

**IN THE COURT OF PULASTYA PRAMACHALA
ASJ-03, NORTH-EAST DISTRICT
KARKARDOOMA COURTS: DELHI**

IA 25/2024 (Sameer Khan)

CNR No. DLNE01-002410-2020

Sessions Case No. 120/20

State v. Mohd. Tahir Hussain etc.

FIR No. 65/20

PS Dayalpur

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

15.07.2024

Bail Order

Vide this order, I shall decide 4th bail application u/s. 439 Cr.P.C., moved on behalf of applicant Sameer Khan. Previously, first bail application of this accused was dismissed on 22.10.2020 by my Id. Predecessor. Second bail application was dismissed by Hon'ble High Court of Delhi vide order dated 03.05.2021. Third bail application of this applicant was dismissed as withdrawn before Hon'ble High Court of Delhi vide order dated 17.11.2022.

1. Briefly stated, vide order on charge dated 23.03.2023, charges have been framed against accused persons including applicant for offences (i) u/s. 120B IPC r/with Sections 147, 148, 153A, 302 IPC; (ii) u/s 147, 148, 302, 365 IPC r/with 120B and 149 IPC; and (iii) u/s. 188 IPC, on the allegations that on 25.02.2020 at around 5 PM, at and around Khajuri Khas nala near Chand Bagh Pulia, one person namely Ankit Sharma was murdered by the rioters and his dead body was thrown in Khajuri Khas nala near Chand Bagh Pulia. Applicant is alleged to be involved in aforesaid incident being part of that mob. Trial is going on.

2. As per the application and contention of **Mohd. Hasan**, ld. counsel for applicant/accused Sameer Khan, co-accused Javed, Gulfam and Shoaib Alam @ Bobby have been enlarged on bail by Hon'ble High Court of Delhi. The role attributed to the applicant and co-accused persons namely Javed, Gulfam and Shoaib Alam @ Bobby, are similar in nature and therefore, applicant is also entitled for bail on the grounds of parity.
3. On the point of material change in the circumstances, **Mohd. Hasan** argued that witnesses PW6/Sh. Pradeep Verma, PW13/Sh. Aakash and PW14/Sh. Bharat, have been examined after dismissal of last bail application of this applicant. Another cited eyewitness namely Shamshad Pradhan has been dropped by the prosecution. Ld. counsel further argued that PW6 and PW14 did not identify applicant during his testimony before the court. PW13 identified applicant as part of the mob, but he did not specify the role of the applicant. Ld. counsel for applicant further argued that no voice sample of applicant was obtained in this case for the purpose of comparison with alleged telephonic conversation's recording.
4. Ld. counsel referred to paragraphs 30 and 31 of bail order dated 02.05.2024, passed in favour of co-accused Javed by Hon'ble High Court of Delhi in BAIL APPLN. 3126/2021. Said paragraphs no. 30 and 31 are as under: -

'30. Applying the above tests to the facts of the present case, while there is no doubt that there are grave charges alleged against the applicant and that, if proved, the applicant may suffer severest of punishment, however, the character of evidence and circumstances peculiar to the case of the applicant are also to be considered. Pradeep Verma (PW-6) has identified the applicant as being part of the mob belonging to a community which was pelting stones. Though the learned senior counsel for the applicant submits that the statement

of Pradeep Verma (PW-6) cannot be relied upon as he did not inform any police official regarding the incident at the earliest stage, but only on 09.03.2020, that is, after the arrest of the applicant, in spite of the fact that he admits that the police used to visit his parking lot regularly between the date of the incident and 09.03.2020, at this stage, it would be premature for this Court to make any observation one way or the other on the above submission. As has been held by the Supreme Court in Satish Jaggi (supra), at the stage of bail, the Court should not go into the credibility and reliability of the witnesses put up by the prosecution.

31. Having said the above, the above discrepancy and the doubt cast on the testimony of Pradeep Verma, cannot also be completely ignored. In any case, Pradeep Verma (PW-6) merely states about the applicant being part of the mob, which was pelting stones and indulging in rioting. He has not ascribed any role to the applicant in the murder of the deceased. The same also applies to the statement of HC Rahul (PW-5) inasmuch as, in his testimony before the Court, he merely identifies the applicant to be part of the mob that was indulging in stone pelting and arson.”

- 5 . Mohd. Hasan, ld. counsel for applicant also referred to paragraph 26 of bail order dated 02.05.2024, passed in favour of co-accused Gulfam by Hon’ble High Court of Delhi in BAIL APPLN. 4324/2023. Said paragraph no. 26 is as under: -

“26. Applying the above tests to the facts of the present case, while there is no doubt that there are grave charges alleged against the accused, and that, if proved, the accused may suffer severest of punishment, however, at the same time, a look into the character of the evidence against the accused would show that, in the present case, the prosecution has placed reliance on the statement of Pradeep Verma (PW-6) recorded under Section 161 and Section 164 of the Cr.P.C. In his statement recorded before the learned Trial Court, however, as far as the applicant is concerned, the said witness could not identify the applicant. HC Rahul (PW-5), in his statement recorded before the learned Trial Court, has also not spoken about the murder of the deceased but only speaks about the applicant being the part of the mob indulging in riotous activities. The same is the case with Constable Praveen Kumar (whose statement before the learned Trial Court is not recorded or, at least, had not been relied upon by either the prosecution or by the applicant before this Court). As per the order dated 26.03.2024 passed in SC No. 120/20 arising out of FIR no. 65/2020 passed by the learned Additional Sessions Judge – 03 (North East) Karkardooma Courts, Delhi, Shamshad Pradhan is said to have been dropped by the prosecution as a witness in the case.”

6. Mohd. Hasan, ld. counsel for applicant further referred to paragraph 25 of bail order dated 02.05.2024, passed in favour of co-accused Shoaib Alam @ Bobby by Hon'ble High Court of Delhi in BAIL APPLN. 3965/2021, CRL.M.A. 10353/2024 & CRL.M.A.10352/2024. Said paragraph no. 25 is as under: -

“25. Applying the above tests to the facts of the present case, while there is no doubt that there are grave charges alleged against the accused, and that, if proved, the accused may suffer severest of punishment, however, at the same time, a look into the character of the evidence against the accused would show that, in the present case, the prosecution has placed reliance on the statement of Pradeep Verma (PW-6) recorded under Section 161 and Section 164 of the Cr.P.C. In his statement recorded before the learned Trial Court, however, as far as the applicant is concerned, the said witness could not identify the applicant. HC Rahul (PW-5), in his statement recorded before the learned Trial Court, has also not spoken about the murder of the deceased but only speaks about the applicant being the part of the mob indulging in riotous activities. The same is the case with Constable Praveen Kumar (whose statement before the learned Trial Court is not recorded or, at least, had not been relied upon by either the prosecution or by the applicant before this Court). As per the order dated 26.03.2024 passed in SC No. 120/20 arising out of FIR no. 65/2020 passed by the learned Additional Sessions Judge - 03 (North East) Karkardooma Courts, Delhi, Shamshad Pradhan is said to have been dropped by the prosecution as a witness in the case.”

7. As per reply and contention of **Sh. Madhukar Pandey**, ld. Special PP, this application has been opposed on the following relevant grounds: -

- 7.1 That 14 witnesses have been examined by the prosecution and PW13/Sh. Aakash has correctly identified the applicant Sameer Khan as part of the mob, which dragged Ankit Sharma from the mob of persons from Hindu community towards Chand Bagh Pulia at about 5PM on 25.02.2020.
- 7.2 That applicant/accused Sameer Khan had previously tried to evade his arrest after murder of Ankit Sharma. On 09.04.2020, after obtaining vital clues through technical surveillance and informers, the investigating agency raided his possible hideouts in Bulandashahar, U.P. However, applicant succeeded in giving slip to the investigating team. Subsequently, applicant was

arrested from Sunder Nagri, New Delhi. That there is high likelihood that applicant would abscond, as he had done previously.

- 7.3 That bail cannot be claimed mechanically as a right on the ground of parity. Accused/applicant Sameer has to satisfy the court that the necessary threshold for grant of bail is met. Reliance was placed upon the case of **Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana**, (2021)6SCC230, wherein Hon'ble Supreme Court observed that: -

"We are constrained to observe that the orders passed by the High Court granting bail fail to pass muster under the law. They are oblivious to, and innocent of, the nature and gravity of the alleged offences and to the severity of the punishment in the event of conviction. In Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508; (2015) 3 SCC (Cri) 527], this Court has held that while applying the principle of parity, the High Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail."

- 7.4 That the ground of parity is not available to the accused/applicant Sameer as the evidence available against other co-accused persons namely Javed, Gulfam and Shoaib Alam, is different. Accused/applicant was along with the accused Haseen through out the rioting and murder of Ankit Sharma and the same is reflected through the telephonic conversation recorded between them.
- 7.5 Said conversations between applicant and Haseen @ Mullaji, are of the date and time of incident of the present case. Besides these conversations, co-accused Haseen @ Mullaji was also found talking about several persons on phone that he was with nanhe i.e. applicant Sameer Khan and had killed people during riots, which corroborate the case of prosecution.
- 7.6 That applicant alongwith his associates have been instrumental in the riot and murder of Ankit Sharma. The riots and murder were carried in an organized manner and deep rooted involvement of applicant is established.
- 7.7 Other witnesses are yet to be examined in this case. The accused/applicant reside in the nearby locality of the deceased. There is every likelihood that he may threaten or try to influence the witnesses and may attempt to tamper with the evidence.
8. I have considered the rival contentions and have perused the

record of this case.

- 9 . It is matter of record that all alleged eyewitnesses of the incident have been examined. One alleged eyewitness has been dropped by the prosecution. PW13/Aaskash is the witness, who identified applicant before the court stating that he was also in the mob. As per his evidence, he had identified applicant before IO on 09.04.2020, when applicant was present alongwith IO at Chand Bagh Puliya. Thus, as per evidence on the record, one prosecution witness has identified applicant as part of the mob, which was allegedly responsible to drag away deceased Ankit Sharma and to kill him. PW13 did not refer to any specific other role, if played by applicant and in that situation, I find that the evidence qua applicant is the same as compared with other co-accused persons i.e. Javed, Gulfam, Shoaib Alam @ Bobby etc., who have been granted bail in this case despite being identified as members of aforesaid mob.
- 10 . One additional circumstance was pointed out against the applicant in the form of alleged telephonic conversation between applicant and co-accused Haseen @ Mullaji. However, Id. Special PP conceded that specimen voice sample of accused was not taken to compare his voice in the alleged recording. Therefore, I cannot give much importance to such piece of evidence of prosecution at this stage and I find that case presented by applicant satisfies the grounds of parity with co-accused persons namely Javed, Gulfam and Shoaib Alam @ Bobby. Accordingly, application is allowed.
- 11 . Applicant Sameer Khan is admitted to bail on his furnishing P/B and S/B in the sum of Rs.10,000/- each with one surety in the

like amount, subject to the following conditions: -

- 11.1 Applicant/accused shall not leave India without express permission of the court.
- 11.2 Applicant and his surety shall intimate the court immediately after any change in their addresses or other particulars.
- 11.3 Applicant shall not try to influence any other witness of this case.
- 11.4 Applicant and his surety shall mention their mobile numbers to be used by them during the period of bail.

Copy of order be sent to Jail Superintendent for intimation to the applicant. Copy of order be given dasti to ld. counsel for applicant.

Announced in the open court (PULASTYA PRAMACHALA)
today on 15.07.2024 ASJ-03(North East)
(This order contains 7 pages) Karkardooma Courts/Delhi