

Shadab Alam vs State on 10 April, 2020

Author: Mukta Gupta

Bench: Mukta Gupta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLICATION NO. 755/2020

SHADAB ALAM

.....Petitioner

Represented by: Mr.Siddharth Aggarwal, Adv.
with Ms.Tara Narula, Adv.

Versus

STATE

..... Respondent

Represented by: Ms.Manjeet Arya, APP the
State with Inspector Ved
Prakash, SHO, P.S.Dayalpur

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% 10.04.2020

1. The hearing has been conducted through Video Conferencing.

2. By this application the petitioner seeks regular bail in case FIR No.57/2020 registered at Police Station Dayal Pur for offences punishable under Section 147/148/149/427 IPC and Section 3 of the Prevention of Damage to Public Property Act, 1984 (PDPP Act).

3. The case of the petitioner is that the petitioner has not been arrested in any other FIR and is not involved in any other offence. As per the status report now filed, the witness who gave the source information also signed the arrest memo. However, till date, copy of the Arrest Memo has not been supplied to the petitioner or his family members. As a matter of fact, on 28th February, 2020, an application was filed on behalf of co-accused Mohd.Raees and Nadeem alleging that several persons including Mohd.Rahis and Mohd. Nadeem were in illegal detention since 24th February, 2020 and they cannot be illegally detained like this and they be released. The learned Additional Chief Metropolitan Magistrate called a report on the said application for 29th February, 2020. Once the said application was received, petitioner alongwith other nine persons were shown to be arrested on 28th February, 2020 in early morning and were produced for judicial remand before the learned

Duty Magistrate on 28th February, 2020 itself. No police remand was sought before the Duty Magistrate, hence the accused were remanded to Judicial Custody. As the accused alleged illegal confinement since 24th February, 2020, the learned Duty Magistrate while granting judicial custody directed the Jail authorities to conduct their medical examination. Though the MLC got prepared by the police of the petitioner on 28th February, 2020 stated no fresh injury and that there were old injuries over the back, the medical examination of the petitioner conducted at the jail revealed bruise marks on the back, buttock and thighs. No video footage of nearby places have been collected by the police till date. There has been no recovery from the personal search of the petitioner and thus there is no physical evidence of the involvement of the petitioner in the alleged offence. However, there is no evidence till date that the petitioner participated in the offences alleged.. The petitioner works with a pharmaceutical shop where one Naved was also working and both of them were arrested together on the evening of 24th February, 2020 from the shop. The video footage of the shop shows police coming to the shop on the 24th February, 2020. A PCR call in this regard was made by the father of Naved on 25th February, 2020. When the first remand application was filed, Section 436 IPC was added. There is no evidence till date that the petitioner is involved in the offence of Section 436 IPC which has been added lateron. Thus, there is no evidence as yet against the petitioner showing his involvement for any offence punishable with more than seven years of imprisonment and hence the petitioner is not only entitled to the benefit of bail as per the decision of the Supreme Court in Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 273, but also in view of the decision of the High Power Committee of this Court. In any case, by the subsequent meeting, the Committee has relaxed and directed release of the prisoners who are alleged to be involved in offences punishable upto ten years imprisonment. Though the petitioner is not seeking any benefit from the decision of the High Power Committee, however, seeks exercise of judicial discretion in view of the evidence collected by the investigating agency till date. The petitioner also does not claim benefit due to the prevailing lockdown situation as the bail application of the petitioner was filed even prior to the lockdown being directed however, since there is lockdown, the petitioner cannot go anywhere or tamper with any evidence. Further, Section 3 of the PDPP Act has been wrongly invoked for the reason even as per the FIR and the recoveries made, the Scooty, motorbikes, TSR and the Maruti Alto car allegedly burnt were not "public property" in terms of Section 2(b) of the PDPP Act as the same do not belong to the Government or any other authority controlled by the Government. Reliance is placed on the decision in case of Munir Babu vs. State of Kerala. It is further contended that Section 436 IPC is also not applicable as no dwelling house has been burnt. In any case, there is no witness or no CCTV footage showing that the petitioner was the one who set on fire the vehicles or the shops.

4. Learned counsel for the petitioner states that immediately after FIR No.57/2020 was registered wherein the petitioner is allegedly involved, FIR No.58/2020 was registered at Police Station Dayal Pur where ten persons were arrested and all those persons have been granted bail. The impugned order passed by the learned Sessions Judge is erroneous for the reason it notes that the petitioner was arrested at the spot, whereas even the case of the prosecution is not that the petitioner was not arrested at the spot on the intervening night of 23rd - 24th February, 2020.

5. Ld.APP for the State, on instruction from SHO, P.S.Dayal Pur, who is also available alongwith the file through video conferencing, states that during the course of investigation statements of two

shop owners in the area have also been recorded as per which 4-5 shops were vandalized and later burnt. Statement of Mohd. Mumtaj of Sanjar Hotel Chicken has been recorded who stated that at 8.00 p.m. on 23rd February, 2020 his shop was first vandalized and thereafter torched. The eye witness has signed the arrest memo indicating his identification and the petitioner being involved in the offences. Father of the petitioner was telephonically informed of the arrest of petitioner by ASI Hukum Singh. Even if the motorcycles/car do not fall in a dwelling unit, by burning shops in the area, the petitioner and co-accused have been found to be involved in offence under Section 436 IPC which is punishable upto ten years of imprisonment. The spot referred to by the learned ASJ in the impugned order means the spot where the petitioner and other co-accused persons were planning to commit further offence on 28th February, 2020. It is submitted that since the investigation is still going on, no bail be granted to the petitioner at this stage.

6. Heard learned counsel for the parties.

7. The above noted FIR was registered on 24th February, 2020 after large scale riots took place in the area of Police Station Dayal Pur. This particular FIR relates to the incident which took place on the intervening night of 23rd -24th February, 2020 at Sherpur Chowk wherein the allegations are as under:-

"Sir, Duty Officer Police Station, Dayalpur, Delhi It is humbly submitted that I ASI on receipt of DD No. 93A dated 23.02.2020 along with Ct. Pawan Kumar No. 1139/NE reached at the place of Incident Sherpur Chowk where several peoples were gathered separately in two groups of different community and were raising slogans against and in favour of CITIZEN AMENDMENT ACT. People of one community were saying that they will not allow CCA to come in force, it is against India and people of Other community were saying that CAA is necessary for India they were raising slogans. I SI upon observing the situation at the site informed about the position through Phone to SHO Sir about this, who along with force came at the site and he through LOUD HELLER requested the mob that this gathering is crowd is illegal and ordered them to .remove from that place but the mob did not move from there and within few moments stone pelting started from both the sides. Cars standing there were put on fire, and glasses of various vehicles were broken by mob and Punjab Chicken C/o Chandu Nagar was also put on fire. Fire brigade called at the place of incident, which controlled over the fire and senior officers along with force scattered the crowd from the spot and inspected at the place of incident and found that (1) one burnt motor cycle near Punjab Chicken, (2) four motor cycles were found burnt near divider, (3) one car Maruti Alto found burnt, (4) several TSR found burnt, (5) glasses of several cars found broken, owners of cars ran away with their cars from the spot etc. found there. Crime Team North East was called and photographs were taken. The scattered crowd which again gathered near Moonga Nagar near Chand Bagh Puliya and again started pelting stones on each other. I ASI along with force reached at Munga Nagar, Chand Bagh Ki Puliya and again scattered the crowd. Thus from the inspection at the place of incident and from all PCR Calls and on inquiry from local persons crime under section 147/148/149/427 IPG and 3 PDPP Act found committed therefore Ct.

Pawan Kumar No.1139/NE along with Tehrir sent to Police Station for registration of the case. Case be registered and case number be informed to me ASI I am busy at site in the investigation. Date and time of incident 23.02.20 at 9.00 PM to 12.00 PM. Place of Incident: Between Sherpur Chowk to Monga Nagar Chand Bagh Pulia, Karawal Nagar Road, Date and Time of departure of Tehrir 24.02.2020 at 11.30 AM Sd/-"

8. As per the prosecution case, the petitioner along with eight other accused were arrested when a source information was received that people who did rioting on the intervening night of 23rd-24th February, 2020 were present at Sherpur Chowk, Karawal Nagar Road and were planning to execute another riot. At the instance of the said eye witness, the petitioner and other eight other persons were arrested on 28th February, 2020 and are since then in custody. No police custody was sought and on being produced before the Duty Magistrate on the same day, they were sent to judicial custody.

9. The above noted FIR is one of the FIRs registered in the aftermath of riots which took place in the area of Police Station Dayal Pur from the intervening night of 22nd - 24th February, 2020. This FIR was registered after a PCR call was received and the Head Constable on reaching the spot found the vehicles, as noted above, have been put on fire. As per the prosecution statement of two eye witnesses were recorded one of whom signed the arrest memo. Statement of only one witness who had also signed the arrest memo has been produced before this Court. The statement of eye witness was recorded only on 28th February, 2020 which is an omnibus statement and does not identify any accused. There is undoubtedly a mystery surrounding the arrest of the petitioner and co-accused which is further fortified by the nature of injuries received by the petitioner as would be investigated in the course of events. It is also strange that even as per the prosecution, the petitioner and co-accused were arrested on the 28th February, 2020 and produced before the Magistrate on the same day and no police custody remand was sought, nor was an application filed for conducting TIP by the other witness who was not present at the time of arrest. Statement of this witness recorded under Section 161 Cr.P.C. has also not been produced. The petitioner has also pressed into service the CCTV footage of 24th February, 2020 when the petitioner claims to have been arrested alongwith one Naved by the police and kept in illegal confinement and only when the application was filed by the co-accused persons alleging illegal detention since 24th February, 2020 the arrest of the petitioner have been shown in the present FIR. In the statement of Mohd. Mumtaz of Sanjar Halal Chicken Shop, whose shop had been burnt, the petitioner and co-accused have not been named. Statement of the eye witness is also vague. No doubt, as stated by the learned counsel for the petitioner, no offence under Section 3 of the PDPP Act is made out for the reason all the properties which have been alleged to be torched or rioted were not the government property, however, as regards Section 436 IPC is concerned, the investigation is at crucial stage as the SHO states that the video footages have been preserved and are yet to be examined. Since the investigation is going on and the persons who were present at the spot are required to be ascertained by scientific evidence and even if found that the petitioner is part of the unlawful assembly even though he may not have individually torched any vehicle or the shops he would be liable for the offences, at this stage this Court finds no ground to grant bail to the petitioner.

10. Application is dismissed.

11. It is however clarified that any observations made hereinabove may not be read as final expression of opinion during the trial.

MUKTA GUPTA, J.

APRIL 10, 2020 skb