers on duty at the time of incident, have been inflicted with serious injuries and are currently undergoing treatment. In all, 67 government vehicles have been burnt and damaged by the unlawful assembly. In view of the said incident Inspector of Police has filed complaint and registered in Cr.No.195/2020.

3. In continuation of the above said incident, the accused persons conspired with various other persons who are yet to be taken into custody in this case, came to the K.G.Halli Police Station premises, formed themselves into an unlawful assembly with a common intention to destroy the

police station and harming the police personnel, with a intention to take away the life of the police personnel, came there with armed, clubs, rods, stones, and other weapons and caused damage to police vehicles, private vehicles parked inside and outside the police station, at that time when complainant tried to prevent the miscreants from damaging, from setting fire at that time the miscreants had assaulted to police personnel including complainant. Thus, the complainants have filed complaints, on basis of said complaints crimes have been registered by the respondent for the offence punishable u/S mentioned above. The complainants have identified the miscreants named in the FIR. And the complainant has identified this petitioners during the investigation. Thus petitioners have been arrested by the respondent for involvement in commission of crime.

4. Further the respondent contended in the objection that, investigation is going on in the crimes registered in

connection with attack dated 11.8.2020, on two police stations. During the investigation the petitioner has been identified for having participated in the commission of crime. Thus, the miscreants, who gathered in front of K.G.Halli Police Station have attacked on the police personnel, assaulted police personnel and set fire to the police station, government vehicles and private vehicles and caused damage to the government and private persons. Further the miscreants have burned the residential house of local MLA and house of said Naveen and other private vehicles belonging to individuals.

5. It is contended in the objection that, in connection of the incident, taken place on 11.8.2020, the investigation is going on and collected the CCTV footage and other material evidence for arresting the other accused persons who have attacked on the police stations and attempted to take away the life of the police personnels.

6. Thus, the learned Special Public Prosecutor has contended in the objection that looking to the facts and circumstances, manner in which the attack was taken place by the miscreants on law enforcing agency, which has been extended to cause damage to the private and public property and the miscreants have burnt the vehicles belonging to government and private persons, more than 300 to 500 accused persons are involved. The petitioners are not entitled for the bail, since, all the accused persons have been clearly identified through CCTV footage, video recordings and other material evidence collected by the I.O. and the investigation is at initial stage, the custodial interrogation of the petitioners/accused are necessary for further investigation.

Further the respondent has taken specific defence in para-14 and 16 of his objection in respect of present petitioner/accused No.7 about his participation in the commission of crime and further contended that the present petitioner/accused No.7 has been identified and his

involvement in the commission of crime has captured in the video as well as CCTV. Thus, the petition filed by the petitioner is liable to be rejected.

7. Heard the argument of the learned counsel for the petitioner and learned Special Public Prosecutor for the respondent.

8. The learned Special Public Prosecutor has filed same objection filed in the other petitions which are arising out of the same incident which took place on 11.08.2020, in respect of which the several crimes have been registered in D.J.Halli and K.G.Halli Police Station. In support of his case the learned Spl. Public Prosecutor relied on the decisions and same decisions have been furnished in all the petitions filed in connection with the crimes registered in respect of the incident taken place on 11.08.2020.

Further, the learned Special Public Prosecutor has relied on the decisions, in support of his arguments in the

above petitions, reported in:

- 1) *1998 SCC Online All 1173 in case of Suneel Roy v/s State of UP and others.*
- 2) *(2017) 14 SCC 803 in case of Vineet Mahajan v/s State of Punjab and others.*
- 3) *(2015) 15 SCC 327 in case of Litta Singh and another v/s State of Rajasthan.*
- 4) *(2005) 1 SCC 237 in case of K.Hashim v/s State of Tamil Nadu.*
- 5) *(2017) 15 SCC 560 in case of State Through CBI v/s Dr.Anup Kumar Srivastava.*
- 6) *(2020) 3 SCC 321 in case of Varinder Kumar v/s State of Himachal Pradesh.*
- 7) *(2016) 9 SCC 443 in case of*

*Chandrakeshwar Prasad v/s
State of Bihar & another.*

8) (2017) 5 SCC 406 in case of
*Virupakshappa Gouda @ another
v/s State of Karnataka &
another.*

9) (2014) 16 SCC 508 in case of *Neeru
Yadav v/s State of UP and
another.*

10) *Crl.P.No.2180/2020 Karnataka
HC (DD: 28.04.2020) in case of
Shabana.M.Ron & others v/s
State of Karnataka.*

11) *SLP (Crl) Nos.1992-1995/2020 in
case of the State of Karnataka v/s
Ashik @ Mohammed Asik &
others.*

12) *Daily Orders of the Hon'ble High
Court of Karnataka in WP
No.9287/2020 along with*

connected matters.

13) Order dated 21.09.2020 passed by the learned LX Addl. City Civil & Sessions Judge, Bangaluru (CCH-61) in Crl.Misc.No.4867/2020.

14) Order dated 15.09.2020 passed by the learned LXX Addl. City Civil & Sessions Judge, Bangaluru (CCH-71) in Crl.Misc.No.4556/2020.

15) Order dated 15.09.2020 passed by the learned LXX Addl. City Civil & Sessions Judge & Special Judge, Bangaluru (CCH-71) in Crl.Misc.No.4731/2020.

16) Order dated 16.09.2020 passed by the learned LXX Addl. City Civil & Sessions Judge & Special Judge, Bangaluru (CCH-71) in Crl.Misc.No.4824/2020.

17) Order dated 15.09.2020 passed by

*the learned LXX Addl. City Civil &
Sessions Judge & Special Judge,
Bangaluru (CCH-71) in
Crl.Misc.No.5027/2020.*

9. I have perused the grounds made out in the petition and objection filed by the learned Special Public Prosecutor and material placed before the court and I have also considered the arguments advanced by the learned counsel for the petitioners and the learned Special Public Prosecutor for the respondent. On perusal of the same the points that would arise for my consideration are as follows:-

1. Whether the petitioner has made-out a grounds to show prima-facie that he is entitle for the bail in the respective crimes?

2. What order?

10. My answer to the above points are as follows:-

Point No.1: *In the Negative,*

Point No.2: *As per the final order,*
for the following:-

REASONS

11. **POINT No.1:** The brief facts of the prosecution case is that, one Naveen has posted derogatory comments on prophet Mohammed Paigamber, on his facebook. On account of which, the peoples belongs to Muslim community had gathered near D.J.Halli P.S. and asked for handing over the said Naveen to the peoples gathered in front of police station. For that the D.J.Halli police officials told that they have already registered the case against the said Naveen and assured for arresting him and necessary action will be taken. But, the peoples who were gathered wanted to hand over the Naveen to them. Meanwhile, the said message has been spread to all the community peoples, for that there were more than 300 people gathered, when police personnel did not handed over the said Naveen to the unlawful assembly, the members of the unlawful assembly has started pelting stones at police station and at police personnel and attacked

on the police personnel, assaulted them, set fire to the police station, vehicles belonging to government, parked in front of police station and set fire to the basement of the police station and all vehicles have been burnt. Further the miscreants set fire to the private vehicles parked outside and inside the police station, and set fire to the house belonging to local MLA and house belonging to said Naveen and house of the MLA and said Naveen completely burnt. More than 100 vehicles of private persons have been set fire. Thus, the unlawful assembly had caused loss to public and private property and assaulted to the public servant while discharging their duty as a public servants attached to the D.J. and K.G.Halli police station.

12. In connection with this incident the crimes have been registered in both police station against the unlawful assembly members of more than 300 persons and investigation was going on in connection with said incident in the crimes. During the investigation the present petitioners

and other persons have been arrested and produced before the learned judicial Magistrate and sent them to the judicial custody.

13. The learned counsel for the petitioner would contended in his arguments that, there is no material before the court to connect the petitioner in the commission of crime. Further contended that the respondent/complainant in all crimes has not been stated the names of the accused persons involved in the commission of crime in FIR, complaint, there was no recovery of any material object from the petitioner and no allegation against the petitioner in the complaint and in the FIR and no overtact of the petitioner found in the complaint and FIR. Thus, when there is no material before the court to connect the petitioner with the incident, taken place on 11.8.2020 at D.J.Halli and K.G.Halli police station and other place, then the petitioner is entitle for the grant of bail.

14. The learned Special Public Prosecutor would contended in his argument that, it is an horrible incident that took place in the metro city in which more than 300 peoples have assembled to do the illegal act and attack on the two police station. Further he argued that when one Naveen has posted a derogatory comment on prophet Mohammed Paigamber, on account of which the people belongs to a particular community has gathered in front of police station, asked for handing over the said Naveen, at that time, the police officials requested the mob that they have already registered the case against the said Naveen and necessary action has already been initiated, but, the members of the unlawful assembly did not heed the request of the police officials and assaulted to the police personnel and set fire to the police station, vehicles belongs to government and private.

Further the learned Special Public Prosecutor submitted that the miscreants had set fire to the residential house of

local MLA and residential house of said Naveen and burnt completely. Further the miscreants set fire to the vehicles parked in front of house of the Naveen and house belongs to local MLA. In such a incident there were more than 300 to near 1,000 persons have participated and caused damage to the public property and private properties and assaulted to the public servant while discharging their duty.

15. Further he submitted counter to the argument advanced by the learned counsel for the petitioner that there is no necessary to invoke Section 307 of IPC, since, there is no such injury suffered by the complainant or his officials. When the miscreants have burnt the residential house of MLA and said Naveen and they set fire to two police stations. Under such circumstances, it is necessary to invoke Section 307 of IPC. It is well settled law that to invoke Section 307 of IPC, the complainant or a victim must not necessarily suffered a grievous injury. In support of his argument he relied on the decision reported in:

1998 SCC Online All 1173 in case of Suneel Roy v/s State of UP and others and brought the notice of this court on para-17 of the judgment, which reads thus:

“18. In the present case the allegation against the petitioner is that he hit the police inspector by a wooden rod who fell down and thereafter the entire police party present there was attacked by the petitioner and the co-accused. Several constables were injured and their fire-arms and ammunition were snatched and taken away. Thus the petitioner and his colleagues did not stop after causing injuries to the police officer and the constables but they acted further which caused all the difference. Had the attack been only to secure the release of the petitioner, there was no reason to further aggravate the situation by snatching the fire-arms and ammunition and taking away the same with them. All this happened at a public place police

outpost in broad day light and in full view of the public watching it. One can well imagine the impact of such an incident on the general public watching it. Life of community has many shades and aspects. One of its important shades is the sense of security. This sense of security depends on the authority of the State through police. 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 was not a case of hit and run to secure release of the petitioner. The incident continued for hours. 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 tranquillity. The incident was reported in leading newspapers, copies of which were supplied to the petitioner. In our opinion, the act of the petitioner, who was mainly responsible to initiate the trouble, was an act which definitely disturbed the public order and respondent No. 2 had sufficient material to have subjective satisfaction that detention of the petitioner was necessary to maintain public order and even tempo of life of the community.”

Further the learned Special Public Prosecutor relied on the decision reported in *(2017) 14 SCC 803 in case of Vineet Mahajan v/s State of Punjab and others* and brought notice of the court on para-10 of the judgment, which reads thus:

“10. Having regard to the aforesaid statement of the persons recorded under Section 161 Cr.P.C. and the medical report, we fail to understand

as to how the High Court could come to the conclusion, at the stage of framing of the charge itself, that guilty intention of the accused persons was conspicuously missing. This Court in 'Anjani Kumar Chaudhary v. State of Bihar and Another' [2014 (12) SCC 286] has categorically held that in order to attract the provisions of Section 307 IPC, injury need not be on fatal part of the body. It is further held that when several persons attacked unarmed persons with deadly weapons, it is reasonable to presume that they had knowledge or intention that such attack would result in death."

Further the learned Special Public Prosecutor relied on the decision reported in *(2015) 15 SCC 327 in case of Litta Singh and another v/s State of Rajasthan* and brought the notice of this court on para-22 of the judgment, which reads thus:

“22. The word “MARO MARO” can never mean “KILL KILL”. The word “KILL” means to cause the death of a person or animal. It also means to put some one to death, to murder, to slaughter. On the other hand, the word “MARO MARO” means to beat, to cause assault. Here the thin line of distinction lies between the two words. If the voice is “KILL KILL”, it means to cause death of the person and to finish him. Had the intention of the person been to make such call or voice “KILL KILL” and on the basis of such call the accused persons had assaulted the deceased, then the intention would have been clearly to kill and murder the deceased. Here on hearing the call “MARO MARO”, the accused persons with Boga Singh started beating the deceased.”

Further learned Special Public Prosecutor relied on the decision reported in *(2005) 1 SCC 237 in case of K.Hashim*

v/s State of Tamil Nadu and relied on the decision reported in *(2017) 15 SCC 560 in case of State Through CBI v/s Dr.Anup Kumar Srivastava*, brought the notice of the court on the relevant para-26 & 27 of the judgment, which reads thus:

“26. Similarly, the law on the issue emerges to the effect that conspiracy is an agreement between two or more persons to do an illegal act or an act which is not illegal by illegal means. The object behind the conspiracy is to achieve the ultimate aim of conspiracy. For a charge of conspiracy means knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the

goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do.

27. At this stage, it would be appropriate to quote a decision of this Court in Central Bureau of Investigation, Hyderabad vs. K. Narayana Rao (2012) 9 SCC 512 wherein it was held as under:-

“24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be

proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available.

Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable

evidence.”

Further, the learned Special Public Prosecutor relied on decision reported in *(2020) 3 SCC 321 in case of Varinder Kumar v/s State of Himachal Pradesh* and brought the notice of this court on para-12 of the judgment, which reads thus:

“12. Individual rights of the accused are undoubtedly important. But equally important is the societal interest for bringing the offender to book and for the system to send the right message to all in the society — be it the lawabiding citizen or the potential offender. ‘Human rights’ are not only of the accused but, extent apart, also of the victim, the symbolic member of the society as the potential victim and the society as a whole.”

Further the learned Special Public Prosecutor relied on the decision reported in *(2016) 9 SCC 443 in case of*

Chandrakeshwar Prasad @ Chandu Babu v/s State of Bihar and another c/w State of Bihar v/s Md.Shahabuddin

and brought the notice of this court on para-10 of the judgment, which reads thus:

“10. This court in Rajesh Ranjan Yadav v/s CBI balanced the fundamental right to individual liberty with the interest of the society in the following terms in para-16 thereof: (SCC.P.79)

16. We are of the opinion that while it is true that Article-21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time, a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the

considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society.”

Further the learned Special Public Prosecutor relied on the decision reported in *(2017) 5 SCC 406 in case of Virupakshappa Gouda and another v/s State of Karnataka and another*, and brought the notice of the court at para-13 and 14 of the judgment, which reads thus:

“13. The proposition expounded above, has to be accepted, but that has to be applied appositely to the facts of each case. A bail application cannot be allowed solely or exclusively on the ground that the fundamental principle of criminal jurisprudence is that the accused is presumed to be innocent till he is

found guilty by the competent court. The learned trial Judge has also referred to the decision in Sanjay Chandra (supra), wherein a two-Judge Bench while dealing with bail applications, observed thus:- “21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody

pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to

refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.”

14. Be it noted, though the aforesaid passages have their relevance but the same cannot be made applicable in each and every case for grant of bail. In the said case, the accused-appellant was facing trial for the offences under [Sections 420-B, 468, 471](#) and [109](#) of the IPC and [Section 13\(2\)](#) read with [Section 13\(1\)\(d\)](#) of the Prevention of Corruption Act, 1988. Thus, the factual matrix was quite different. That apart, it depends upon the nature of the crime and the manner in which it is committed. A bail application is not to be entertained on the basis of certain observations made in a different context. There has to be application

of mind and appreciation of the factual score and understanding of the pronouncements in the field.”

16. Relying on the decision referred above, the learned Special Public Prosecutor has submitted that looking to the peculiar circumstances, under which crime has been committed by the unlawful assembly, manner in which crime has been committed and the properties belongings to government and private person has been destroyed by setting fire. It is further he submitted that it is not only a question of liberty of the petitioner/accused, it is also question of right and liberty of the society at large, since, in the case on hand, the members of the unlawful assembly has set fire to the residential house of the local persons who are nowhere concerned and responsible for the incident, that is, message posted by the Naveen and property belonging to private person has burnt for no reason. Then, it is for the state to give answer to those peoples whose properties were burnt, are

they not having a right to protect their belongings, are they not having a right to live in peace, are they not having constitutional protection as contended by the other side stating that it is a question of liberty of the accused persons.

17. Further the learned Special Public Prosecutor submitted that it is not a case that incident had happened at a remote place, there is no access of the persons or there is no residential house, on account of which, the respondent police authority is require to implicate false person in the crime to show statistics as contended by the other side. It is a case which took place in the heart of the metro city and the accused persons has set fire to the residential house and more than 100 of private vehicles have been burnt in the city. Not only this, the miscreants have burnt the residential house of local MLA, that shows their courage that they are not hesitate to do any illegal act. Looking to the manner in which the incident has taken place, the petitioner if released there will

be chances of tampering the prosecution witnesses and repetition of same offence by the petitioner and if the petitioner is released on bail he will come in the way of fair investigation. With this, the learned Special Public Prosecutor submitted that already during the course of investigation the accused persons have identified by the eye witnesses for their having participated in the commission of crime and some of the recovery from the petitioner has already been taken place, looking to the special facts and circumstances of the case, the petitioner is not entitled for the bail.

18. On perusal of the material placed before the court, and considering the arguments advanced by the learned counsel for the parties, it is clear that, the petitioner sought for grant of relief on the grounds that, his name is not reflected in the FIR, complaint, no recovery from any petitioner and there is no identification of the petitioner for having involved in the incident.

Further, it is not the argument of the learned counsel for the petitioner that, no incident has taken place on 11.8.2020, at Metropolitan City, but, it is unfortunately had happened. Further submitted that, when incident had happened, on account of which, this petitioner has become the victim of circumstances and the respondent police authority failed to arrest the real accused who are involved in the commission of the crime. Having said so, the learned counsel for the petitioner submitted that, the petitioner is not responsible for the incident.

Second ground for grant of bail is parity and another ground that, it is a question of liberty of the accused persons as there is no material to show their involvement in the commission of crime and further submitted that the accused persons are become victim of circumstances.

19. I have perused the material placed before the court and considered case diary and remand application as pointed out by the learned counsel for the petitioner. It is well settled

law that parity is not the sole grounds for bail. It is one of the grounds for consideration. Further there is no absolute hidebound rule that bail must necessarily be granted to the co-accused where co-accused has been granted with bail.

Thus, the principle of consistency or demand for parity only a factor to be considered and not a governing consideration. Bail is to be granted or refused on the totality of the facts and circumstances of case. The special facts and circumstances of the case is that the incident has taken place in the police station and there are eye witnesses who suffered injuries, the miscreants have attacked on police personnels and more than 65 government vehicles are burnt and more than 100 vehicles of private person burnt and two residential house burnt in the presence of the local persons and there were CD camera and eye witnesses have already been identified the accused persons.

20. According to prosecution, more than 500 peoples

are involved in the commission of crime. In order to have a fair investigation, I am of the opinion that at the initial stage of investigation of crime in which more than 300 peoples are involved, if the accused are released on bail, then it will hamper on the fair investigation of the crime. Thus, at this stage, the petitioner is not entitled for the bail looking to the peculiar facts and circumstances of the case, nature and gravity of the circumstances in which offence is committed, place at which, manner in which crime has been committed, the likelihood of the accused fleeing from justice, repeating of the offence, tampering of the prosecution witnesses.

21. It is not a case to give benefit of parity and question of liberty of the accused persons ignoring the right and liberty of the society at large, at this stage, to the accused persons. I would like to extract the relevant portion of judgment of the Hon'ble Apex Court in support of my opinion, passed in *Crl.A.No.1272/2015 (SLP (Crl) No.1596/2015) decided on 29.09.2015 in case of Neeru*

Yadav v/s State of U.P. and another. Para-13 of the judgment reads thus:

“13. We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though committed against an individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective.

He cannot be a terror to the society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus:-

Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters[9].

14. E. Barrett Prettyman, a retired Chief Judge of US Court of Appeals had to state thus:-

In an ordered society of mankind there is no such thing as unrestricted liberty, either of nations or of individuals. Liberty itself is the product of restraints; it is inherently a composite of restraints; it dies when restraints are withdrawn. Freedom, I say, is not an absence of restraints; it is a composite of restraints. There is no liberty without order. There is no order without systematised restraint. Restraints are the substance without which liberty does not exist. They are the essence of liberty. The great problem of the democratic process is not to strip men of restraints merely because they are restraints. The great problem is to design a system of restraints which will nurture the maximum development of mans capabilities, not

in a massive globe of faceless animations but as a perfect realisation, of each separate human mind, soul and body; not in mute, motionless meditation but in flashing, thrashing activity.[10]

15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be

alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.”

22. Further the learned counsel for the petitioner submitted that, the petitioner is entitled for the bail on the ground of parity as the co-accused has already been released in Crl.Misc. No.25565/2020 c/w 25614/2020 passed by the 26th Addl. City Civil & Sessions Judge, Mayohall Unit, Bangaluru, on 19.9.2020, which is connected to the case on hand. As I already observed that looking to the peculiar facts and circumstances of the case, I am of the opinion that parity alone had not been considered as a ground for release on bail. In support of my opinion, I relied on the decision reported in *1993 Crl.L.J. 938 in case of Nanha v/s State of U.P.* The lordships have held at para-23 of the judgment thus:

“23. On an examination of the cases

cited before us, I am of opinion that the case of an accused has to be examined individually. Simply because the co-accused has been granted bail cannot be the sole criteria for granting bail to an accused. Even at the stage of second or third bail the court has to examine whether on facts the case of the applicant before the Court is distinguishable from other released co-accused and the role played by the applicant is such which may disentitle him to bail. The norms laid down by the Supreme Court in Gurcharan Singh's case, viz:

(i) the nature and gravity of the circumstances in which offence is committed;

(ii) the position and the status of the accused with reference to the victim and witnesses;

(iii) the likelihood of;

(a) the accused fleeing from justice;

(b) of repeating the offence

(c) of jeopardising his own life being faced with grim prospect of possible conviction in the case;

(d) of tampering the witnesses.

(iv) the history of the case as well as of its investigation; and

(v) other relevant grounds which, in view of so many variable factors, cannot be exhaustively set out, have to be considered even at the time of consideration of bail at a subsequent stage of second or third application. I have stated the above norms even at the risk of repetition even though they have been quoted earlier.

24. My answer to the points referred to us is that parity cannot be the sole ground for granting bail even at the stage of second or third or subsequent bail applications when the bail applications of the co-accused whose bail application had

been earlier rejected are allowed and co-accused is released on bail. Even then the court has to satisfy itself that, on consideration of more materials placed, further developments in the investigations or otherwise and other different considerations, there are sufficient grounds for releasing the ' applicant on bail. If on examination of a given case, it transpires that the case of the applicant before the court is identically similar to the accused on facts and circumstances who has been bailed out, then the desirability of consistency will require that such an accused should be also released on bail. As regards the second part of the referred question my answer is that it is not at all necessary for an accused to state in his application that the application of a co-accused had been rejected previously.”

23. Further, the lordship of the *Hon'ble High Court of*

Kerala held in the decision reported in 2012 SCC Online Ker 20685 in case of Yesudas V/s. State of Kerala held that, accused No.1 and 2 have filed application for bail in Crime No.916/2012, registered against them for the offence p/u/sec.143, 147, 148, 149, 283, 427 and 307 of IPC. In the said case allegation was that, they formed into an unlawful assembly possessing deadly weapons and attacked persons belonging to different political party. At that time, the police interfered and some of the police officers are suffered injury. Therefore, crime has been registered. The defence of the petitioners was that, they are innocent and has falsely implicated with ulterior motive. Further alleged that, there was a friction between two political parties and police had intervened and the police officials suffered injury. But petitioners stated that, they had never attacked police officers as alleged.

The argument of the learned Public Prosecutor in the said case was that, petitioners are not as a innocent as they

pretend to be. They attacked the Police force. According to the prosecution the Police Officers had tried to restore the law and order. But they were assaulted and Police officers have suffered serious injury. Such acts of vandalism, according to the learned Public Prosecutor, should not be encouraged and bail may not be granted to the petitioners. In the said situation the lordship have held that, C.D. was made available for perusal of the court. It discloses that, there was a friction between two groups of political parties, in which Police had intervened as it is the duty of the Police officers to restore the law and order. Situation may necessitate the Police officers to resort to the lathi charge in order to restore the law and order. That is not a licence for the petitioner and others like them to mount an attack on police officers and cause injuries to them. Some of the Police Officers suffered serious injury. Further held that, going by the nature of the allegation seen from the records made available, it is felt that, nothing to show that petitioners are

innocent and their claim are true. The petition has no merit and accordingly dismissed.

24. Further the Hon'ble High Court of Kerala held in the decision reported in **2012 SCC Online Ker 21729 in case of Rahul R. Nath -V/s- State of Kerala**. In the said case also, there was attack on police force and lordship have held that, looking to the facts and circumstances, under which crime has been committed, it may not be just and proper for this court to exercise its extraordinary jurisdiction in favour of the petitioners.

Considering the facts and circumstances of the case, and gravity of the case as discussed above and relying on the decision referred above, I am of the opinion that, the petitioner is not entitled for grant of bail at the initial stage of investigation. With this observation and reasons assigned I answer this point ***in the Negative***.

25. **POINT No.2:** In view of the findings on point No.1,

I proceed to pass the following:-

ORDER

*The petition filed by the
petitioner U/Sec. 439 of Cr.P.C. is
hereby dismissed.*

(Dictated to the Stenographer on computer, after
computerization, corrected and pronounced by me in the
Open Court, this the 9th day of October, 2020)

(Yamanappa Bammanagi)
LXXIII Addl. CC & SJ, M.H. Unit,
Bangaluru.

Order pronounced in the open court
(vide separate order).

ORDER

*The petition filed by the
petitioner U/Sec. 439 of Cr.P.C. is
hereby dismissed.*

(Yamanappa Bammanagi)
LXXIII Addl. CC & SJ, M.H. Unit,
Bangaluru.

