

Irshad Ali vs State on 1 September, 2023

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1302/2023

IRSHAD ALI

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STATE

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CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

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% 01.09.2023

1. The present application has been filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 [CrPC] seeking regular bail in FIR No.60/2020 dated 25.02.2020 under Sections 186/353/332/333/323/109/144/147/148/149/153A/188/336/427/307/308/397/412/302/201/120B/34 of the Indian Penal Code, 1860 [IPC] read with Sections 3/4 of the Prevention of Damage to Public Property Act, 1984 [PDPP] read with Sections 25/27/54/59 of the Arms Act, 1959 at PS.: Dayalpur, Delhi.

2. The FIR discloses that on the afternoon of 24.02.2020, during the ongoing protests in the areas of North-East Delhi, which had evidently This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 15:45:32 taken a communal flavour, a mob of protestors near Wazirabad Road turned violent and staged a concerted attack on the police force deployed there. As a result of this, one Head Constable [HC] Ratan Lal of Delhi Police received serious injuries and as a result thereof, lost his life. A few other policemen also received serious injuries in the said incident. The same resulted in the registration of the present FIR.

3. The facts before this Court disclose that the applicant herein was arrested on 07.12.2020 and has been in judicial custody since then. The facts also disclose that as many as seven supplementary Chargesheets have already been filed, after filing of the first Chargesheet in the present FIR.

4. Learned counsel appearing for the applicant submits that the applicant was falsely implicated in the present FIR and was arrested only after almost 10 months of the registration of the FIR on the basis of his identification by a CCTV video which was of a totally different location altogether. He further submits that the identification of the applicant by a video allegedly recorded by one of the PW's namely Vishal Choudhary is dubious since there is no mention as to who the identifying witness is or as to how the applicant was identified. He then submits that in any event, the death of HC Ratan Lal was caused due to a bullet wound fired from a gun/ firearm from the rooftops and not by anyone on the ground and the applicant was there on the ground. Based thereon, he submits that even if the identification of the applicant in the video of PW Vishal Choudhary is true, the same only reflects that the applicant was merely a part of the protesting mob and he wasn't carrying any gun/ firearm. To this effect, he places reliance on *Musa Khan and Others vs State of Maharashtra* This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 15:45:32 (1977) 1 SCC 733 to contend that mere presence of an accused in a crowd is not sufficient to attract common object under Section 149 of the IPC. Learned counsel appearing for the applicant further submits that charges are yet to be framed in the present case and there are almost 300 prosecution witnesses to be examined, the same is going to take a considerable time and the detention of the applicant pending trial would hence serve no purpose. For this, he places reliance upon *Union of India vs K.A. Najeed* (2021) 3 SCC 713 wherein the Hon'ble Supreme Court has held that notwithstanding the merits of a case, delay in completion of trial violates a detenu's fundamental right to life and personal liberty as enshrined in Article 21 of the Constitution of India.

5. Learned counsel appearing for the applicant further submits that though it is a matter of fact that the previous bail applications of the applicant have been rejected but that would in itself not come in the way of the applicant in seeking bail by way of the present application as has been held by a Co-ordinate bench of this Court vide judgment dated 18.01.2022 in Bail Appl. 1518/2021 titled *Mohd. Tahir vs State* that the precedential value of a bail order dilutes with passage of time. Based thereon, he submits that in the present case, the last bail application of the applicant was rejected almost 2 years ago.

6. Learned counsel appearing for the applicant lastly submits that out of the 28 co-accused in the present FIR, at least 16 have already been granted bail. So much so, one of the co-accused namely Mansoor, who has already been granted bail, has also been described in identical terms and ascribed the same role as the applicant herein. In effect, as per the learned counsel, the applicant ought to be granted bail on the ground of This is a digitally signed order.

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7. This Court vide order dated 21.04.2023 issued notice and called for the Status Report. Nominal Roll was also requisitioned from the concerned Jail Superintendent.

8. As per Nominal Roll, the overall jail conduct of the applicant has been satisfactory and there are two other FIR's namely FIR No.99/2020 under Sections 147/148/149/435/436 of the IPC read with Sections 3/4 of the PDPP Act and FIR No.136/2020 under Sections 147/148/149/120B/436/34 of the IPC, both registered at PS.: Dayalpur, Delhi pending against him wherein the applicant has already been granted bail. Further, the applicant has been in judicial custody for a total period of almost 3 years.

9. Learned SPP appearing for the State, while opposing the grant of bail in the present application, after taking this Court through the video footages captured by different CCTV's installed in the area where the incident took place, submitted that they show how the assault on the police personnel was pre-meditated. He submits that on the day of the incident, the applicant was a part of the protesting mob which was carrying dandas, lathis, baseball bats, iron rods and stones which were used by them to launch an assault on the police personnel which ultimately led to the death of HC Ratan Lal, besides causing grievous injuries to more than fifty other police personnel. He further submits that it is a matter of fact that there has been no denial by the applicant to the fact that he was present at the place and time of the incident. He then submits that the identity of the applicant has been clearly established via various CCTV footages of the area and also by statement of Constable This is a digitally signed order.

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10. Learned SPP, drawing the attention of this Court to a pamphlet containing as many as twenty alleged suspects, which was circulated on 17.11.2020 in the areas adjoining the place of incidence for identification of other accused person(s) during investigation also submits that it was only after this that the applicant could be identified and finally arrested on 07.12.2020.

11. Under the aforesaid circumstances, learned SPP submits that if the applicant is granted bail, there is every likelihood that the applicant might abscond and furthermore since there are witnesses who reside in the same/ nearby area as the applicant herein, there are chances that the applicant might threaten or endanger their lives and influence them.

12. This Court has heard the learned counsel for the parties and perused the documents on record including the judgments cited by the learned counsel for the applicant.

13. It is noteworthy that one of the relevant Section(s) involved in the present FIR is Section 149 of the IPC which is pertaining to anyone who happened to be a member of an "unlawful assembly" and is prima facie guilty of committing an offence involving a "common object". This entails that even if an offence is committed by one member of the said "unlawful assembly" for fulfilment/ execution/ implementation of the "common object" thereof, every person, who is a member of the said "unlawful assembly" at the time of commission of the offence is said to have been involved and thus is "... .. guilty of that offence".

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14. In the present scenario, admittedly, not only has the applicant been identified from the video footages captured by different CCTV's installed in the area where the incident took place and also from the video recorded by one of the PW's Vishal Choudhary(not shown to this Court today) but also by the numerous witnesses residing in the same/ nearby area as the applicant herein and further, it was only after the circulation of the pamphlet that the arrest of the applicant was possible after a gap of a few months. Qua the video footages captured by different CCTV's installed in the area where the incident took place and the video recorded by one of the PW's Vishal Choudhary, in the opinion of this Court, the genuineness of the witness or the video recorded by him is not a matter of concern at the time of granting bail as the same are matters of trial. Similarly, qua the rest of the witnesses involved, as most of them are residing in the same/ nearby area as the applicant herein, in the opinion of this Court, they would be aware of the applicant, his identity and whereabouts and thus cannot be treated as mere fly by night operators.

15. Though, today during the course of arguments, the learned counsel appearing for the applicant has denied the presence of the applicant at the site of the incident but the existence of video footages captured by different CCTV's installed in the area where the incident took place alongwith the video recorded by one of the PW's Vishal Choudhary go on to show otherwise, which in the opinion of this Court are sufficient for denying bail at this stage, more so, whence they show that the applicant was very much present at the place and time of the incident.

16. Additionally, the applicant was admittedly residing around 1.6 kms away from the site of the incident and he was very much present at the This is a digitally signed order.

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17. This Court is in complete agreement with the dicta passed by the Hon'ble Supreme Court in Musa Khan (supra) wherein the mere presence of an accused in a crowd has been held to be itself not sufficient to attract common object. However, in the opinion of this Court, reliance thereon by the learned counsel for the applicant is misplaced under the facts and circumstances involved herein as this Court in the present application is dealing with a situation where the applicant has no plausible explanation for both his cause and has no reason to be there at the place of incident on the date and time thereof.

18. In the considered opinion of this Court, the dicta passed by the Hon'ble Supreme Court in K.A. Najeeb (supra) is also not applicable to the facts involved herein as this Court has to take note of public purpose against private interest/right and seeing the gravity of the situation involved herein, the balance tilts in favour of the public purpose over private interest/right.

19. It is worthwhile to mention that while dealing with grant of bail to an accused, this Court has to be careful in taking into consideration the This is a digitally signed order.

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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
iii.	severity of the punishment
iv.	danger of the accused absconding on bail;
v.	character, behaviour, means and resources of the accused;
vi.	likelihood of the offence being repeated;
vii.	reasonable apprehension of danger to the public and
viii.	danger, of course, of justice being defeated on bail.

20. Also, this Court cannot lose sight of the fact that as many as 22 Sections of the IPC read with Sections of the PDPP Act and the Arms Act are involved in the present FIR and the same goes on to reflect the gravity of the situation involved herein.

21. In the opinion of this Court, in light of the nature and gravity of the offences involved and the fact that there are numerous witnesses yet to be examined, the same are sufficient factors for rejecting bail to the accused.

More so, whence in the present scenario the witnesses are residents of the same/ nearby area as the applicant herein, a certain degree of precaution This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 15:45:32 and care is to be exercised especially when many of these witnesses are yet to be examined. There are chances that once out on bail, the applicant may influence and/ or threaten one or many of the witnesses and is likely to tamper with the evidence on hand and the same can jeopardise and derail the proceedings which could ultimately set the clock back once again.

22. This Court is of the view that the applicant cannot be granted bail on the basis of parity claimed with another co-accused in view of the aforesaid facts being altogether different from the facts involving the other co-accused. In any event, it is trite that parity is based on the role of an accused vis-à-vis the other co-accused with respect to their specific roles in the incident/ offence and the nature of the incident/ offence. Here is a case wherein the applicant has been captured in a video recorded by one PW namely Vishal Choudhary as well as several CCTV footages of the area where the incident took place. Thus, the fact that the applicant was indeed caught at the site of the incident on the mentioned date and time is itself an overt act which indicates his active participation in perpetrating the offences mentioned in the present FIR. Not only that, there is no denial on the part of the applicant that he was indeed present at the place of incident on the day when it took place.

23. In view of the aforesaid, the present application seeking grant of bail under Section 439 of the Cr P C in FIR No. 60 / 2020 dated 25.02.2020 under Sections 186 / 353 / 332 / 333 / 323 / 109 / 144 / 147 / 148 / 149 / 153 A / 188 / 336/427/307/308/397/412/302/201/120B/34 of the IPC read with Sections 3/4 of the PDPP Act read with Sections 25/27/54/59 of the Arms This is a digitally signed order.

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24. It is clarified that the applicant has a right to approach this Court for seeking grant of bail despite being denied the same on earlier occasions and the same cannot deter the applicant to invoke his rights and remedies under law. This Court also wishes to clarify that the present order is passed under the facts and circumstances as they stand today before this Court without being influenced with the previous order(s) of rejection of bail of the applicant.

25. Needless to say, no observations have been made on the merits of the matter and those made, if any, are purely for the purposes of adjudicating the present application and shall not be construed as expressions on the merits of the matter.

26. Accordingly, the present application stands disposed of.

SAURABH BANERJEE, J.

SEPTEMBER 01, 2023
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BAIL APPLN. 220/2023

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