

State V/s Ashish Kumar

FIR No.58/2020

U/s 147/148/149/153-A/302/365/326/395/120-B IPC

PS Karawal Nagar (Suleman murder case)

08.02.2021

Ld. Special PP for the State and and Ld. Counsel for the applicant have made a joint request that they may be heard through Video Conferencing.

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri Nitin Rai Sharma, Ld. Special PP for the State alongwith IO, Inspector Manoj Kumar.

Shri K.K Tyagi, Ld. Counsel for accused Ashish Kumar/applicant.

ORDER

I have heard arguments advanced at bar by both the sides and perused the report filed in the matter as well as the chargesheet.

2. The learned counsel for the applicant has very vehemently argued that the applicant has been falsely implicated in the matter by the investigating agency merely on the basis of disclosure statement of co-accused persons. He has been in judicial custody in the matter since 29.10.2020. The applicant is not named in the FIR. No recovery of any sort has been effected from him. There is no electronic evidence available against the applicant, either in the form of any CCTV footage(s) or his CDR location, which could *prima facie* show his presence at the scene of crime on the date of incident. Therefore, the ingredients of Section 302 IPC and 307 IPC are not made out against the applicant and the other sections

invoked in the matter areailable. The so called eye witnesses namely Sanober, Sunil, Mamur and Neeraj are "*planted witnesses*", as the police failed to obtain their CDRs. The applicant cannot be presumed to be having unlawful object of committing murder of deceased Suleman and attempt to murder upon Sanober merely by the aid of Section 149 IPC. The learned counsel for the applicant has further submitted that "*bail is not to be withheld as a punishment before the trial*" and "*presumption of innocence*" of the accused remains till the time he is pronounced guilty by the Court and mere filing of chargesheet does not prove the guilt of an accused. He has further argued that "*pre-trial detention has been deprecated by the Courts*"; "*bail is the rule and jail is an exception*". It is further submitted that applicant has been academically bright student and prior to his arrest in the matter, he was pursuing graduation from School of Open Learning (SOL), University of Delhi. 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.

3. Per contra, the learned Special PP for the State has very vehemently argued that the present case relates to the murder of one innocent person namely Suleman, S/o Shri Yusuf, who was brutally murdered by the "*riotous mob*" near Prem Vihar puliya within the jurisdiction of PS Karawal Nagar and his dead body was thrown into ganda nala. It is submitted that on 26.02.2020, on receipt of a call at PS Karawal Nagar from GTB Hospital, regarding admission of an unknown injured (vide MLC No.D-8/26), aged about 45 years, HC Purshottam alongwith Constable Shubham reached the said hospital, where they were informed that the said patient/injured had already died during treatment. It was

another shopkeeper i.e. M.K. Jewelers shop at A-17, 33 Futa Road was also obtained; FSL team was called on the spot, who also examined the CCTV footage(s) and same were also shown to persons and informers near the place of occurrence.

6. It is further stated that during the course of investigation, eye witness Sanober, S/o Rahisuddin (who is stated to be the friend/colleague of deceased and was present with the deceased at the time of incident) was also examined, who gave a *clear, categorical and step-by-step account* of the series of events which happened with them. This witness stated that he alongwith his friends, i.e. Mamur, Sunil and deceased Suleman used to work under one Yusuf, S/o Shri Ali Hassan, R/o Village Bhikanpur, PS Babugarh Cantt, who had been awarded a construction work contract at a school in Karawal Nagar, near TB Hospital and said Yusuf had engaged 7-8 boys (which included deceased Suleman also) for the said construction work and they used to live in a tin shed constructed by them besides the school wall. It was categorically stated by him that on 26.02.2020, when he alongwith his friends/colleagues, i.e, deceased Suleman, Mamur and Sunil were going to Loni Bus stand and had reached near Maa Bhagwati Memorial School at about 8.30 AM, a mob of about 30-40 boys, having lathis, dandas, and rods in their hands stopped them and asked for their identity cards. Since, Mamur was 15-20 steps behind them, so sensing danger he fled away from the spot; however, he and Suleman were beaten by the said mob, as they belonged to other community. The said mob directed Sunil to run away from the spot, but when he insisted for going with them, the mob also started beating him and as such, he also fled from the spot. As a result of the beating of the mob, he lost consciousness and when he regained the same, he saw that the riotous mob was beating Suleman and taking him towards Prem Vihar Puliya by pushing with sticks.

7. It is further stated that during the course of investigation, statements of two more public witness namely Sunil Kumar, S/o Shri Dal Chand and Mamur, S/o Mohd. Hasan, who both were the friends/colleagues of deceased and were also present with the deceased at the time of incident was also recorded in the matter and both of them have also given a *clear, categorical and step-by-step account* of the sequence of events which happened with them on the date of incident at the scene of crime. Public witness Neeraj has also identified the applicant as one of the rioters who had killed Suleman.

8. While emphasizing upon the *“role of applicant”* in the present matter, the learned Special PP has argued that at this stage, there is enough material available against the applicant, which clearly depicts him to be a part of the *“riotous mob”*, who had *“brutally murdered”* deceased Suleman, just because of the fact that he belonged to a different community. His submissions in this regard can be broadly categorized into following three heads:

(i) Physical/Oral Evidence:

It has been stated that eye witnesses namely Sanober and Sunil Kumar, who were present with the deceased at the time of incident have given a clear, categorical and step-by-step account of the sequence of events which occurred at the scene of crime.

(ii) CCTV footage/photograph:

It has been emphasized that the applicant is “clearly visible” in the CCTV footage, walking behind the “riotous mob”, who was prodding deceased Suleman with dandas.

(iii) Other Evidence:

It has been emphasized that applicant has been duly identified by PW Neeraj Kumar through his photograph and CCTV footage as the person actively involved in the rioting incident on 26.02.2020.

9. It is further argued that the investigation has revealed that the mob of 30-40 persons had apprehended the victims namely Sanobar, Sunil Kumar and Suleman on 26.02.2020 at about 8.30-8.40 AM near Shree Ram Chowk, Maa Bhagwati School, 33 ft road, having dandas and rods in their hands. Mamur managed to escape from spot. The mob asked their ID cards which was shown by them. Thereafter, some persons from mob asked Sunil to leave the spot, but he denied and told the mob that he will go with Sanobar and Suleman. The mob forced Sunil to run away after beating him. They started beating Sanobar and Suleman mercilessly. Someone from the mob hit an iron rod on Sanobar's head as a result of which he fell unconscious. The mob continued to beat Suleman. Sanobar regained consciousness and managed to escape while the mob was busy assaulting Suleman. The mob also robbed their mobile phones. Thereafter, the mob took Suleman towards Prem Vihar pulia via 33 ft road passing through Ambika Vihar, Panchal Vihar. They kept hitting and prodding him with dandas and rods. The rioters/mob crossed the Prem Vihar pulia and stopped near SBM Toilet on ganda nala patri opposite Mangal Bazar road, Radhey-Radhey Chhole Bhature and Ghooghat Emporium. The mob assaulted Suleman mercilessly with dandas, rods, kicks and fists on his face, head, chest, abdomen and other parts of the body. When he fell unconscious, the mob threw him on the junction point of colony sewer in ganda nala near the nala wall and wall of the toilet from where he was taken to GTB Hospital by I/c PCR Van B-56, ASI Kulbir. ASI Kulbir got him admitted in GTB Hospital vide MLC No. D-8/26 at 10.16 AM, where the victim died during treatment.

10. It is further argued that the applicant has been categorically identified in the matter by PW Neeraj Kumar. As regards the argument of the learned counsel for the applicant that why the CDRs of the witnesses were not

collected by the IO, it is argued by the learned Special PP that there is no law which mandates the investigating agency to obtain the CDRs of the witnesses. The learned Special PP has taken me through page 47 of the chargesheet, which is copy of the “*Attendance Register*” of the O/o Yusuf, to emphasize that PW Sanober, deceased Suleman, PW Mamur and PW Sunil were working in his office.

11. As regards the argument of learned counsel for the applicant about Section 149 IPC, it is argued that the proclamation under Section 144 Cr.P.C was in operation and the applicant has no reasonable justification as to what he was doing with the mob of rioters, which is categorically seen carrying the deceased Suleman towards Prem Vihar puliya via 33 foota road, where ultimately he was found killed. It is very vehemently argued that the kind of demeanor being exhibited by the applicant in the CCTV footage, it is clearly evident that he was taking active part in abducting and subsequent killing of the deceased.

12. I have given my 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.*

13. 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:

XXXXX

17. XXXXX

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."

XXXXX

(emphasis supplied)

14. From the evidence of a number of witnesses recorded in the matter, it is *prima facie* apparent that the "*riotous mob*" armed with "*weapons*" had abducted the deceased Suleman to commit his murder merely on account of the fact that he was from a different 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 from their demeanor, depicted in the CCTV footage. This Court is conscious that at this stage the trial is not being dealt with. We are at pre-cognizance 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.

15. In the present case, we have clear identification of the applicant through the evidence of public/eye witnesses namely Neeraj Kumar. He is also clearly visible in the CCTV footage walking behind the riotous mob that was prodding deceased Suleman with “dandas”. Even in the photographs which were got developed from the CCTV footages, the applicant is clearly seen with co-accused Gaurav and apprehended juvenile being part of the “*riotous mob*” and taking active part in the rioting.

16. The offence in this matter is very grave, wherein one innocent person was brutally murdered, just because of the fact he belonged to other community. *A perusal of the post-mortem report of the deceased Suleman, dated 28.02.2020 reveals that he had received as many as 11 injuries, out of which as many as 7 injuries were so grave in nature that they itself were independently and collectively sufficient to cause death of any person in ordinary course of nature,* which speaks volume about the intensity of dastardly act committed by the riotous mob during the course of communal riots.

17. The nature of allegations against the applicant are very serious. The public witness(es) in the matter are residents of the same locality and the possibility of applicant threatening or intimidating them, if released on bail at this stage cannot be ruled out. This Court has already dismissed the regular bail application of co-accused Hemant Pratap Singh @ Himanshu vide detailed order dated 02.09.2020 and the role assigned to applicant in the matter *prima facie*

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appears to be on same/identical footing. Considering the facts and circumstances
of the case in totality vis-à-vis the gravity of offence, I do not find it to be a fit case
for grant of bail to the applicant. The bail application is accordingly dismissed.

18. It is hereby clarified that anything stated hereinabove shall not be
construed as expressing any opinion on the final merits of the case,
as the case is at "*pre-cognizance/pre-committal stage*".

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

(VINOD YADAV)
ASJ-03(NE)/KKD COURTS/08.02.2021