

Bail Application No.1197/2020

State V/s Tahir Hussain

FIR No.80/2020

U/s 147/148/149/427/436/120-B IPC & Section 3 and 4 PDPP Act

PS: Dayalpur

And

Bail Application No.1196/2020

State V/s Tahir Hussain

FIR No.117/2020

U/s 147/148/149/427/436/120-B IPC

PS: Dayalpur

And

Bail Application No.1153/2020

State V/s Tahir Hussain

FIR No.120/2020

U/s: 147/148/149/427/436/120-B IPC

PS: Dayalpur

22.10.2020

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri Manoj Choudhary, Ld. Special PP for the State.

Shri K.K Manan, Sr.Advocate alongwith Ms.Uditi Bali, Ld.Counsel for the accused Tahir Hussain/applicant.

Applicant produced from Tihar Jail through video-linkage.

Shri Joy Tirki, DCP (Crime Branch) (through video linkage).

ACP Surender Kumar Gulia and Inspector Amleshwar Rai, IO of the case (through video linkage).

COMMON ORDER

I have heard arguments advanced at bar by both the sides and perused the reports filed in the matter as well as the chargesheets. The arguments in all the aforesaid three matters have been heard in detail spreading across several sessions on various dates.

2. All the three bail applications are being disposed off by way of a common order, as the facts involved qua the applicant in the matters are common.

3. Before proceeding further, it would be appropriate to have a brief synopsis of the facts which gave rise to registration of FIRs in all the aforesaid three matters.

Facts qua registration of case FIR No.80/2020

4. This case FIR was registered on 28.02.2020, pursuant to PCR call received vide GD No.45-A, dated 25.02.2020 which was regarding about 100 people standing on the terrace of the house of applicant with petrol bombs and throwing the same on the persons belonging to another community. The incident(s) in the matter occurred on 25.02.2020 between 2.00 PM to 4.00 PM at Chand Bagh puliya, wherein numbers of houses, shops and public properties were damaged and burnt by the rioters.

Facts qua registration of case FIR No.117/2020

5. The case FIR in the matter was registered on 04.03.2020 on the written complaint dated 03.03.2020, made by Shri Zeeshan, S/o Shri Fajlu Rehman, r/o House No.1280, Gali No.18/3, Nehru Vihar, New Delhi. Complainant Zeeshan in his written complaint dated 03.03.2020 stated that he had a furniture shop at B-2/10, between Gali No.6 and 7, main Sherpur Chowk, Delhi. On 23.02.2020, he had closed his aforesaid shop as per routine and did not open the same on 24.02.2020 on account of eruption of communal riots in the area. It was further stated by him that on 25.02.2020 he received a call that the shutter of his aforesaid shop had been broken and articles lying therein looted by the rioters, as a result of which he had to incur a loss of about Rs.20.00 lakhs.

Facts qua registration of case FIR No.120/2020

6. This case FIR was registered on 04.03.2020 on the complaint of Irshad Ali, S/o Shri Shamshad Ali, wherein he stated that he had been running a rented shop by the name of Royal Mattresses at 406-A, Moonga Nagar, Delhi. Smt.Rekha Garg, W/o Shri Brijmohan Garg is the owner of the said shop. On

23.02.2020 he had closed his shop as usual, but on account of eruption of communal riots in the area he did not open the same on 24.02.2020. On 24.02.2020 itself, he received a call that the shutter of his shop had been broken, articles lying therein looted and thereafter the same was set on fire by the riotous mob, as a result of which he incurred loss of around Rs.17-18.00 lakhs.

Arguments on behalf of applicant qua case FIR No.80/2020

7. The learned counsel for the applicant has very vehemently argued that applicant has been falsely implicated in the matter by the investigating agency and his political rivals with the sole purpose of harassing him by abuse of the machinery of law. It is argued that applicant belongs to “*Aam Aadmi Party*” and is a “*victim of circumstances*”, as he has been caught up in a political cross-fire and the allegations levelled against him are nothing, but a political blame game to malign his image. He has been in judicial custody since 16.03.2020. It is argued that there is an “*unexplained delay*” of about three days in registration of FIR in the matter, as the alleged incident in the matter took place on 25.02.2020; whereas, the FIR was registered on 28.02.2020. The bail is being sought by him on the grounds that there is no cogent and legal evidence which is admissible in the eyes of law, to connect the applicant with the incident alleged in the matter. There is no evidence by way of even a single video footage or CCTV footage to prove that the applicant had participated in the riots or caused damage to any property. It is further argued that PW Jai Bhagwan Singh had initially not named the applicant in his complaint, however, thereafter inculpated him only while recording of his statement under Section 161 Cr.P.C by the investigating agency, which is nothing but merely an “*improvement*” done at the instance/connivance of investigating agency. It is argued that most of the co-accused persons in the matter namely Riyasat Ali, Arshad Qayyum @ Monu, Mohd. Shadab, Rashid Saifi, Mohd. Abid, Mohd. Rehan @ Arshad Pradhan and Gulfam have already been enlarged on bail by this Court vide various orders and as such, the applicant is also entitled for grant of bail in the matter on the ground of **parity**.

8. In the end, it is argued that the investigation in the matter is complete; chargesheet has already been filed; the applicant is no more required for custodial interrogation; and no useful purpose would be served by keeping him behind bars in the matter, as trial of the case is likely to take long time. It is claimed that the applicant has clean past antecedents and has deep roots in the society. Besides him, there is no other person in the family to take care of his wife, two minor school going children, a college going son and an elderly mother.

Arguments on behalf of applicant qua case FIR No.117/2020

9. It is argued that applicant has been in judicial custody since 16.03.2020. It is further argued that he has not been specifically named in the FIR by the complainant. There is an “*unexplained delay*” of about seven days in registration of FIR as the alleged incident in the matter took place on 25.02.2020; whereas, the case FIR in the matter was registered on 04.03.2020. It is argued that the complainant had not even named the applicant while replying to the notice U/s 160 Cr.P.C/91 Cr.P.C which was served to him by the investigating agency. It is argued that mere presence of the applicant at the spot of incident is not sufficient to hold that he shared the “*common intention*” to commit the alleged offence in the matter. Rest of the arguments put forth by the learned counsel were on the same lines as advanced in case FIR No.80/2020, PS Dayalpur. The learned counsel also placed reliance upon the copy(ies) of transcripts and PCR call(s) made by the applicant in the matter.

Arguments on behalf of applicant qua case FIR No.120/2020

10. It is argued that the applicant has been in judicial custody in the present matter since 21.04.2020. It is further argued that he has not been specifically named in the FIR by the complainant. There is an “*unexplained delay*” of about eight days in registration of FIR as the alleged incident in the matter took place on 24.02.2020; whereas, the case FIR in the matter was registered on 04.03.2020. It is argued that the complainant had not even named

the applicant while replying to the notice U/s 160 Cr.P.C/91 Cr.P.C which was served to him by the investigating agency. It is argued that mere presence of the applicant at the spot of incident is not sufficient to hold that he shared the “*common intention*” to commit the alleged offence in the matter. Rest of the arguments put forth by the learned counsel were on the same lines as advanced in case FIR No.80/2020, PS Dayalpur. The learned counsel also placed reliance upon the copy(ies) of transcripts and PCR call(s) made by the applicant in the matter.

General Comments of learned Senior Counsel for the applicant

11. *On facts*, it is submitted that on 24.02.2020 at around 1.30 PM, a riotous mob had gathered around the house of applicant that had set on fire a bullet motorcycle lying parked outside his house. Thereafter, the said riotous mob broke the main gate of his house, entered inside and climbed up on to the roof and damaged his house badly. It is further argued that considering the seriousness of the situation prevalent in the area on 24.02.2020 vis-à-vis threat to his life and the life of his family members, applicant had made several telephonic calls to SHO, PS Dayalpur and ACP of the area, but none of them answered his calls. It is further argued that from 3.52 PM till 5.56 PM, applicant had made as many as 7 calls to Police Control Room/Police Helpline Number, but to no avail and the police force finally arrived at the spot at around 7.30 PM. He also made a call to Shri Sanjay Singh, Hon’ble Member of Parliament from Aam Aadmi Party, who assured the applicant not to panic. In this regard, the copy(ies) of transcripts and PCR call(s) made by the applicant have been annexed with the bail application. It is further argued that on 27.02.2020, the applicant had made a written complaint and sent the same to Commissioner of Police via e.mail, thereby informing him in detail about all the facts.

12. *On legal aspect*, it is submitted that while criminal conspiracy, as defined in Section 120-B IPC must precede the crime, Section 149 IPC is invoked

when unlawful assembly, object and crime take place simultaneously. It is argued that both these sections are incompatible and cannot be invoked together, especially when there is no evidence produced by the investigating agency to connect the applicant with the unlawful assembly and conspiracy. As regards invocation of Section 436 IPC in the matter by the investigating agency, it is argued that the prosecution has failed to establish as to who lit the fire, which is an important ingredient to bring home the charges under Section 436 IPC and since the same is lacking in this case, so section 436 IPC is also not made out against the applicant. It is argued that the applicant being the resident of the same locality was present inside his house and he cannot be fastened with liability of riots with the aid of Section 149 IPC as he *never shared any "common object" with the unlawful assembly*, even if he was present at the spot.

Arguments qua delay in recording the statements of witnesses

13. The learned senior counsel for the applicant has very vehemently argued that there is considerable delay in recording the statement(s) of public witnesses under Section 161 Cr.P.C in all the aforesaid three matters. To be specific, the learned counsel pointed out that the incident in case FIR No.80/2020 occurred on 25.02.2020, whereas the statements U/s 161 Cr.P.C of public witnesses namely Surender and Rajbir Singh Yadav were recorded on 27.05.2020. As regards FIR No.117/2020, it is submitted the incident happened on 24.02.2020; whereas, the statements U/s 161 Cr.P.C of public witnesses namely (i) Khaleel, (ii) Irfan, (iii) Surender Singh, (iv) Rajbir Singh Yadav, (v) Pradeep Kumar and (vi) Manoj Kumar were recorded on 27.05.2020. Similarly, it is submitted that incident in case FIR No.120/2020 occurred on 24.02.2020, but the statements U/s 161 Cr.P.C of public witnesses namely Surender Singh, Rajbir Singh Yadav, Pradeep Kumar and Manoj Kumar were recorded on 27.05.2020. It is argued that the prosecution has not been able to offer any plausible explanation for delay in recording the statements of public witnesses U/s 161 Cr.P.C and thus, there is a possibility of embellishment in the prosecution version on account of such delay

which would be fatal to the prosecution. The learned counsel for the applicant in this regard has relied upon the following judgments:

- (a) ***Sachin S/o Dnyaneshwar Fulkar V/s State of Maharashtra; Crl. Appeal No.248/2016 (Decided by Hon'ble Bombay High Court on 21.06.2019);***
- (b) ***Ganesh Bhavan Patel & Ors. V/s State of Maharashtra, 1979 SCR (2) 94 (Decided on 18.10.1978) and;***
- (c) ***Jagjit Singh V/s State of Punjab; MANU/SC /0044/2005 (Decided on 18.01.2005)***

Arguments qua conspiracy

14. As regards the allegations of “***criminal conspiracy***” against the applicant, it is argued that “***criminal conspiracy***”, as defined in Section 120-B IPC must precede the crime vis-à-vis the legal effect of Explanation appended to Section 120-A in the light of evidence has to be examined. It is argued that conspiracy cannot be assumed from a set of unconnected facts or from a set of conduct at different places and times without a reasonable link. In this regard, reliance has been placed by the learned counsel upon Crl.Appeal No.630/2020, titled as, “***Mohan V/s State of Madhya Pradesh***”, decided by the Hon'ble Supreme Court of India on 24.09.2020.

15. Per contra, learned Special PP has very vehemently argued that the communal riots in North-East Delhi were of a very high magnitude, wherein 53 innocent lives were lost and a lot of public and private property was damaged/vandalized and looted and several vehicles, houses and business establishments were set on fire. These riots were part of large scale conspiracy hatched at various levels all over Delhi in the aftermath of enactment of ***Citizenship Amendment Act, 2019*** (in short “***CAA***”) and the same did not take place spontaneously. These riots were result of a well-planned and meticulously executed action by the anti-CAA protesters. It had in fact been planned before the visit of US President Donald J. Trump to India, as one group of particular

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

16. *As regards case FIR No.80/2020*, it is argued that applicant had been categorically identified and seen by Constable Vikrant and Constable Pawan rioting in the area and burning the shop of complainant on 25.02.2020. It is further argued that during the course of investigation statement of two eye witnesses namely Surender Singh and Rajbir Singh Yadav were recorded in the matter, who have categorically identified the applicant as they were familiar with him previously on account of applicant being a public figure. It is further argued that during further course of investigation (after submission of chargesheet), on 18.08.2020, three PCR callers (eye witnesses) were examined in the matter, who in their statements recorded U/s 161 Cr.P.C have categorically identified the applicant, who was present at the terrace of his house and was part of riotous mob that was pelting stones, petrol bombs (Molotov Cocktail) and firing on the people crossing the main Karawal Nagar road.

17. The learned Special PP further submitted that during analysis of CDR of mobile number (9810363xxx) (number withheld) belonging to applicant, it was revealed that he had made several PCR calls on 24.02.2020 and 25.02.2020. As per CDR analysis, six PCR calls were made by applicant on 24.02.2020 between 2.50 PM and 6.00 PM and six PCR calls were made on 25.02.2020 between 3.50 PM to 4.35 PM. On checking the PCR calls, it was found that only four PCR calls made by applicant on 24.02.2020 had connected to Police Control Room, while remaining calls could not be connected due to reason mentioned as “*IVR key not pressed*”. Out of four calls, three calls were sent to PS Dayalpur for local police action and one call was sent to PS Karawal Nagar. The concerned Emergency Officer, SI Shiv Charan Meena and other emergency officer of the day at PS Dayalpur, who had attended the PCR calls were examined. During investigation, it was revealed that there were thousands of people standing on both sides of main Karawal Nagar Road from Chand Bagh pulia to Sherpur Chowk. Police force which was less in number in comparison to the rioters could not reach the spot on receipt of calls. It was quite late in the night when staff from PS Dayalpur reached at the spot, which was in front of applicant’s house. At that time, the applicant was present in front of his house. Shops and a few houses adjoining the house of applicant had been burnt. No damage had been caused by the rioters to applicant’s house and none of his family members had sustained injuries. From the circumstances, it seemed that the accused persons/rioters were known to the applicant and applicant was present with the rioters at his house and he had deliberately made PCR calls to save his skin from legal complications in future.

18. It is further argued that during interrogation of applicant, it was revealed that in the intervening night of 24/25.02.2020 in the early morning hours, applicant had shifted his family from House No.E-7, main Karawal Nagar Road, Khajuri Khas, near Chand Bagh pulia, Delhi to his parental house at Mustafabad. However, he stayed back at his E-7, main Karawal Nagar Road house to keep an eye on the whole situation and lead the Muslim rioters against the Hindus on the

next day. His call locations of 25.02.2020 proves this version to a great extent. The location of applicant near Jama Masjid, Munga Nagar, Delhi which is close to Chand Bagh Pulia speaks of his evil intentions.

19. It is further argued that applicant cannot claim parity with other co-accused persons in the matter who have been enlarged on bail because the role assigned to him is totally different and distinct from the other co-accused persons, as he is the *main kingpin/conspirator* in the case. The applicant in furtherance of the criminal conspiracy had instigated the rioters of a particular community and provided logistic support like lathis, dandas, stones, acid bottles, knives, swords, fire arms etc. to the rioters at the roof of his house itself. It is argued that the principle of grant of bail on parity cannot be allowed to be carried to an absurd or illogical conclusion so as to put a judge in a tight and straight jacket to grant bail automatically (reference case reported as, “*1993 CrIJ 938*”, titled as, “*Nanha V/s State of Uttar Pradesh*”, decided by the Hon’ble High Court of Allahabad on 18.09.1992).

20. *As regards case FIR No.117/2020*, it is submitted that the applicant was formally arrested in this case on 21.04.2020 at Mandoli Jail, since he has already been in judicial custody in case FIR No.101/2020, PS Khajuri Khas. It is argued that besides Constable Pawan and Constable Vikrant, independent public witnesses namely (i) Khaleel and (ii) Irfan vide their statements recorded U/s 161 Cr.P.C have categorically identified the applicant indulging in rioting in the area. It is next contended that during the course of further investigation, public witnesses namely Surender Singh, Rajbir Singh Yadav, Pradeep Kumar and Manoj Kumar have also categorically identified the applicant to be present at the scene of crime on the date of incident as he is a public figure and all of them knew him previously.

21. Similarly, it has been argued that the arrest of applicant in case FIR No.120/2020 was formally effected on 21.04.2020 at Mandoli Jail, since he has already been in judicial custody in case FIR No.101/2020, PS Khajuri Khas. It is argued that besides Constable Pawan and Constable Vikrant, independent public witnesses namely Surender Singh, Rajbir Singh Yadav, Pradeep Kumar and Manoj Kumar have also categorically identified the applicant to be present at the scene of crime on the date of incident as he is a public figure and all of them knew him previously. It is submitted that considering the seriousness of the offences involved in the case, the bail application of co-accused Riyasat Ali and interim bail of co-accused Gulfam @ VIP have already been dismissed by this Court vide detailed orders dated 19.06.2020 and 10.08.2020 and the applicant being the main kingpin of the conspiracy, his bail application is also liable to be dismissed.

22. As regards the contention of the learned counsel for the applicant that there is delay in recording of FIR in the matters, it is argued that the riots at or around the scene of crime(s) were “*very fierce*” from 23.02.2020 till 26.02.2020. Several persons were injured; public and private property(ies) worth crores of rupees were vandalized, arsoned and torched. There was curfew like atmosphere at or around the area. The police officials of PS Dayalpur remained busy in law and order duty and as such, delay in recording of FIRs took place. In *decision dated 06.07.2020*, passed in *Bail Application No.922/2020*, titled as, “*Raiees Khan V/s State of NCT of Delhi*”, the Hon’ble High Court of Delhi in para 11 thereof has been pleased to hold as under:

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

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23. As regards the delay in recording the statements of public witnesses U/s 161 Cr.P.C, it is submitted that the inspection of the house/building of the applicant was got conducted by FSL team on 28.02.2020. The adjoining shops of applicant's building had been burnt. During riots, the situation of the area was tense and curfew like situation was prevailing all over North-East District of Delhi. People hardly visited their shops and did not come out of their houses due to tense atmosphere because of riots. Their statements were recorded by the police U/s 161 Cr.P.C as per their availability. It is further argued that there is no statutory period prescribed for recording of statement(s) of witnesses. It is argued that it is common knowledge that at or around Chand Bagh puliya till upto Sherpur Chowk, several shops and houses were vandalized, looted and torched. The beat constables who remained on duty in the area on both the days, i.e, 24.02.2020 and 25.02.2020 had witnessed thousands of persons committing the aforesaid acts. They might have witnessed hundreds of properties being torched; they might have seen several persons receiving injuries. It is not humanly possible for a poor beat constable to remain engaged in law and order duty in such extraordinary circumstances from morning till night and thereafter after going back to the Police Station would recollect all the incidents of the day and get hundreds of FIRs registered at PS throughout the night and would be ready to go for his law and order duty on the next morning again to witness hundreds of such incidents on the next day and again get the FIRs recorded at PS and so on and so forth. It is emphasized that the situation was so grim and the police force was meagre, yet besides performing the law and order duty they had to take care of injureds and other victims. Their first priority was to help needy persons and not sit through the night and get the FIRs recorded. On the strength of the order passed in *Raiees Khan's* case (supra), it is emphasized that the Hon'ble High Court correctly appreciated the plight of local police and discarded the argument of the defence regarding delay in recording of FIR and the statements of witnesses. It is further argued that as and when the complainants/victims approached the police then on the basis of their recollection, the beat constables got their statements recorded in the matter and their statements

cannot be discarded merely on the ground of delay, as they were pitted against extraordinary circumstances. He has stretched the argument further by pleading that had hundreds of FIRs being recorded merely on the statements of beat constables, then the defence would have questioned the same on the ground that they had concocted the facts. In any case, it is the prerogative of the investigating agency to see on whose statement the FIR in the matter is to be recorded and the safest course which was thought appropriate was either to approach the complainant/victim or let him approach the police after normalisation of the situation.

24. I have given thoughtful consideration to the arguments advanced at bar. Before proceeding to discuss the rival arguments, it is worthwhile to note that Section 149 IPC creates a specific and distinct offence. Its two ingredients are:

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

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

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What has to be proved against a person, who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entered alongwith the other members of the assembly. The common object is defined by Section 141 IPC. Section 142 provides as whoever being aware of the facts which run any assembly is unlawful assembly, intentionally joins that assembly or continues in it is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons, actuated by and entertaining one or more of the common objects specified by five clauses of Section 141 IPC is unlawful assembly. The crucial question to determine in such a case is whether the

assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified by Section 141 IPC. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons, who were nearly passive witnesses and had joined the assembly as a matter of idle curiosity, without intending to entertain the common object of the assembly.”

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(emphasis supplied)

26. From the evidence of a number of witnesses recorded in the matter, it is *prima facie* apparent that the “**riotous mob**” armed with “**lethal weapons**” had engaged in vandalism, looting and torching of public and private properties and their **main objective was to cause maximum damage to the lives and properties of persons belonging to other community**. Therefore, at this stage it cannot be said with certainty that the applicant did not have a common object with the other persons of unlawful assembly. The “**common object**” of this kind of riotous mob can be easily inferred therefrom. This Court is conscious that at this stage the trial is not being dealt with. We are at **pre-cognizance/pre-committal stage** and this Court has limitations in making in-depth analysis of the statements of witnesses, which are yet to be tested on the anvil of trial. Whether he can be convicted in the matter with the aid of Section 149 IPC is a preposterous conclusion at this stage, as the evidence is yet to be led in the matter. However, from the aforesaid behavior of “**riotous mob**”, the “**common object**” can be inferred at this stage.

27. Even if there is no video footage or CCTV footage, showing the presence of applicant at the spot, but there is enough ocular evidence available on record. The independent public witnesses in the matters namely (i) Khaleel, (ii) Irfan, (iii) Surender Singh, (iv) Rajbir Singh Yadav, (v) Pradeep Kumar and (v) Manoj Kumar have categorically identified the applicant to be present at the scene of crime(s) on the date(s) of incident(s). It is nowhere disputed that the applicant is a public figure and the aforesaid public witnesses are residents of the same locality, so *prima facie* this Court has to believe that the aforesaid public witnesses

knew the applicant very well. I am conscious of the law that at the “*pre-cognizance/pre-committal stage*” and that too while deciding the bail application, this Court cannot probe deep into the material collected by the investigating agency because at this stage conducting of “*mini trial*” is not warranted. However, I have taken pains to go through the statement of each witness recorded by the police U/s 161 Cr.P.C to satisfy myself about the sufficiency or otherwise of the material collected during investigation by the police. I do not find any force in the arguments of learned counsel for the applicant that applicant has been falsely implicated in the present matter or that there is no legally sustainable evidence available against him. On the contrary, I find the “*ocular evidence*” of independent witnesses aforesaid to be categorical, which gives the clear details qua the active role played by him in the incidents in question.

28. The CDR analysis qua the mobile number (9810363xxx) (number withheld) belonging to applicant confirms his presence at or around the scene of crime(s) on the dates of incident(s).

29. As regards the grant of bail to an accused on the ground of parity, the law on this point is fairly settled now. The Hon’ble High Court of Allahabad, in case reported as, “*1993 Cr.L.J 938*”, titled as, “*Nanha S/o Nabhan Kha V/s State of U.P*” (decided on 18.09.1992) has been pleased to hold in paragraphs 58 and 59 thereof as under:

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58. The word 'parity' means the state or condition being equal or on a level; equality; equality of rank or status (See Shorter Oxford English Dictionary 1936 Ed.). In other words it means being placed at the same footing. All the accused of a case always do not stand on the same footing. While considering bail of different accused the court has to find out whether they stand on the same footing or not. Even if role assigned to various accused is same yet they may stand on different footing. The case of Cap. Jagjeet Singh (supra) is an illustration wherein the Supreme Court distinguished the case of Capt. Jagjeet Singh on the ground that he was in touch with foreign agency and

leaking out secrets. The Supreme Court in the case of Gur Charan Singh v. Delhi Administration, AIR 1978 SC 179 : (1978 Cri LJ 129) laid down that the considerations for grant of bail are inter alia the position and status of the accused with reference to the victim and the witnesses; likelihood of the accused; fleeing from justice; of repeating offence; of jeopardising his own life, being faced with grim prospect of possible conviction in the case; of tampering with witnesses; and the like. These are additional factors which are to be judged in the case of individual accused and it may make the cases of different accused distinguishable from each accused. At the same time if there is no real distinction between the individual case of accused the principle of parity comes into play and if bail is granted to one accused it should also be granted to the other accused whose case stands on identical footing.

59. None the less the principle of grant of bail on parity cannot be allowed to be carried to an absurd or illogical conclusion so as to put a judge in a tight and straight jacket to grant bail automatically. There may be case which may require an exception; where a judge may not simply take a different view from the judge who granted bail earlier to a co-accused but where the conscience of the judge revolts in granting bail. In such a situation the judge may choose to depart from the rule recording his reasons. However, such cases would be very few.

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30. I find substance in the submissions of learned Special PP that the applicant claiming parity with the co-accused persons (who have been enlarged on bail in case FIR No.80/2020) is totally illogical because the role assigned to him in the matters is totally different and distinct from rest of the co-accused persons. It is noteworthy that at the time of eruption of communal riots in the area(s) of North-East Delhi, the applicant has been in a powerful position (being sitting Councillor of the area from Aam Aadmi Party) and it is *prima facie* **apparent that he used his muscle power and political clout to act as a kingpin in planning, instigating and fanning the flames of communal conflagration.** Therefore, at this stage, I find that there is enough material on record to presume that the applicant was very well present at the spot of crime and was exhorting the rioters

of a particular community and as such, he did not use his hands and fists, but rioters as “*human weapons*”, who on his instigation could have killed anybody. It is common knowledge that the dreary day of 24.02.2020 saw parts of North-East Delhi gripped by a communal frenzy, reminiscent of carnage during the days of partition. Soon, the riots spread like wildfire across the smoke-grey skyline of Capital, engulfing new areas and snuffing out more and more innocent lives. ***The Delhi riots 2020 are a gaping wound in the conscience of a nation aspiring to be a major global power. The allegations against the applicant are extremely grave in nature.*** Even if there were no direct acts of violence attributable to the applicant, he cannot shy away from his liability under the provisions of the sections invoked against him, particularly on account of the fact that his house/building became the hub/centre point for the rioters and rabble-rousers to unleash the worst communal riots since partition in Delhi. The spread of riots on such a big scale in such a short time is not possible without a premeditated conspiracy. *At this stage*, I am reminded of a famous English saying which says that “*when you choose to play with embers, you cannot blame the wind to have carried the spark a bit too far and spread the fire*”. So, when the applicant is at the receiving end now, he cannot pass on the buck by simply taking a plea that since he did not participate physically in the riots, so he has no role to play in the riots. It is ***prima facie*** apparent that the applicant abused his muscle power and political clout to foment communal violence in the area.

31. For the present, the delay in recording of FIR(s) in the matter(s) have been suitably explained by the prosecution.

32. I have also analyzed the judgments relied upon by the learned counsel for the applicant regarding delay in recording the statements of public witnesses U/s 161 Cr.P.C. ***In my considered opinion, the statements of witnesses can be said to be delayed when the witnesses are known to the police and yet police do not record their statements; whereas, in a case of rioting, police hardly has any***

idea as to who were the witnesses. Further, people normally do not come forward and it is admitted position on record that on the date of incident nearly 10,000 PCR calls were recorded in the area of PS Dayalpur. Thereafter, on the basis of these calls, police reverted back and traced out some of the witnesses. Therefore, at this stage, it cannot be said that there is delay in recording of statements of witnesses by investigating agency.

33. Besides the aforesaid three matters, the applicant is also an accused in eight other cases of communal riots in North-East Delhi.

34. It is a matter of record that public witnesses in the aforesaid matters are residents of the same locality and if released on bail at this stage, the possibility of applicant threatening or intimidating them cannot be ruled out. Considering the facts and circumstances of the case(s) in totality, I do not find it to be a fit case for grant of bail to the applicant in all the aforesaid three matters. The bail application(s) in all the aforesaid three matters are accordingly dismissed.

35. A copy of this order be placed in all the aforesaid three matters.

36. It is hereby clarified that anything stated hereinabove shall not be construed as expressing any opinion on the final merits of the case(s), as the case(s) are at “*pre-cognizance/pre-committal stage*”.

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

(VINOD YADAV)
ASJ-03(NE)/KKD COURTS/22.10.2020