

HIGH COURT OF DELHI

BENCH : HON'BLE MR. JUSTICE NAVIN CHAWLA

Date of Decision: 2nd May 2024

BAIL APPLN. 3965/2021, CRL.M.A. 10352/2024 & CRL.M.A. 10353/2024

Parties Involved:

SHOAIB ALAM @ BOBBY ...Applicant

VERSUS

STATE (NCT OF DELHI) ...Respondent

Legislation:

Sections 365, 302, 201, 34, 147, 148, 149, 436, 153-A, 505, 120-B of the Indian Penal Code, 1860

Section 439 of the Code of Criminal Procedure, 1973

Subject: Application for bail related to FIR No. 65/2020 involving charges of kidnapping, murder, rioting, and arson amidst allegations of being part of a violent mob during the Delhi riots.

Headnotes:

Criminal Law – Bail Application – Applicant accused in connection with Delhi riots involving murder and multiple felonies – Bail sought under Section 439 CrPC after being implicated in the murder and riots as part of a violent mob based on eyewitness and police testimonies – Charges under multiple sections of IPC including murder, rioting, and destruction of property – Statements under Sections 161 and 164 CrPC used for prosecution, with discrepancies in identification and roles ascribed to the applicant in court testimonies – Prosecution relied on presence and general accusation in mob

for invoking Section 149 IPC, but primary public witnesses did not confirm applicant's specific role in violent acts [Paras 1-20]

Evidence and Trial – Contradictions in witness statements concerning the applicant's direct involvement – Senior counsel for applicant highlights discrepancies and no direct identification in key testimonies – Prosecution stressed on collective liability under Section 149 IPC, but lacks specific evidence against the applicant directly linking him to the murder or commanding role in riots [Paras 11-20]

Court Analysis – Acknowledgment of grave nature of accusations but consideration of the quality and relevance of evidence against the specific role of applicant – References made to precedents on bail considerations and principles, stressing not to delve deep into evidence credibility at bail stage – Discussion on legal standards and judicial discretion in bail matters, emphasizing nature and seriousness of offence, likelihood of fleeing, community ties, and impact on society [Paras 21-34]

Decision – Bail granted based on cumulative discrepancies in witness identification, the non-specific role of the applicant provided in testimonies, and substantial period already spent in custody – Bail conditions set including surety, regular court appearances, and restrictions on interactions with witnesses and co-accused – Observations made without prejudice to the merits of the main trial [Paras 35-40]

Referred Cases:

- Bal Mukund Sharma @ Balmukund Chaudhry and Ors. V. State of Bihar, (2019) 5 SCC 469
- Vinubhai Ranchhodbhai Patel v. Rajivbhai Dudabhai Patel and Ors, (2018) 7 SCC 743
- State of Orissa v. Mahimananda Mishra, (2018) 10 SCC 516
- Anil Kumar Yadav v. State (NCT of Delhi) & Anr., (2018) 12 SCC 129

Representing Advocates:

For Applicant: Ms. Rebecca M. John, Sr. Advocate, with Ms. Tara Narula, Ms. Shivangi Sharma, Mr. Harshvardhan Jain, Mr. Anirudh Ramanathan, Mr. Pravir Singh, and Ms. Anushka Baruati, Advocates.

For Respondent: Mr. Rajat Nair, SPP for State, with Mr. Dhruv Pandey, Adv.

J U D G M E N T

1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for the applicant to be released on bail in FIR No.65/2020 registered at Police Station: Dayalpur, North East under Sections 365/302/201/34 of the Indian Penal Code, 1860 (in short, 'IPC') (Sections 147/148/149/436/153-A/505/120-B of the IPC were later added in the charge-sheet).

Case of the Prosecution

2. It is the case of the prosecution that on 26.02.2020, complainant- Sh. Ravinder Kumar, resident of Khajuri Khas, Delhi, came to the Police Station: Dayalpur and informed that on 25.02.2020, his son, the deceased - Ankit Sharma, who is posted in the Intelligence Bureau, had come from his office, and at about 5:00 PM had gone out of the house to buy some household goods. As he did not return for a long time, the complainant started searching for him. In spite of searching at nearby places and hospitals, etc., he could not be found. The complainant, therefore, lodged a missing person report (GD No. 009-A dated 26.02.2020 at 11:41 Hrs). He stated that he later came to know from local boys that a person has been thrown into the Khajuri Khas Nala from the Masjid of Chand Bagh Pulia after being murdered. The complainant further stated that he had a strong suspicion that his son had been killed by Tahir Hussain and his goons, who had gathered in his office and who had, after killing his son, thrown the body in the Nala, from the masjid.

3. The prosecution alleges that the dead body of the deceased was later recovered from Khajuri Khas nala near Chand Bagh Pulia. The deceased had sustained injuries with a sharp object on his head, face, chest, back, and his waist. There were a total of 51 injuries caused by sharp-edged weapons and blunt objects on the body of the deceased.

4. The investigation was later transferred to Special Investigation Team (in short, 'SIT') of the Crime Branch.

5. As far as the applicant is concerned, it is the case of the prosecution that Pradeep Verma identified the applicant in his statement under Section 161 of the Cr.P.C., recorded on 11.03.2020. He stated that Tahir Hussain was provoking and instigating the mob against the Hindus to kill them and on his

instigation, the mob became violent, and while carrying *lathis, dandas*, knives, etc., had started looting shops and setting them ablaze. At about 5 PM, a mob of 20-25 persons had caught hold of the deceased on the instigation of Tahir Hussain and dragged him to Chand Bagh Pulia, and beaten him to death by inflicting sharp and blunt injuries on him. The applicant was also a part of the violent mob which was involved in the acts of rioting and arson, which killed the deceased. The statement of the witness Pradeep Verma was also recorded under Section 164 of the Cr.P.C., on 08.05.2020.

6. The prosecution further relies upon the statement of Shamshad Pradhan recorded under Section 161 of the Cr.P.C. on 18.04.2020. He stated that on 25.02.2020, the applicant, along with other co-accused, attacked Bunny Bakers Shop near Chand Bagh Pulia, Main Karawal Nagar Road, at about 3-4 PM. They set the said shop on fire and also attacked the E-Rickshaw shop adjacent to the Bunny Bakers Shop. They looted the E-Rickshaw shop and thereafter set it on fire. The said witness is stated to have identified the applicant when his photograph was shown to him.

7. The prosecution relies also on the statement of HC Rahul, Beat Officer of Police Station- Khajuri Khas, who is stated to have also identified the applicant in his statement under Section 161 of the Cr.P.C., recorded on 09.03.2020, as one of the persons who was present at Chand Bagh Pulia and involved in the act of rioting and arson, pelting stones at the Hindu crowd, and setting ablaze the shops of Hindus on the instigation of accused Tahir Hussain.

8. The prosecution also relies on the statement of Constable Praveen Kumar, who is also the Beat Constable at Police Station- Khajuri Khas, recorded under Section 161 of the Cr.P.C., wherein he is stated to have made a statement similar to HC Rahul.

9. The applicant was arrested on 09.03.2020 in the present FIR. The charge-sheet was filed on 02.06.2020.

10. As far as the applicant is concerned, the charge-sheet describes his role as follows:

“10. Role of Shoaib Alam @ Bobby - Accused Shoaib Alam was also arrested in this case on the basis of his locations of his mobile phone and also on the identification and statements of HC Rahul No. 563/NE and Ct. Praveen Kumar No. 1418/NE of 40 PS Khajuri Khas on 09.03.2020. HC Rahul and Ct Praveen Kumar have stated that accused Shoaib Alam was also involved in the act of rioting and arson at Chand Bagh Pulia on 25.02.2020. Accused Shoaib Alam

was identified by other public witnesses namely Pardeep Verma and Shamshad Pradhan on seeing their photographs among the photographs of various accused persons and suspects. Witnesses Pardeep Verma and Shamshad Pradhan have stated that Shoaib Alam @ Bobby runs a dhaba by the name of King Muslim Dhaba and he was also involved in the act of rioting and arson near Chand Bagh Pulia on 25.02.2020.

During the course of investigation, the mobile phone of accused Shoaib Alam was examined and seized and sent to FSL to retrieve all the data including the deleted data from his mobile phone. The report is still awaited.”

Submissions of the learned Senior Counsel for the Applicant

11. The learned senior counsel for the applicant submits that witness-Pradeep Verma (PW-6), in his testimony recorded before the learned Trial Court, did not identify the applicant herein as part of the mob. She submits that Shamshad Pradhan, even in his statement under Section 161 of the Cr.P.C., has made no mention regarding the murder of the deceased. Similar is her submission with respect to the statements of HC Rahul (PW-5) and Constable Praveen Kumar. Moreover, as far as Shamshad Pradhan is concerned, she further submits that, in fact, in his testimony in FIR No. 114/2020, he did not even support the case of the prosecution and has since been dropped as a witness in the present case, on 26.03.2024.

12. She submits that, therefore, there is no material on record to implicate the applicant in the murder of the deceased.

13. As far as being part of the mob which had indulged in rioting is concerned, she submits that another FIR, that is, FIR No. 114/2020, has been registered on 27.02.2020 at Police Station- Khajuri Khas for the alleged act of rioting on 25.02.2020 up to 5:00 PM. She submits that, therefore, the applicant cannot be prosecuted and made to face two trials for being a part of the mob on the same day and at the same time, by making an artificial distinction between the mob as one for before 5:00 PM and the other for after 5:00 PM. She submits that, in fact, the statements of HC Rahul and Constable Praveen Kumar are identical in the case arising out of the FIRs in question, that is, FIR No. 65/2020 and FIR No. 114/2020.

14. She further submits that the applicant has been in custody since 09.03.2020. The prosecution has cited almost 114 witnesses, out of which

only 11 have been examined so far. She submits that the applicant cannot be made to suffer a long period of incarceration when the trial is not likely to conclude anytime soon.

15. She further submits that the applicant has his parents, his wife, his two very young children, along with his two younger siblings in the house. His children and wife are dependent on him. Moreover, the applicant is a permanent resident of Delhi and has deep roots in the society. He was running a small-scale hotel business and therefore, there is no risk of him trying to flee from the process of law.

Submissions on behalf of the learned Special Public Prosecutor

16. On the other hand, the learned Special Public Prosecutor submits that HC Rahul and Constable Praveen Kumar identified the applicant as a part of the mob that was indulging in rioting at Chand Bagh Pulia. The said mob had later dragged the deceased and was responsible for his murder. He submits that being a member of the unlawful assembly, the applicant shared a common object and knew that the offence was likely to be committed in prosecution of such common object. He submits that it is not necessary that each of the accused should inflict fatal injuries; mere presence of the accused is sufficient to render him vicariously liable under Section 149 of the IPC for causing the death of the deceased. In support, he places reliance on the judgments of the Supreme Court in **Bal Mukund Sharma @ Balmukund Chaudhry and Ors. v. State of Bihar**, (2019) 5 SCC 469 and **Vinubhai Ranchhodbhai Patel v. Rajivbhai Dudabhai Patel and Ors**, (2018) 7 SCC 743.

17. He submits that the conviction of the applicant can be based also on the basis of the last seen theory.

18. He submits that, at the stage of consideration of an application seeking release on bail, the Court should not go into the credibility of the witnesses relied upon by the prosecution.

19. He submits that the trial is at a pivotal stage and the learned Trial Court is, in fact, prioritizing the trial by fixing day-to-day hearings. It has also directed that the public witnesses be summoned on a priority basis. He submits that a long period of custody is not a ground for releasing the applicant on bail in cases involving such heinous crimes. He places reliance on the judgment of the Supreme Court in **Manish Sisodia v. Central Bureau of Investigation**, 2023 SCC OnLine SC 1393, to submit that in case of mass violence, delay in completion of the trial cannot be a ground to release the

accused on bail. He submits that in similar circumstances, bail of a co-accused has been rejected by this Court in its judgment in **Mohd. Mustaqeem v. State (Govt of NCT) of Delhi** 2023 SCC OnLine Del 8031, which held that the accused cannot be granted bail only on account of long period of incarceration, as the accused has been charged with an offence punishable with death or life imprisonment.

20. Placing reliance on Section 437(2) of the Cr.P.C., he submits that as the applicant is charged with an offence punishable with death or life imprisonment, he can be granted bail only if a positive finding is returned, that the material available on record does not constitute a reasonable ground for believing that the applicant has committed such an offence.

Finding and Analysis

21. I have considered the submissions made by the learned counsels for the parties.

22. At the outset, it is noted that the offence charged against the applicant is heinous and grave, and if proved, is punishable with death or life imprisonment. It is also settled by the Supreme Court in its judgment of **Satish Jaggi v. State of Chattisgarh & Ors.**, (2007) 11 SCC 195, that the question of credibility and reliability of witnesses put up by the prosecution, should not be gone into by the Court at the stage while considering an application filed by the accused seeking bail; it is a matter to be determined by the learned Trial Court. The Supreme Court in **State of Orissa v. Mahimananda Mishra**, (2018) 10 SCC 516 and in **Anil Kumar Yadav v. State (NCT of Delhi) & Anr.**, (2018) 12 SCC 129, has also cautioned that while considering an application of the accused seeking bail, the Court would not be justified in going into evidence on record at such depth so as to ascertain probability of conviction of the accused.

23. In **Anil Kumar Yadav** (supra), the Supreme Court reiterated the relevant considerations which should weigh with the court while granting bail to an accused, as under:-

“17. While granting bail, the relevant considerations are : (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or

refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court.

18. While considering the basic requirements for grant of bail, in State of U.P. v. Amarmani Tripathi, this Court has held as under: “18. It is well settled that the matters to be considered in 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 charge; (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 tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar v. Rajesh Ranjan:

„11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from nonapplication of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*

(c) *Prima facie satisfaction of the court in support of the charge.”*

19. *The test to be applied for grant of bail was also considered in Jayendra Saraswathi Swamigal v. State of T.N., wherein it was held as under:*

“16. ... The considerations which normally weigh with the court in granting bail in nonbailable offences have been explained by this Court in State v. Jagjit Singh and Gurcharan Singh v. State (NCT of Delhi) and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.”

24. As regards the submission of the learned SPP that if there appears to be a reasonable ground to hold that the accused has committed an offence, which is punishable with death or life imprisonment, bail should be refused, in **Gurcharan Singh v. State (Delhi Administration)**, (1978) 1 SCC 118, the Supreme Court has observed as under:

“24. Section 439(1), Cr.P.C. of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), Cr.P.C. against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment of life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1), Cr.P.C. of the new Code. The overriding considerations in granting of bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1), Cr.P.C. of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and

the status of the accused with reference to the victim and the witnesses; the likelihood of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.”

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.

26. This Court in ***Shadab Ahmad v. State of NCT of Delhi***, 2021

SCC OnLine Del 4251, while granting bail to the applicant therein, who was also charged by invoking Section 149 of the IPC for act of rioting, has observed as under:

“35. The Supreme Court has consistently held that in order to convict an accused with the aid of Section 149, a clear finding needs to be given by the Court regarding the nature of unlawful common object. Furthermore, if any such finding is absent or if there is no overt act on behalf of the accused, the mere fact that the accused was armed would not be sufficient to prove common object. xxxx

38. *It is, therefore, noted that the applicability of Section 149 IPC, specifically read with Section 302, cannot be done on the basis of vague evidence and general allegations. When there is a crowd involved, at the juncture of grant or denial of bail, the Court must hesitate before arriving at the conclusion that every member of the unlawful assembly inhabits a common intention to accomplish the unlawful common object. There cannot be an umbrella assumption of guilt on behalf of every accused by the Court, and every decision must be taken based on a careful consideration of the facts and circumstances in the matter therein. This principle, therefore, gains utmost importance when the Court considers the question of grant or denial of bail.”*
27. Reference in this regard may also be made to the judgments of the Supreme Court in **Muthu Naicker v. State of Tamil Nadu** (1978) 4 SCC 385; **Musa Khan & Ors. v. State of Maharashtra** (1977) 1 SCC 733; **State of Maharashtra v. Ramlal Devappa Rathod & Ors.** (2015) 15 SCC 77; **Usmangani @ Bhura Abdul Gafar & Anr. v. State of Gujarat** (2018) SCC Online SC 3270; and, in **Amrika Bai v. State of Chattisgarh**, (2019) 4 SCC 620.
28. In **Arif v State of NCT of Delhi**, 2023 SCC OnLine Del 8032, a case arising out of Delhi Riots as well, this Court in relation to the application of Section 149 of the IPC to bring home the charge under Section 302 of the IPC against the accused observed as under:
- “11. In so far as the applicants are concerned, the evidence on record, at best, suggests that the applicants were a part of the unlawful assembly. It is not the case of the prosecution that the applicants were armed with a dangerous weapon. In so far as the applicant Arif is concerned, the only additional incriminating allegation against him is that he broke the CCTV camera installed at the Pal Dairy.*
- 12. In my considered view, merely because the applicants were part of an assembly, it cannot be assumed that the common object of the assembly was to commit a murder or that the applicants knew that a murder was likely to be committed. It is the prosecution’s own case that the co-accused Mohd. Mustaqueem shot the deceased. In this regard, counsels for the applicants have correctly placed*

reliance on the judgment of the Supreme Court in Kuldip Yadav (Supra). Relevant paragraph of the said judgment has been set out below:-

“39. It is not the intention of the legislature in enacting Section 149 to render every member of unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to attract Section 149, it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly and it must be within the knowledge of other members as one likely to be committed in prosecution of the common object. If the members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of the common object, they would be liable for the same under Section 149 IPC.”

13. In BAIL APPLN. 774/2021 titled Mohd. Arif v. State decided on 3rd September, 2021 and BAIL APPLN. 1518/2021 titled Mohd. Tahir v. State decided on 18th January, 2022, also pertaining to North-East Delhi riots, a Coordinate Bench has granted bails to applicants placed similarly to the applicants herein. Relevant observations from Mohd. Arif (Supra) have been set out herein below:- “36. It is, therefore, noted that the applicability of Section 149 IPC, specifically read with Section 302, cannot be done on the basis of vague evidence and general allegations. When there is a crowd involved, at the juncture of grant or denial of bail, the Court must hesitate before arriving at the conclusion that every member of the unlawful assembly inhabits a common intention to accomplish the unlawful common object. There cannot be an umbrella assumption of guilt on behalf of every accused by the Court, and every decision must be taken based on a careful consideration of the facts and circumstances in the matter therein. This principle, therefore, gains utmost importance when the Court considers the question of grant or denial of bail.”

14. Strong reliance has been placed on behalf of the prosecution on the judgment of the Coordinate Bench in BAIL APPLN. 791/2021 in Sonu Saifi v. State decided on 1st June, 2021, rejecting bail of a co-accused in the same FIR. However, the

aforesaid judgment is distinguishable as in the said case, arms were recovered from the applicant therein, whereas no arms have been recovered from the applicants herein. Even otherwise, more than two years have elapsed since the said judgment in Sonu Saifi (Supra) was pronounced, and prosecution evidence is yet to commence.

15. Furthermore, reliance cannot be placed on the CDR location details as it is an admitted position that both the applicants and the deceased were residents of the same area. Furthermore, no judicial TIP was conducted of both the applicants herein.”

29. The above observation would also apply to the facts of the present case.
30. After the judgment had been reserved, the learned SPP mentioned these applications again for placing on record the judgment in **Salim Malik @ Munna v. State of NCT of Delhi**, 2024 SCC OnLine Del 2824, to submit that in another case of Delhi Riots, this Court has dismissed an appeal against the order dated 06.10.2022, whereby the appellant had been denied bail.
31. I am afraid, the said judgment cannot come to much aid of the prosecution in the facts of the present case. Suffice it to note that in the said case the accused has also been charged under Sections 13/16/17/18 of the Unlawful Activities (Prevention) Act, 1967 (in short 'UAPA'). The Division Bench of this Court upon analyzing the evidence that was collected against the accused therein by the prosecution held as under:

“34. In view of the afore-noted factual matrix of the case and statements of the witnesses recorded during investigation, we find that the accusation made against the appellant make out a “prima facie true” case against him. Consequently, embargo created under Section 43-D(5) of UAPA, automatically gets attracted. Moreover, at the stage of consideration of bail in UAPA, the Court is not required to do extensive or comprehensive evaluation of the evidence and is required to form opinion on the basis of broad probabilities. The evaluation is essentially based on surface-analysis of the probative value of the material so collected. The Court is, thus, required to assess whether there are reasonable grounds to believe that the accusation made against any such accused are „prima facie true“ or not.”

32. Therefore, it was in view of the bar provided under Section 43 D (5) of the UAPA that the Court rejected the application of the accused therein for being released on bail. In the present case, however, the applicant has not been charged for the offences under the UAPA.
33. The learned senior counsel for the applicant has also submitted that for the riotous activities and for the applicant being a part of the mob on 25.02.2020, that is the date of the alleged incident of murder of the deceased, the applicant is facing trial in another FIR as well, that is FIR No. 114/2020. She submits that the applicant was also made an accused in FIR no.98/2020, again alleging him to be a part of the mob which had indulged in rioting on 24.02.2020 in the area, however, the applicant had been discharged by the learned Trial Court in the said case vide order dated 04.04.2022, passed by the learned Additional Sessions Judge, Karkardooma Courts (North East District), Delhi.
34. The applicant has been in custody for more than 4 years. The prosecution is stated to have cited 114 witnesses, out of which, only 11 have been examined so far. In spite of the best efforts of the learned Trial Court, the trial is, therefore, not likely to conclude any time soon. Though a long period of incarceration alone may not be sufficient to grant bail to an accused in a case which is punishable with death or life imprisonment, however, it would weigh with the Court while considering a balance to be struck between the interest of the prosecution/society and the rights of the accused guaranteed under Article 21 of the Constitution of India. It is to be remembered that pending trial, Bail is the rule while Jail is an exception. Also, the purpose of keeping an accused in jail during the trial is to ensure that he faces trial, does not abscond, and, if found guilty, is available to serve his sentence. The purpose is not to punish the accused.
35. The applicant is stated to be a man of family consisting of his wife, two young children, and all are stated to be dependant on him.
36. I have been shown no reason to suspect that, if released on bail, the accused-applicant is likely to abscond or in any manner tamper with the evidence or influence the witness(s). The primary public witnesses on which the prosecution is placing reliance, already stand examined before the learned Trial Court. **Directions**
37. Keeping in view the above, it is directed that the applicant Shoaib Alam @ Bobby be released on bail in FIR No.65/2020 registered at Police Station:

Dayalpur, North East, on furnishing a personal bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court and to the IO, by way of an affidavit, regarding any change in his residential address.
 - ii. The Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - iii. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned. The mobile location be kept on at all times.
 - iv. The Applicant shall not indulge in similar or any other criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses or the co-accused.
 - v. The applicant shall surrender his passport, if any issued to him. He shall also not leave NCT of Delhi without seeking prior permission of the learned Trial Court.
 - vi. In case the Applicant is found involved in another case, it will be open to the prosecution to file an appropriate application seeking cancellation of his Bail in the present case as well.
38. Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the matter. 39. It is also made clear that this order shall have no effect on an application, if any, filed by the applicant seeking bail in FIR No. 114/2020, if the applicant is not already on bail in the said case.
40. The applications are disposed of in the above terms.
41. A copy of this order be sent to the Jail Superintendent for information and necessary compliance.

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