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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 02.02.2023

Pronounced on: 01.03.2023

+ **BAIL APPLN. 3208/2022**

SHOAIB ALAM

..... Petitioner

Through: Ms. Rebecca John, Senior Advocate with Ms. Tara Narula, Ms. Tamanna Pankaj, Mr. S. Debabrata Reddy and Ms. Bijaharini G., Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Rajat Nair, SPP for the State with Inspector Rajeev Bamal and SI Mukesh Tyagi, Crime Branch

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of present application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the present accused/applicant Shoaib Alam seeks regular bail in case FIR bearing no. 114/2020, registered at Police Station Khajuri Khas, New Delhi, under Sections 109/114/147/148/149/427/454/395/435/436/153A/505/120B/34 of the Indian Penal Code, 1860 ('IPC').

2. Briefly stated, the relevant facts of the present case are that an

FIR was lodged on 27.02.2020 pursuant to a complaint filed by Sh. Karan, whereby it was alleged that on 25.02.2020, between 4:00 PM to 05:00 PM, around 40-50 associates of one Tahir Hussain had looted his godown situated at E-17, Khajuri Khas, Main Karawal Nagar Road, Chand Bag Pulia. It has been alleged that during the incident, valuable property of the complainant had been stolen, such as, spare parts and important documents including original certificates of e-rickshaw, certificates of spare parts from the year 2016, had been burnt due to which the complainant had suffered loss of about Rs. 25-30 Lakhs.

3. After registration of the FIR, investigation of the present case had been carried out by Special Investigating Team (SIT), Crime Branch. During investigation, it had been discovered that the place of incident was situated at a distance of about 50-60 meters from building bearing no. E-17, Khajuri Khas, Main Karawal Nagar Road, Delhi which is owned by co-accused Tahir Hussain, which had been used by rioters/miscreants including the present accused for throwing bricks, stone pelting, pelting of petrol bombs, acid bombs etc. It is alleged that some residue/remains of the debris as well as stones, bricks, broken bottles and burnt articles had also been found lying on the main Karawal Nagar road. It is stated that the said building was four storied, including basement, and co-accused Tahir Hussain used to run his office in the name of M/s Show Effect Advertisement Pvt. Ltd. on the first floor, however, second floor and third floor of the building were under construction.

4. It is alleged that during further investigation, photographs of

various persons/suspects/ accused had been shown in riots related cases to various public persons including eye witnesses of the incident i.e. Sh. Pradeep Verma and Sh. Shamshad Pradhan. The said witnesses had specifically identified the accused(s) including the present applicant. One of the witnesses i.e. Pradeep Verma had also identified co-accused Tahir Hussain, who was the Municipal Councillor of the area at that point of time. It is alleged that statement of witnesses regarding the identification of the rioters had been recorded.

5. Chargesheet was filed after completion of investigation against the present applicant and other accused persons for offences punishable under Sections 109/114/147/148/149/427/454/395/435/436/153A/505/120B/ 34 of IPC.

6. Learned senior counsel for the applicant herein states that the prosecution has filed the chargesheet with respect to the present applicant without there being any evidence admissible in law. It is also argued that the process adopted by the police regarding identification of the applicant is flawed. It is also vehemently stated that the applicant was not even present at the spot and neither there is any material on record to establish connection of the present applicant with co-accused Tahir Hussain, nor any specific role has been attributed to the present applicant. It is also argued that the identification of the applicant by the alleged eye witnesses had been recorded after an inordinate delay which is not explained and, therefore, cannot be relied upon. It is further stated that there is no electronic evidence such as CCTV footage, videography and photographs on record, to establish the presence of applicant at the spot. Learned senior counsel

has also pointed out several discrepancies in the statements of witness i.e. Pradeep Kumar and absence of any direct evidence implicating the applicant in the present offence. It is also stated that the statement recorded by the police regarding seizure of phone, which is not registered in the name of present applicant, also points out that he has been falsely implicated in the present case. Learned Senior counsel also states that the applicant is no more required for any investigation and the CDR related to the applicant does not mention the tower location, and the mere presence of the applicant in the vicinity of the incident side cannot prove that the applicant was a part of the mob.

7. *Per Contra*, learned SPP for the State, opposes the present application and vehemently submits that the allegations against the applicant are serious in nature, and veracity of the statements of witnesses cannot be considered in depth at this stage when grant of bail is being considered. Attention of this Court is also drawn to the order passed on charge where the delay in carrying out investigation and regarding the statement of witnesses has been discussed in detail. It is also stated that when the present applicant/accused was enlarged on interim bail on an earlier occasion, he had threatened the witnesses even prior to being released on bail. It is further stated that one witness has also lodged a complaint that the accused has been threatening him.

8. In rebuttal, learned senior counsel for the applicant states that despite such complaint being filed on record, learned Trial Court was pleased to grant interim bail to the applicant. It is, however, argued on behalf of the State that after carrying out threat assessment, the said witness has been granted protection.

9. The rival contentions of both the sides have been considered and material on record has been perused.

10. After hearing arguments and going through the case file, this Court is of the opinion that in the instant case, the prosecution has placed on record, at this stage, statement of two witnesses i.e. Pradeep Kumar Verma recorded on 20.04.2020 and one Shamshad Pradhan recorded on 03.04.2020, who are the eye witnesses of the incident in question and have specifically stated that the present applicant was involved in the present incident and he had instigated the mob on communal lines. The beat officers of the area i.e. Head Constable Rahul and Constable Parveen have categorically named and assigned specific role to the applicant and acts committed by him in the offence in question. For deciding a bail application, a reference can be made to the precedents laid down by the Hon'ble Apex Court in relation to grant of bail.

11. The Hon'ble Supreme Court in ***Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (Koli) and Anr.***(2021) 6 SCC 230, held that:

“24. The principles governing the grant of bail were reiterated by a two judge Bench in *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496:

“9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the

factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

39. Grant of bail under Section 439 of the Cr.P.C. is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail - as in the case of any other discretion which is vested in a court as a judicial institution - is not unstructured..."

12. Similarly, in *Kamla Devi v. State of Rajasthan and Anr.* (2022) 6 SCC 725, the Hon'ble Supreme Court held that:

"25. This Court has, on several occasions has discussed the factors to be considered by a Court while deciding a bail application. The primary considerations which must be placed at balance while deciding the grant of bail are: (i) the seriousness of the offence; (ii) the likelihood of the accused fleeing from justice; (iii) the impact of release of the accused on the prosecution witnesses; (iv) likelihood of the accused tampering with evidence. While such list is not exhaustive, it may be stated that if a Court takes into account such factors in deciding a bail application, it could be concluded that the

decision has resulted from a judicious exercise of its discretion, vide Gudikanti Narasimhulu & Ors. v. Public Prosecutor; Prahlad Singh Bhati v. NCT of Delhi &Ors.; Anil Kumar Yadav v. State (NCT of Delhi)”.

13. As per settled law regarding grant of bail, the Court is expected to take into account the allegations levelled against the accused as well as the seriousness of the offence committed. Considering the fact that the eye witnesses have given account of the specific role played by the present applicant and the fact that threats are being extended in this case to the witnesses, this Court does not find it a fit case for grant of bail, at this stage, when the witnesses are yet to be examined before the Trial Court. This Court also takes note of the fact that after threat assessment of threat to the witness, the concerned authorities have provided protection to witness, for threat being real.
14. Accordingly, the present application stands dismissed.
15. It is however, clarified that the observations made by this Court are only for the purpose of deciding the present application and shall have no bearing on the merits of the case during the trial.
16. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 01, 2023/ns