

Bail Application No.339/2021 State V/s Tahir Hussain FIR No.92/2020 U/s 147/148/149/153-A/505/307/436/ 120-B/34 IPC And Section 27/30 Arms Act PS: Dayalpur	IA No.01/2021 in SC No.70/2021 State V/s Tahir Hussain FIR No.91/2020 U/s 147/148/149/153-A/505/307/436/ 120-B/34 IPC & Section 27/30 Arms Act PS: Dayalpur
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15.05.2021

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri D.K Bhatia, Ld. Special PP for the State alongwith IO,
SI Manoj Kumar.

Shri Amit Prasad, Ld. Special PP for the state in case
FIR No.59/2020, PS Crime Branch (larger conspiracy case).

Shri Rizwan, Ld. Counsel for accused Tahir Hussain/applicant.

COMMON ORDER

These are two applications, both filed under Section 439 Cr.P.C on behalf of applicant, seeking regular bail in the aforesaid matters.

2. I have heard arguments advanced at bar by both the sides and perused the reports filed in the matter as well as the chargesheets. The arguments in both aforesaid matters have been heard in detail spreading across several sessions on various dates. I have also carefully watched the video-footages. Since the learned counsel for the applicant harped a lot on the fact that the larger conspiracy and conspiracy invoked in the present matter(s) is same, I deemed it expedient and in the interest of justice to hear Shri Amit Prasad, learned Special PP who is representing the State in the matter of larger conspiracy.

3. Both bail applications are being disposed off by way of a common order, as the facts involved qua the applicant in the captioned matters are common.

4. Before advertng to the applications under consideration, it would be appropriate to have a brief overview of the facts of the case(s) which led to registration of FIRs in the captioned matters.

Facts qua registration of case FIR No.91/2020

5. The case FIR in the matter was registered at PS Dayalpur on 02.03.2020 on the basis of an information received from Sushrat Trauma Centre vide GD No.163A, dated 25.02.2020, regarding **gunshot injury sustained by one Shri Ajay S/o Shri Pramod** (aged about 30 years) on his right arm, at Chand Bagh Puliya, near Lakhpat School Main Road. On receipt of said information, IO/ASI Hukam Singh reached at the said trauma centre and collected the MLC No.1970/2020 of the injured, however, he was not found fit for statement. Thereafter, during the course of investigation, IO recorded the statement of complainant/injured namely Ajay Kumar Jha, wherein he stated that on 25.02.2020, at about 4.00 PM he had come out from his house to purchase few household articles and when he reached near Lakhpat School, Chand Bagh, he noticed that a riotous mob was pelting stones, throwing petrol bombs and firing gunshots from the terrace of the house belonging to applicant, upon the persons of other community. Suddenly, one of the persons from the said riotous mob fired upon him, as a result of which **he sustained gunshot injury on his right arm.**

Facts qua registration of case FIR No.92/2020

6. The case FIR in the matter was registered at PS Dayalpur on 02.03.2020 on the basis of an information received from Sushrat Trauma Centre vide GD No.151A, dated 25.02.2020, regarding **gunshot injury sustained by Shri Prince Bansal**, S/o Shri Narender (aged about 19 years) on his upper abdomen left side, at Chand Bagh Puliya, near Lakhpat School Main Road. On receipt of said information, IO/ASI Hukam Singh initially reached at the trauma centre and from there to LNJP Hospital and collected the MLC No.8508/2020 of the injured, however, he was not found fit for statement. Thereafter, during the course of

investigation, IO recorded the statement of complainant/injured namely Prince, wherein he stated that on 25.02.2020, at about 4.00 PM he had come out from his house to purchase few household articles and when he reached near Lakhpat School, Chand Bagh (near the house of applicant), he noticed that a riotous mob was pelting stones, throwing petrol bombs and firing gunshots from the terrace of the house belonging to applicant, upon the persons/members of other community. Suddenly, one of the persons from the said riotous mob fired upon him, as a result of which he sustained gunshot injury.

7. At the very threshold, while opening up the arguments, learned counsel for the applicant made a strong pitch by submitting that recently several co-accused persons have been enlarged on bail in both the captioned matters by this Court as well as by Hon'ble High Court of Delhi vide various orders and as such, it is strenuously prayed that applicant is also entitled for grant of bail in the matter on the ground of parity, as role assigned to him is minuscule in comparison to that of the co-accused persons. To cement the ground of parity, learned counsel has placed reliance upon the judgment passed by Hon'ble High Court of Karnataka in case titled as, "**Syed Parvez V/s State of Karnataka**" (2018) SCC Online Kar 4.

The detail of the co-accused persons, who have already been granted bail in both the captioned matters is given hereunder:

Details of accused persons already stood enlarged on bail in case FIR No.91/2020	Details of accused persons already stood enlarged on bail in case FIR No.92/2020
(i) Regular bail granted to accused Kasim by Hon'ble High Court of Delhi vide order dated 13.10.2020 (passed in Bail Application No.2925/2020)	(i) Regular bail granted to accused Nazim by this Court vide detailed order dated 28.11.2020.
(ii) Regular bail granted to accused Shah Alam (real younger brother of applicant) by this Court vide detailed order dated 05.04.2021.	(ii) Regular bail granted to accused Tanveer Malik by Hon'ble High Court of Delhi vide order dated 04.02.2021 (passed in Bail Application No.3864/2020).
(iii) Regular bail granted to accused Tanveer	(iii) Regular bail granted to co-accused Shah

Malik by Hon'ble High Court of Delhi vide order dated 26.04.2021, passed in Bail Application No.1002/2021.	Alam (real younger brother of applicant) by this Court vide detailed order dated 05.04.2021.
(iv) Regular bail granted to accused Gulfam @ VIP by this Court vide order dated 11.05.2021.	(iv) Regular bail granted to co-accused Kasim by this Court vide order dated 09.04.2021.
	(v) Regular bail granted to accused Gulfam @ VIP by Hon'ble High Court of Delhi vide order dated 29.04.2021, passed in Bail Application No.1200/2021.

Arguments advanced qua case FIR No.91/2020

8. Besides pressing into service the ground of parity, learned counsel for the applicant has very vehemently argued that applicant has been falsely implicated in the matter by the investigating agency and his political rivals with the sole purpose of harassing him by abuse of the machinery of law. It is argued that applicant belongs to "*Aam Aadmi Party*" and is a "*victim of circumstances*", as he has been caught up in a political cross-fire and the allegations levelled against him are nothing, but a political blame game to malign his image. He has been in judicial custody in the matter since 06.05.2020. It is further argued that there is an "*unexplained and undue delay*" of about six days in registration of FIR in as much as the alleged incident took place on 25.02.2020; whereas, the FIR in the matter was registered on 02.03.2020.

As a sequel to the said contention, it is argued that registration of FIR in a timely manner is of utmost importance to gauge the credibility of the complainant/victim, which is lacking in the present case. In this regard, the learned counsel laid emphasis upon the observations made by Hon'ble High Court of Delhi in Bail Application No.254/2021 in case titled as, "**Shiv Chander V/s State of NCT of Delhi & Anr**".

9. The bail is being sought also on the ground that there is no cogent and legal evidence which is admissible in the eyes of law, to connect the applicant with the incident alleged in the matter. There is no evidence by way of even a single

video footage or CCTV footage to prove that the applicant had participated in the riots or caused damage to any property. It is further very vehemently argued that multiple FIRs have been filed/registered against the applicant covering the same offence and the facts, which is an infringement of the right of applicant guaranteed under Article 20 (3) of the Constitution of India. In this regard, it is contended that once the applicant has already been accused of participating in larger conspiracy in case FIR No.59/2020 (being investigated by Special Cell of Delhi Police), then other ten FIRs on the basis of said conspiracy cannot be registered against him. In support of his aforesaid contention, the learned counsel placed heavy reliance upon the law laid down in the following judgments:

- (a) **T.T Antony V/s State of Kerala, (2001) 6 SCC 181;**
- (b) **Arnab Ranjan Goswami V/s Union of India; decision dated 19.05.2020, passed by Hon'ble Supreme Court of India in WP (Crl.) No.130/2020;**
- (c) **C. Muniappan & Ors. V/s State of Tamilnadu, (2010) Vol.IX SCC 567;**
- (d) **Amitbhai Anilchandra Shah V/s CBI & Anr., (2013) 6 SCC 348 and;**
- (e) **Amish Devgan V/s Union of India & Ors., decision dated 07.12.2020, passed by Hon'ble Supreme Court of India in WP (Crl.) No.160/2020.**

10. It is next contended that the applicant has not been specifically named in the FIR(s). There are many contradictions and improvements made by injured Ajay Kumar Jha in his statement(s) recorded under Section 161 Cr.P.C, which are inconsistent with the contents of FIR. **The injured/complainant did not specifically name the applicant in his initial complaint.** It is further argued that the statements of victims recorded in both the captioned FIRs are not only similar, but exact copies of each other which casts a serious doubt on the credibility of the witness(es).

As a corollary to the aforesaid submission, it is contended that serious question marks have already been raised upon credibility of alleged eye witnesses namely Constable Saudan and Constable Pawan by Hon'ble High Court of Delhi while enlarging co-accused Kasim on regular bail in the matter vide order dated 13.10.2020, passed in **Bail Application No.2925/2020**. Paragraph No.5 of the said bail order been specifically referred to.

11. It is further argued that applicant's licensed pistol having being released to him days before the date of alleged incident(s) is nothing, but merely circumstantial in nature. The applicant never used his licensed pistol to fire at anybody. There is no electronic or any other evidence to prove that the applicant had used/fired from his licensed pistol to hurt anybody. Instead from the statement of injured/victim Ajay Kumar Jha, it is clearly apparent that it was co-accused Gulfam @ VIP, who had fired from his pistol towards the victim.

12. As regards invocation of Section 436 IPC in the matter by the investigating agency, it is emphasized that there is no electronic evidence available on record to show that applicant had used petrol bombs and instead the applicant's own house was severely damaged in rioting due to explosives used and as such, he is a victim and not the culprit.

13. The learned counsel for the applicant has referred to a few judgments to emphasize the point that "*pre-trial detention should be avoided*" and if the applicant satisfies the tripod test, bail should be granted to him. In this regard, the learned counsel has referred to the case titled as, "*P. Chidambaram V/s Directorate of Enforcement*", [2019 SCC Online SC 1549], wherein the Hon'ble Supreme Court has been pleased to re-emphasize that the primary conditions of bail are (i) *availability of accused for investigation, interrogation and facing trial*; (ii) *whether the accused is a flight risk and*; (iii) *likelihood of the petitioner to tamper with evidence and influence/intimidate witnesses (paras 10, 16-18, 23-24)*. On the

strength of “*P. Chidambaram’s*” case (supra), it has been contended by the learned counsel that the applicant in the present case satisfies the “*tripod test*” mentioned therein and as such, he is entitled for bail. Reference has further been made to few judgments to emphasize the point that at the time of granting bail the gravity of offence cannot be the only criteria for refusing bail. The learned counsel further relied upon the judgment passed in case of “*Sanjay Chandra V/s CBI*” (2012) 1 SCC 40 to emphasize the point that once the chargesheet has been filed and accused is no longer required for further investigation, then he is entitled for bail. It is further argued that “*pre-trial detention has been deprecated by the Courts*” and “*bail is the rule and jail is an exception.*” He has also relied upon some judgments regarding delay in recording of statements of witnesses, omnibus accusation and the effect thereof.

Arguments advanced qua case FIR No.92/2020

14. It is argued that there is no cogent and legal evidence which is admissible in the eyes of law, to connect the applicant with the incident alleged in the matter. He has been in judicial custody in the matter since 06.05.2020. **There is no evidence by way of even a single video footage or CCTV footage to prove that the applicant had participated in the riots or caused damage to any property.** The applicant has neither been specifically named in the FIR nor recovery of any sort has been effected from him. There is an “*unexplained delay*” of about six days in registration of FIR in as much as the alleged incident took place on 25.02.2020; whereas, the FIR in the matter was registered on 02.03.2020. It is emphasized that statement(s) recorded under Section 161 Cr.P.C of injured Prince Bansal, PWs Kuldeep Bansal and Narender Bansal are all “**undated**” and no cogent/plausible explanation in this regard has been accorded by the investigating agency. It is further argued that the identification of applicant by Constable Pawan and Constable Saudan on an undisclosed date is hardly of any consequence as the alleged incident in the matter occurred on 25.02.2020 and as per the story propounded by the prosecution both of them had witnessed the alleged incident;

then why they waited till registration of FIR to name the applicant, when they had categorically seen and identified the applicant indulging in riots on the date of incident, i.e 25.02.2020. Being police officials, what stopped them from reporting the matter then and there in the PS or to bring the same in the knowledge of higher police officers. This casts a serious doubt on the credibility of said witnesses. In support of his aforesaid contention, learned counsel placed heavy reliance upon the observations made by Hon'ble Supreme Court in case titled as, "**Prabhakar Tewari V/s State of UP & Anr.**", **Criminal Appeal No.153/2020**, decided on 24.01.2020.

Rest of the arguments put forth by the learned counsel were on the lines of submissions made in case FIR No.91/2020.

General Comments of learned counsel for the applicant

15. **On facts**, it is submitted that on 24.02.2020 at around 1.30 PM, a riotous mob had gathered around the house of applicant that had set on fire a bullet motorcycle lying parked outside his house. Thereafter, the said riotous mob broke the main gate of his house, entered inside and climbed up on to the roof and damaged his house badly. It is further argued that considering the seriousness of the situation prevalent in the area on 24.02.2020 vis-à-vis threat to his life and the life of his family members, applicant had made several telephonic calls to SHO, PS Dayalpur and ACP of the area, but none of them answered his calls. It is further argued that from 3.52 PM till 5.56 PM, applicant had made as many as 7 calls to Police Control Room/Police Helpline Number, but to no avail and the police force finally arrived at the spot at around 7.30 PM. He also made a call to Shri Sanjay Singh, Hon'ble Member of Parliament from Aam Aadmi Party, who assured the applicant not to panic. In this regard, the copy(ies) of transcripts and PCR call(s) made by the applicant have been annexed with the bail application. It is further argued that on 27.02.2020, the applicant had made a written complaint and sent the same to Commissioner of Police via e.mail, thereby informing him in detail about all the facts.

16. ***On legal aspect***, it is submitted that while criminal conspiracy, as defined in Section 120-B IPC must precede the crime, Section 149 IPC is invoked when unlawful assembly, object and crime take place simultaneously. It is argued that both these sections are incompatible and cannot be invoked together, especially when there is no evidence produced by the investigating agency to connect the applicant with the unlawful assembly and conspiracy. It is argued that the applicant being the resident of the same locality was present inside his house on 24.02.2020 and at a friend's place at Munga Nagar on entire day of 25.02.2020 and as such, he cannot be fastened with liability of riots with the aid of Section 149 IPC as he ***never shared any "common object" with the unlawful assembly***, even if he was present at the spot.

17. As regards the allegations of "***criminal conspiracy***" against the applicant, it is argued that "***criminal conspiracy***", as defined in Section 120-B IPC must precede the crime vis-à-vis the legal effect of Explanation appended to Section 120-A in the light of evidence has to be examined. It is argued that conspiracy cannot be assumed from a set of unconnected facts or from a set of conduct at different places and times without a reasonable link. In this regard, reliance has been placed by the learned counsel upon CrI.Appeal No.630/2020, titled as, "***Mohan V/s State of Madhya Pradesh***", decided by the Hon'ble Supreme Court of India on 24.09.2020.

18. In the end, it is argued that investigation in the matter(s) is complete; chargesheet(s) have 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(s), as trial of the case(s) is likely to take long time. It is claimed that the applicant belongs to a respectable family; has clean past antecedents and deep roots in the society. He is permanent resident of India and as such, there is no possibility of his absconding in the matter(s). Besides him, there is no other person in the family to take care of his wife, two minor school going

children, a college going son and an elderly mother and as such grant of regular bail in the captioned matters has been prayed for.

19. Per contra, learned Special PP has very vehemently argued that the communal riots in North-East Delhi were of a very high magnitude, wherein 53 innocent lives were lost and a lot of public and private property was damaged/vandalized and looted and several vehicles, houses and business establishments were set on fire. These riots were part of large scale conspiracy hatched at various levels all over Delhi in the aftermath of enactment of ***Citizenship Amendment Act, 2019*** (in short “***CAA***”) and the same did not take place spontaneously. These riots were result of a well-planned and meticulously executed action by the anti-CAA protesters. It had in fact been planned before the visit of US President Donald J. Trump to India, as one group of particular community was aware of the fact that police system would be busy in handling arrangements for Trump’s visit to Ahmedabad in Gujarat on 24.02.2020 and 25.02.2020 and hence, the very timing of riots just prior to the visit of US President Donald J. Trump to India points towards a very deep-rooted conspiracy behind the entire scenario. In continuation of the aforesaid, it is further argued that the protests against CAA were going on for the last one and a half month in the area of PS Dayalpur at Chand Bagh and Brijpuri Puliya alongwith the other areas of North-East Delhi. On 23.02.2020, the protest turned violent and protestors at Chand Bagh spread on Wazirabad Road and Karawal Nagar Road upto Sherpur Chowk, including Moonga Nagar. The communal riots continued till 26.02.2020. During this period, a number of cases of riots have been registered at PS Dayalpur and other police stations of North-East District. A heavy damage to government and public property and loss of innocent lives were reported and paramilitary forces had to be deployed to control law and order situation in the area.

20. **To be specific**, it is argued that applicant has been categorically named/identified by injured(s)/victim(s) Ajay Kumar (**in case FIR No.91/2020**) and

Prince Bansal (**in case FIR No.92/2020**), both of whom have categorically stated that applicant was present at the roof of his house on the date and time of incident and instigating the other rioters of his community.

It is further argued that during the course of investigation statement(s) under Section 161 Cr.P.C of eye witnesses namely Harish Chander, Prashant Kumar, Mukesh Kumar Jha, Jai Shankar and Manoj Jha were also recorded in the matter(s), who have categorically identified the applicant as they were familiar with him previously on account of applicant being a public figure.

21. The learned Special PP further submitted that during analysis of CDR of mobile number (9810363xxx) (number withheld) belonging to applicant, it was revealed that he had made several PCR calls on 24.02.2020 and 25.02.2020. As per CDR analysis, six PCR calls were made by applicant on 24.02.2020 between 2.50 PM and 6.00 PM and six PCR calls were made on 25.02.2020 between 3.50 PM to 4.35 PM. On checking the PCR calls, it was found that only four PCR calls made by applicant on 24.02.2020 had connected to Police Control Room, while remaining calls could not be connected due to reason mentioned as “*IVR key not pressed*”. Out of four calls, three calls were sent to PS Dayalpur for local police action and one call was sent to PS Karawal Nagar. The concerned Emergency Officer, SI Shiv Charan Meena and other emergency officer of the day at PS Dayalpur, who had attended the PCR calls were examined. During investigation, it was revealed that there were thousands of people standing on both sides of main Karawal Nagar Road from Chand Bagh Puliya to Sherpur Chowk. Police force which was less in number in comparison to the rioters could not reach the spot on receipt of calls. It was quite late in the night when staff from PS Dayalpur reached at the spot, which was in front of applicant’s house. At that time, the applicant was present in front of his house. Shops and a few houses adjoining the house of applicant had been burnt. No damage had been caused by the rioters to applicant’s house and none of his family members had sustained injuries. From the circumstances, it seemed that the accused persons/rioters were known to the applicant and applicant was present with

the rioters at his house and he had deliberately made PCR calls to save his skin from legal complications in future.

22. It is further argued that during interrogation of applicant, it was revealed that in the intervening night of 24/25.02.2020 in the early morning hours, applicant had shifted his family from House No.E-7, main Karawal Nagar Road, Khajuri Khas, near Chand Bagh pulia, Delhi to his parental house at Mustafabad. However, he stayed back at his E-7, main Karawal Nagar Road house to keep an eye on the whole situation and lead the Muslim rioters against the Hindus on the next day. His call locations of 25.02.2020 proves this version to a great extent. The location of applicant near Jama Masjid, Munga Nagar, Delhi which is close to Chand Bagh Pulia speaks of his evil intentions.

23. It is further argued that applicant cannot claim parity with several other co-accused persons in the captioned matters, who have been enlarged on bail because the role assigned to him is totally different and distinct from the other co-accused persons, as he is the *main kingpin/conspirator* in the case. The applicant in furtherance of the criminal conspiracy had instigated the rioters of a particular community and provided logistic support like lathis, dandas, stones, acid bottles, knives, swords, fire arms etc. to the rioters at the roof of his house itself.

24. As regards the contention of the learned counsel for the applicant that there is delay in recording of FIR in the matters, it is argued that the riots at or around the scene of crime(s) were “*very fierce*” from 23.02.2020 till 26.02.2020. Several persons were injured; public and private property(ies) worth crores of rupees were vandalized, arsoned and torched. There was curfew like atmosphere at or around the area. The police officials of PS Dayalpur remained busy in law and order duty and as such, delay in recording of FIRs took place. In *decision dated 06.07.2020*, passed in *Bail Application No.922/2020*, titled as, “*Raiees Khan V/s State of NCT of Delhi*”, the Hon’ble High Court of Delhi in para 11 thereof has

been pleased to hold as under:

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11. No doubt, there was a delay in registration of the FIR, but it was only because of the circumstances prevalent at that time. On the day of incident, I am told about 18689 PCR calls were received on a single day; 3450 calls were from the Dayalpur area itself and then it took time to register the FIRs; the last FIR being registered on 28.03.2020. Pandemic Covid-19 further delayed the investigation.

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25. As regards the delay in recording the statements of public witnesses U/s 161 Cr.P.C, it is submitted that the inspection of the house/building of the applicant was got conducted by FSL team on 28.02.2020. The adjoining shops of applicant's building had been burnt. During riots, the situation of the area was tense and curfew like situation was prevailing all over North-East District of Delhi. People hardly visited their shops and did not come out of their houses due to tense atmosphere because of riots. Their statements were recorded by the police U/s 161 Cr.P.C as per their availability. It is further argued that there is no statutory period prescribed for recording of statement(s) of witnesses. It is argued that it is common knowledge that at or around Chand Bagh puliya till upto Sherpur Chowk, several shops and houses were vandalized, looted and torched. The beat constables who remained on duty in the area on both the days, i.e, 24.02.2020 and 25.02.2020 had witnessed thousands of persons committing the aforesaid acts. They might have witnessed hundreds of properties being torched; they might have seen several persons receiving injuries. It is not humanly possible for a poor beat constable to remain engaged in law and order duty in such extraordinary circumstances from morning till night and thereafter after going back to the Police Station would recollect all the incidents of the day and get hundreds of FIRs registered at PS throughout the night and would be ready to go for his law and order duty on the next morning again to witness hundreds of such incidents on the next day and again get the FIRs recorded at PS and so on and so forth. It is emphasized that the situation was so grim and the police force was meagre, yet besides performing the law and order duty they had to take care of injureds and other victims. Their first

priority was to help needy persons and not sit through the night and get the FIRs recorded. On the strength of the order passed in *Raiees Khan's* case (supra), it is emphasized that the Hon'ble High Court correctly appreciated the plight of local police and discarded the argument of the defence regarding delay in recording of FIR and the statements of witnesses. It is further argued that as and when the complainants/victims approached the police then on the basis of their recollection, the beat constables got their statements recorded in the matter and their statements cannot be discarded merely on the ground of delay, as they were pitted against extraordinary circumstances. He has stretched the argument further by pleading that had hundreds of FIRs being recorded merely on the statements of beat constables, then the defence would have questioned the same on the ground that they had concocted the facts. In any case, it is the prerogative of the investigating agency to see on whose statement the FIR in the matter is to be recorded and the safest course which was thought appropriate was either to approach the complainant/victim or let him approach the police after normalisation of the situation.

It is very strongly contended that in case FIR No.101/2020, PS Khajuri Khas, DVR of the CCTV camera(s) lying installed at the residence of applicant was taken into possession by the police and the analysis whereof showed that the CCTV camera(s) had been deliberately put off during the period from 23.02.2020 till 28.02.2020, which clearly shows that the applicant wanted to conceal the factum about the visitors visiting his house during the aforesaid dates. It is further pointed out that in his earlier bail application(s) dismissed by this Court in the other matters, the applicant had taken a specific defence that on 25.02.2020 he was not at all present at Munga Nagar near Chand Bagh Puliya, but in these bail applications a different stand has been taken, purportedly after obtaining legal advice on his CDRs, which show his presence to be at the spot and such, the stand here is that on 25.02.2020 although the applicant was present at or around the scene of crime, but he was not there at his residence.

26. It is further argued that besides both the captioned matters, the applicant is also an accused in the following cases of riots:

(a) FIR No.80/2020, PS Dayalpur	(b) FIR No.117/2020, PS Dayalpur
(c) FIR No.120/2020, PS Dayalpur	(d) FIR No.101/2020, PS Khajuri Khas
(e) FIR No.59/2020, Crime Branch (Being investigated by Special Cell of Delhi Police and UAPA Act invoked)	(f) FIR No.65/2020, PS Dayalpur (IB Officer Ankit Sharma murder case)
(g) FIR No.88/2020, PS Dayalpur	(h) FIR No.114/2020, PS Khajuri Khas
(i) FIR No.116/2020, PS Khajuri Khas	

As a sequel to the aforesaid contention, it is further submitted that the regular bail application(s) of applicant already stood `dismissed in case FIR(s) No.65/2020 (**IB Officer Ankit Sharma murder case**), 80/2020, 117/2020 and 120/2020, all pertaining to PS Dayalpur by this Court vide order(s) dated 13.07.2020 and 22.10.2020 respectively.

27. In the end, it is argued that although the chargesheet(s) in the matter(s) have been filed, yet the investigation of the case(s) is still in progress; many persons who were part of the “*riotous mob*” need to be identified and arrested; the “*conspiracy angle*” behind such a large-scale riot needs to be unearthed; and there is every chance that if released on bail, the applicant being resident of the same area may tamper with the evidence and as such, the dismissal of the instant bail application(s) have been prayed for.

28. I have given 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.*

29. 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:

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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.”

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(emphasis supplied)

30. From the evidence of a number of witnesses recorded in the matter, it is *prima facie* apparent that the “**riotous mob**” armed with “**lethal weapons**” had engaged in vandalism, looting and torching of public and private properties and their **main objective was to cause maximum damage to the lives and properties of persons belonging to other 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 therefrom. This Court is conscious that at this stage the trial is not being dealt with. We are at **pre-charge 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.

31. Even if there is no video footage or CCTV footage of 25.02.2020, showing the presence of applicant at the spot, yet there is enough ocular evidence available on record, clearly showing the presence of the applicant at the spot on the date and time of the incident. The injured(s)/victim(s) Ajay Kumar (**in case FIR No.91/2020**) and Prince Bansal (**in case FIR No.92/2020**), have categorically stated in their statements that the applicant was present on the roof of his house on the date and time of incident and instigating the other rioters of his community.

Even the other independent public witnesses in the matter(s) namely Harish Chander, Prashant Kumar, Mukesh Kumar Jha, Jai Shankar and Manoj Jha have categorically identified the applicant to be present on the roof of his house on the date and time of incident(s). It is nowhere disputed that the applicant is a public figure and the aforesaid public witnesses are residents of the same locality, so *prima facie* this Court has to believe that the aforesaid public witnesses knew the applicant very well. I am conscious of the law that at the “*pre-charge stage*” and that too while deciding the bail application, this Court cannot probe deep into the material collected by the investigating agency because at this stage conducting of “*mini trial*” is not warranted. However, I have taken pains to go through the statement of each witness recorded by the police U/s 161 Cr.P.C to satisfy myself about the sufficiency or otherwise of the material collected during investigation by the police. I do not find any force in the arguments of learned counsel for the applicant that applicant has been falsely implicated in the present matter or that there is no legally sustainable evidence available against him. ***In my considered opinion, the statements of witnesses can be said to be delayed when the witnesses are known to the police and yet police do not record their statements; whereas, in a case of rioting, police hardly has any idea as to who were the witnesses.*** Further, people normally do not come forward and it is admitted position on record that on the date of incident nearly 10,000 PCR calls were recorded in the area of PS Dayalpur. Thereafter, on the basis of these calls, police reverted back and traced out some of the witnesses. Therefore, at this stage, in the peculiar facts and circumstances of the case(s) in hand, it cannot be said that there is delay in recording of statements of

witnesses by investigating agency. On the contrary, I find the “*ocular evidence*” of aforesaid independent witnesses to be credible at this *prima facie* stage, which gives the clear details qua the active role played by applicant in the incidents in question.

As regards the contention of learned counsel that the applicant is not seen/visible in any CCTV footage dated 25.02.2020, it is worthwhile to note here that recently vide detailed order dated 03.05.2021 (passed in Bail Applications No.1344/2021 and 1166/2021), the Hon’ble High Court of Delhi has been pleased to dismiss the regular bail applications of two accused persons namely Sameer Khan and Kasim in case FIR No.65/2020, PS Dayalpur (**IB Officer Ankit Sharma murder case**). The aforesaid two accused persons were also not visible in any CCTV footage/video-clip, even then the Hon’ble High Court dismissed their bail applications primarily on account of the fact that both of them were categorically identified/named by the public witness(es) therein. The observations made by Hon’ble High in the said order are re-produced hereunder: To quote:

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19. This Court is conscious that while dealing with bail applications of Liyakat Ali, Arshad Qyauum @ Monu, Gulfam @ VIP and Irshad Ahmad pertaining to FIR No. 116/2020, registered at police station Dayalpur, Delhi, with regard to eye witness Pradeep Verma, this Court had made an observation as to why he had not made any PCR call regarding the incident, but in the facts and circumstances of the present case, his failure to having made a call to the PCR cannot be made fatal to the case of the prosecution wherein life of a young Intelligence Officer has been lost. Moreover, every case has to be seen in the peculiar facts and circumstances of each case and observation in one case may not be binding in another case.

20. With regard to petitioner Sameer Khan, trial court in the impugned order has noted that he is a resident of Nand Nagri and his presence at the place of occurrence was not natural and therefore, it cannot be said that he did not have a common object of unlawful assembly. Regarding petitioner Kasim, learned trial court has observed that he was absconding and could be apprehended from Sambal, UP and eye witnesses have rightly identified him. Trial court has further observed that these petitioners were a part of riotous mob and were

involved in looting and vandalizing public and private property and in the said riots, several persons were injured and Ankit Sharma had lost his life. This Court finds force in the observations made by the court below.

21. It is a matter of fact, in such like cases where large mob is involved in riots and illegal activities causing harm to public property, peace and life, statement of eye witnesses and corroborative evidence plays a vital role and at the time of considering the bail application of accused, it would be too soon to analyse the testimony of eye witnesses and public witnesses to arrive at a conclusion as to whether any case is made out against the accused or not. Non availability of technical evidence such like CCTV footage etc. cannot be accepted as a ground for non-availability of direct evidence, as it is a matter of record that CCTV cameras installed in the areas in question were either broken or hidden by the mob. At the time of grant of bail only a prima facie opinion has to be formed and the facts and circumstances of this case do not persuade this Court to keep a lenient view towards the petitioners. Petitioners have been playing hide and seek with the prosecution. Charge sheet in the FIR in question has already been framed and trial is in progress. Petitioners will have an opportunity to make their case at the appropriate stage during the course of trial.

22. With aforesaid observations, these petitions are dismissed, while making it clear that any observation made herein shall not influence trial of the prosecution case.

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32. The CDR analysis qua the mobile number (9810363xxx) (number withheld) belonging to applicant confirms his presence at or around the scene of crime on the dates of incident(s).

33. It is a matter of record that applicant had got issued a licensed pistol and 100 rounds. He had deposited his pistol in PS Khajuri Khas on 07.01.2020, but had got released the same from PS Khajuri Khas on 22.02.2020, just before the commencement of riots, for the sole purpose of using the same in riots. Upon being interrogated on this score, the applicant failed to give a satisfactory reply regarding

release of his weapon from concerned Police Station. During investigation, only 64 live cartridges and 22 empty cartridges out of 100 rounds were recovered at his instance. During investigation, the applicant could not give account of remaining 14 live cartridges and 22 empty/fired cartridges, as to when and where the same were fired/used. The fact regarding the release of pistol one day prior to the riots has been verified from the record of concerned Police Station and the concerned record has been filed. Pistol, live cartridges and fired cartridges were seized by SIT, Crime Branch in case FIR No.101/2020, PS Khajuri Khas and to verify firing by pistol in question, same has been sent to FSL on 09.03.2020 vide Receipt No.SFSL(DLH)/2195/BAL/478/20 and the report is awaited.

Furthermore, the recovery of several crates of glass bottles having liquid filled in them with their necks stuffed with clothes to be used as **Molotov cocktail**, large amount of bricks, stones and sling shots from his house, i.e E-7, Khajuri Khas, main Karawal Nagar road, Delhi *prima facie* points towards his active and lead role in conspiracy and execution of communal riots in the area/locality.

34. As regards the contention raised on behalf of applicant that his alleged video is dated 24.02.2020 and he was not present inside his house on 25.02.2020, it is noted that there is clear and cogent evidence in the form of evidence of eye-witnesses recorded in case FIR No.65/2020, PS Dayalpur (Ankit Sharma murder case) as well as in the captioned matters that applicant was duly present on the rooftop of his house on 25.02.2020 and leading/instigating the rioters present on the rooftop of his house and also leading the rioters of Moonga Nagar masjid, which is situated just adjacent to Chand Bagh nallah. The said statements of independent eye witnesses cannot be discarded at this stage.

35. It is quite apparent that that the communal riots in Delhi had happened under a **larger conspiracy**, which did not come to fore initially and when a case of larger conspiracy, being case FIR No.59/2020, PS Crime Branch was registered,

several persons were interrogated and facts at broader perspective came to fore before the investigating agency. It is also clearly evident that in execution of the larger conspiracy, smaller conspiracies at local level were undertaken by persons like applicant, who were in authority and had a large fan following in their respective areas. They were in a position to mobilise the local persons from a particular community to come up in arms against the persons of other community and law enforcement agencies to create havoc. The apparent object of execution of such smaller conspiracy(ies) was to make the presence of a particular community felt, to create a rein of terror and to destabilize the law and order position, so that the Central Government could be made to succumb to their demands. It is also evident that initially the dharnas or protests were largely peaceful, however, during the meeting of larger conspiracy it was felt that peaceful protest(s) are not going to cut much ice and such, the road blockades and violence will have to be undertaken. It is also evident that the participants of the larger conspiracy had collected huge amount (terror funding) through *hawala* and other illegal means, pursuant whereto the logistics like arms, implements of rioting etc. were collected and ultimately the smaller conspiracy at local level were given effect to.

36. I have gone through all the aforesaid judgments referred to by the learned counsel for the applicant in this regard.

I have also gone through the judgment titled as, “**Nirmal Singh Kahlon V/s State of Punjab & Ors.**” (2009) 1 SCC 441. The said judgment applies in all fours in the case of applicant. The Hon’ble Supreme Court after analyzing the entire case law on the point came to specific conclusion, which I will advert to a little later. In **Nirmal Sigh Kahlon** (supra), the issue was that the applicant being a Minister in the State of Punjab was instrumental in making certain political appointments and the allegations against him were of corruption, cheating and conspiracy. The State police investigated the matter and filed chargesheet against the applicant, however, lateron it transpired that the conspiracy was at a much larger level, which required further investigation. After series of events and

sorting of case at various fora, the second FIR came to be lodged by Central Bureau of Investigation (CBI) and the conspiracy was investigated at a much larger canvass. The issue of registration of second FIR was unsuccessfully challenged before the Hon'ble High Court of Punjab and Haryana and then the matter went to Hon'ble Supreme Court of India.

37. The Hon'ble Supreme Court of India after considering the case/judgment of **T.T Antony** (supra), particularly paragraph No.21 thereof, came to the conclusion that the second FIR was not bad in law and the investigating agency was not barred from registering second FIR. The Hon'ble Supreme Court also considered the earlier judgments in **Ram Lal Narang V/s State (Delhi Administration)** (1979) 2 SCC 322; **Kari Choudhary V/s Mst.Sita Devi & Ors.**, (2002) 1 SCC 714; **H.N Rishbud & Inder Singh V/s The State of Delhi**, 1955 (1) SCR 1150; and **Upkar Singh V/s Ved Prakash & Ors.**, (2004) 13 SCC 292. The relevant extracts of the "**Nirmal Singh Kahlon**" are re-produced as under:

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44. The second FIR lodged by the Central Bureau of Investigation (CBI), however, was on a wider canvass. It was lodged after holding a detailed preliminary inquiry. CBI collected a large number of materials. It had also recorded the statements of a large number of persons. Whereas the first FIR dated 14.06.2002, thus, contained the misdeeds of individuals, the second one depicts a crime committed in course of selection process of Panchayat Secretaries involving a large number of officers.

45. The High Court was not concerned with individual acts. It was concerned with a scam involving appointment of Panchayat Secretaries.

46. The second FIR dated 26.06.2003 enumerates as many as fifteen categories of irregularities committed by various persons involved in the said selection process. Responsibility has not only been fixed upon the appellant but also upon Shri Mandeep Singh, Shri C.L. Premmy, Shri J.S. Kesar, Shri Joginder Singh as also the then Additional Deputy Commissioners of Bhatinda, Ropar and Muktsar. The number of accused who were involved as per preliminary report of the

CBI were as many as fourteen.

47. The first FIR pointed out offences under Sections 420, 467, 468, 120B of the Indian Penal Code and Sections 13(1)(d)(e) and 13(2) of the Prevention of Corruption Act but no allegation of conspiracy was made. In the second FIR dated 26.06.2003, the persons involved were not only the then Minister but also the then Director, the then Division Deputy Director, the then Deputy Directors, the then Additional Deputy Commissioners, the then Block Development Officers, etc.

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50. An offence committed by an individual or two and an offence disclosed in a scandal involving a large number of officers from the lowest category to the highest category is distinct and different. In the first FIR although the provision of Section 120B of the Indian Penal Code was mentioned, no allegation of conspiracy had been made. As indicated hereinbefore, it centered round a large number of acts of omissions and commissions on the part of the appellant Kahlon alone, as would be evident from the following:

“...By misusing his powers, he has made wrong appointments for his benefit and the deserving candidates were overlooked. By doing this Ex. R.D.P.M. has committed crime under Section 420, 467, 468, 120(B), 13(1)(d)(e) read with 13(2) of the Prevention of Corruption Act...”

51. In the aforementioned circumstances, the decision of this Court in Ram Lal Narang v. State (Delhi Administration) [(1979) 2 SCC 322] assumes significance. This Court therein was concerned with two FIRs; both lodged by the Central Bureau of Investigation. The first one contained allegations against two persons, viz., Malik and Mehra under Section 120B of the Indian Penal Code read with Sections 406 and 420 thereof wherein the CBI filed a chargesheet. Later on, however, some subsequent events emerged resulting in lodging the FIR not only against Malik and Mehra but also against Narang and his two brothers. This Court opined:

“11. ...The offences alleged in the first case were Section 120-B read with Section 420 and Section

406 IPC, while the offences alleged in the second case were Section 120-B read with Section 411 IPC and Section 25 of the Antiquities and Art Treasures Act, 1972. It is true that the Antiquities and Art Treasures Act had not yet come into force on the date when the FIR was registered. It is also true that Omi Narang and Manu Narang were not extradited for the offence under the Antiquities and Art Treasures Act, and, therefore, they could not be tried for that offence in India. But the question whether any of the accused may be tried for a contravention of the Antiquities and Art Treasures Act or under the corresponding provision of the earlier Act is really irrelevant in deciding whether the two conspiracies are one and the same. The trite argument that a Court takes cognizance of offences and not offenders was also advanced. This argument is again of no relevance in determining the question whether the two conspiracies which were taken cognizance of by the Ambala and the Delhi Courts were the same in substance. The question is not whether the nature and character of the conspiracy has changed by the mere inclusion of a few more conspirators as accused or by the addition of one more among the objects of the conspiracy. The question is whether the two conspiracies are in substance and truth the same. Where the conspiracy discovered later is found to cover a much larger canvas with broader ramifications, it cannot be equated with the earlier conspiracy which covered a smaller field of narrower dimensions. We are clear, in the present case, that the conspiracies which are the subject matter of the two cases cannot be said to be identical though the conspiracy which is the subject-matter of the first case may, perhaps, be said to have turned out to be part of the conspiracy which is the subject-matter of the second case. As we mentioned earlier, when investigation commenced in FIR R.C. 4 of 1976, apart from the circumstance that the property involved was the same, the link between the conspiracy to cheat and to misappropriate and the conspiracy to dispose of the stolen property was

not known.

12. The further connected questions arising for consideration are, what was the duty of the police on discovering that the conspiracy, which was the subject-matter of the earlier case, was part of a larger conspiracy, whether the police acted without jurisdiction in investigating or in continuing to investigate into the case and whether the Delhi Court acted illegally in taking cognizance of the case?" 46. It may be true that in both the FIRs Kahlon

52. It may be true that in both the FIRs Kahlon was named. He was considered to be the prime accused. But, it is one thing to say that he acted in his individual capacity and it is another thing to say that he conspired with a large number of persons to facilitate commission of crime by him as a result whereof all of them had made unlawful gains.

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54. Strong reliance has been placed by Mr. Rao on T.T. Antony (supra) and Kari Choudhary (supra). In T.T. Antony (supra), the first FIR was lodged in 1994; another FIR was lodged three years thereafter on the self-same cause of action. Ram Lal Narang (supra) in the said fact-situation was distinguished on facts, opining:

"21. ...This Court indicated that the real question was whether the two conspiracies were in truth and substance the same and held that the conspiracies in the two cases were not identical. It appears to us that the Court did not repel the contention of the appellant regarding the illegality of the second FIR 35 and the investigation based thereon being vitiated, but on facts found that the two FIRs in truth and substance were different — the first was a smaller conspiracy and the second was a larger conspiracy as it turned out eventually..."

55. In Kari Choudhary (supra), the mother-in-law of the deceased Sugnia Devi lodged an FIR that some persons from outside had entered into her bedroom and murdered her by

strangulation. During the process of investigation, it was found that the murder took place in a manner totally different from the version furnished in the FIR. According to the investigating officer, the murder was committed pursuant to a conspiracy hatched by her mother-in-law and her other daughters-in-law. A final report was sent. However, another FIR was lodged. The first FIR was lodged on 27.06.1988 and the second FIR was lodged in 30.11.1988. The validity of the first FIR was in question. In that case, another chargesheet was filed on 31.03.2000. This Court held:

“11. Learned counsel adopted an alternative contention that once the proceedings initiated under FIR No. 135 ended in a final report the police had no authority to register a second FIR and number it as FIR No. 208. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency. Even that apart, the report submitted to the court styling it as FIR No. 208 of 1998 need be considered as an information submitted to the court regarding the new discovery made by the police during investigation that persons not named in FIR No. 135 are the real culprits. To quash the said proceedings merely on the ground that final report had been laid in FIR No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it.”

Kari Choudhary (supra) should be read with Ram Lal Narang (supra).

In State of A.P. v. A.S. Peter [(2008) 2 SCC 383], this Court held:

“16. Even in regard to an independent investigation undertaken by the police authorities, it was observed: (Narang case, SCC p. 338, para 21)

“21. ... In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation.”

17. It is not a case where investigation was carried out in relation to a separate conspiracy. As allegations had been made against the officer of a local police station in regard to the mode and manner in which investigation was carried out, a further investigation was directed. The court was informed thereabout. Although, no express permission was granted, but evidently, such a permission was granted by necessary implication as further proceeding was stayed by the learned Magistrate. It is also not a case where two charge sheets were filed before two different courts. The court designated to deal with the matters wherein investigation had been carried out by CID, is located at Chittoor. It is in the aforementioned situation, the Sessions Judge transferred the case pending in the Tirupati Court to the Designated Court at Chittoor. Cognizance of further offence had also been taken by the Chittoor Court.”

57. The instant case, in our opinion, stands on a better footing vis-à-vis Ram Lal Narang (supra) in the sense that whereas the first FIR did not make any allegation as regards existence of a conspiracy, the second FIR did. The canvass of two FIRs is absolutely different. The numbers of accused in both the FIRs are also different.

58. We must also bear in mind the distinction between crime committed by an individual or a group of persons vis-à-vis a scam which means “to get money or property from, another, under false pretences, by gaining the confidence of the victim,

also includes; swindle; defraud”. [See Advanced Law Lexicon, 3rd edition, 2005, page 4237]

60. Yet again, in *Upkar Singh v. Ved Prakash and Others* [(2004) 13 SCC 292], a Three-Judge Bench of this Court held:

“21. From the above it is clear that even in regard to a complaint arising out of a complaint on further investigation if it was found that there was a larger conspiracy than the one referred to in the previous complaint then a further investigation under the court culminating in another complaint is permissible.”

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(underlining is mine)

38. Furthermore, in case reported as, **(2013), 6 SCC 384**, titled as, “**Anju Chaudhary V/s State of UP**”, the Hon’ble Supreme Court has been pleased to observe as under:

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15. It has to be examined on the merits of each case whether a subsequently registered FIR is a second FIR about the same incident or offence or is based upon distinct and different facts and whether its scope of inquiry is entirely different or not. It will not be appropriate for the Court to lay down one straightjacket formula uniformly applicable to all cases. This will always be a mixed question of law and facts depending upon the merits of a given case.

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(underlining is mine)

In the aforesaid judgment, the Hon’ble Court was pleased to hold that registration of second FIR is permissible if it does not pass the test of “sameness” and “same transaction”.

It is a matter of record that larger conspiracy and the conspiracy invoked in the present matter(s) is altogether different in magnitude, number of persons involved, time and place of incident and the persons effected.

39. In order to understand different situations regarding the issue of registration of multiple FIRs, as contended by the learned counsel for the applicant, it would be appropriate to understand the said issue from the complainant's perspective as well as from the accused's perspective, which is enumerated below in a tabular format.

S.No.	<u>COMPLAINANT PERSPECTIVE</u> (Situations when the Complainant approaches the Court for fair investigation and issue of clubbing FIR)			
	Complainant	Incident	Accused/Set of Accused	FIR
1.	Same in more than one Complaints	Incident is the 'same' and it fits into the 'sameness principle'	<u>Same or not disclosed.</u>	The police/court will permit/ confine the 'investigation' to one FIR/ one trial.
2.	Same in more than one Complaints	Incident is not the 'same' and it does not fit into the 'sameness principle'	Accused/set of accused are <u>disclosed not disclosed</u>	Separate investigations should be done and there should be separate trials.
3.	Different Complainants	Incident is not the 'same' and it does not fit into the 'sameness principle'	Accused/Set of Accused are <u>not disclosed by both or One Complaint discloses the accused another does not</u>	The police should register separate FIR, so that separate trials take place.
	<u>ACCUSED PERSPECTIVE</u> (When the accused approaches the court for fair investigation and issue of clubbing the FIRs Entire idea is to seek protection from double jeopardy)			
	Accused	Incident	Complainant	Investigation and FIRs
1.	<u>Same</u>	Incident is the 'same' and it fits into the	<u>Same Or Different</u>	The court will permit/ confine the

		‘sameness principle’ (<i>and the incident has happened at one place</i>)		investigation’ to one FIR
2.	<u>Same</u>	Incident is different and it does not fit into the ‘sameness principle’	Complainant is <u>Same or different</u>	Investigation and FIR may be different leading to two different trials.
3.	<u>Chain of incidents at different places originating through common cause of action [may be hatred through electronic media at different places]</u>	Incidents are at different places affecting different victims	<u>Complainants are different</u>	Separate FIRs and investigations.

40. Therefore, the position under the law which emerges is that it is not an absolute bar that two FIR(s) on the same subject matter cannot be registered by the investigating agency. The same can be done:

- (a) When it is not as a matter of any political revenge or malice;
- (b) The other FIR deals with the offence(s) at a wider canvass;
- (c) The other offence(s) being investigated are different and distinct and;
- (d) In the cases of scandals or scams, where at local level and at larger level, the canvass is different and number of accused persons is different.

41. The statements of witnesses recorded in these case FIR(s) and other case FIR(s) against the applicant clearly go on to show that *prima facie* the applicant was instrumental in flaring up the communal riots because of his sheer

political and financial clout. He permitted his big house, which was strategically located to be used by rioters to play havoc upon the persons of other community. He indulged in terror funding and collection of means of rioting and thereafter under a conspiracy hatched at local level used seduced persons as “**human weapons**”.

42. In view of the aforesaid discussion, the case of the applicant is totally different from the case of other co-accused persons who have already been granted bail in the matter(s). He even cannot claim parity with the other co-accused persons. The law claiming the ground of parity by an accused is fairly settled now. The Hon’ble High Court of Allahabad, in case reported as, “**1993 CrI.J 938**”, titled as, “**Nanha S/o Nabhan Kha V/s State of U.P**” (decided on 18.09.1992) has been pleased to hold in paragraphs 58 and 59 thereof as under:

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58. The word 'parity' means the state or condition being equal or on a level; equality; equality of rank or status (See Shorter Oxford English Dictionary 1936 Ed.). In other words it means being placed at the same footing. All the accused of a case always do not stand on the same footing. While considering bail of different accused the court has to find out whether they stand on the same footing or not. Even if role assigned to various accused is same yet they may stand on different footing. The case of Cap. Jagjeet Singh (supra) is an illustration wherein the Supreme Court distinguished the case of Capt. Jagjeet Singh on the ground that he was in touch with foreign agency and leaking out secrets. The Supreme Court in the case of [Gur Charan Singh v. Delhi Administration](#), AIR 1978 SC 179 : (1978 Cri LJ 129) laid down that the considerations for grant of bail are inter alia the position and status of the accused with reference to the victim and the witnesses; likelihood of the accused; fleeing from justice; of repeating offence; of jeopardising his own life, being faced with grim prospect of possible conviction in the case; of tampering with witnesses; and the like. These are additional factors which are to be judged in the case of individual accused and it may make the cases of different accused distinguishable from each accused. At the same time if there is no real distinction between the individual case of accused the principle of parity comes into play and if bail is granted to one accused it should also be granted to the other accused whose case stands

on identical footing.

59. None the less the principle of grant of bail on parity cannot be allowed to be carried to an absurd or illogical conclusion so as to put a judge in a tight and straight jacket to grant bail automatically. There may be case which may require an exception; where a judge may not simply take a different view from the judge who granted bail earlier to a co-accused but where the conscience of the judge revolts in granting bail. In such a situation the judge may choose to depart from the rule recording his reasons. However, such cases would be very few.

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43. It is noteworthy that at the time of eruption of communal riots in the area(s) of North-East Delhi, the applicant has been in a powerful position (**being sitting Councillor of the area from Aam Aadmi Party**) and it is *prima facie apparent that he used his muscle power and political clout to act as a kingpin in planning, instigating and fanning the flames of communal conflagration.*

The applicant permitted his house to be used by the miscreants, rioters to play havoc with the lives of the people of other community and this was done by him under a larger conspiracy which has been investigated by Special Cell of Delhi Police in case FIR No.59/2020. In the said case FIR, it is stated that enough material is there against him to be part of large-scale conspiracy to arrest Delhi and he is an accused in eleven cases of riots and there is overwhelming evidence against him in all the said cases. Even some suspicious money transactions had been made from his bank accounts (which is subject matter of case FIR No.101/2020, PS Khajuri Khas) and investigation in the said case is still on to establish the chain of transactions.

Therefore, at this stage, I find that there is enough material on record to presume that the applicant was very well present at the spot of crime and was exhorting the rioters of a particular community and as such, he did not use his hands and fists, but rioters as “**human weapons**”, who on his instigation could have killed anybody. In fact, it would not be wrong here to say that the applicant by his instigation to the rioters **acted as a cannon-fodder** for them to wreak havoc upon

the persons of majority community in the area/locality. At this stage, it is clearly evident that the applicant had misused his official position and political clout to instigate the rioters of his community to wreak havoc on the members of other community.

44. It is common knowledge that the dreary day(s) of 24/25.02.2020 saw parts of North-East Delhi gripped by a communal frenzy, reminiscent of carnage during the days of partition. Soon, the riots spread like wildfire across the smoke-grey skyline of Capital, engulfing new areas and snuffing out more and more innocent lives. ***The Delhi riots 2020 are a gaping wound in the conscience of a nation aspiring to be a major global power. The allegations against the applicant are extremely grave in nature.*** Even if there were no direct acts of violence attributable to the applicant, he cannot shy away from his liability under the provisions of the sections invoked against him, particularly on account of the fact that his house/building became the hub/centre point for the rioters and rabble-rousers to unleash the worst communal riots since partition in Delhi. The spread of riots on such a big scale in such a short time is not possible without a premeditated conspiracy. So, now when the applicant found himself up against the wall, he cannot pass on the buck by simply taking a plea that since he did not participate physically in the riots, so he has no role to play in the riots. It is *prima facie* apparent that the **applicant abused his muscle power and political clout to foment communal violence in the area.**

45. For the present, the delay in recording of FIR(s) in the matter(s) have been suitably explained by the prosecution. Besides the captioned matters, applicant is also an accused in accused in nine other case of communal riots in North-East Delhi and his regular bail applications already stood dismissed by this Court in case FIR(s) No.65/2020 (**IB Officer Ankit Sharma murder case**), 80/2020, 117/2020 and 120/2020, all pertaining to PS Dayalpur vide order(s) dated 13.07.2020 and 22.10.2020 respectively.

46. This Court is aware of the importance of personal liberty of an individual guaranteed under [Article 21](#) of the Constitution, however, the Hon'ble Supreme Court of India in a recent pronouncement in case titled as, "**Sudha Singh V/s State of UP & Ors.**", **Criminal Appeal No.448/2021**, **date of decision 23.04.2021** has been pleased to lay down that "*there is no doubt that liberty is important, even that of a person charged with crime, but it is important for the Courts to recognize the potential threat to the life and liberty of victims/witnesses, if accused is released on bail*".

47. It is a matter of record that public witnesses in the aforesaid matters are residents of the same locality and if released on bail at this stage, the possibility of applicant threatening or intimidating them cannot be ruled out.

Considering the facts and circumstances of the case(s) in totality, gravity of offence and the influence which the applicant holds in the area/locality, I do not find it to be a fit case for grant of bail to the applicant in both the captioned matters. Both the bail applications are accordingly dismissed.

48. A copy of this order be placed in both the aforesaid files.

49. It is hereby clarified that anything stated hereinabove shall not be construed as expressing any opinion on the final merits of the case(s), as the case(s) are at "*pre-charge stage*".

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

VINOD
YADAV

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Date: 2021.05.15
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(VINOD YADAV)

ASJ-03(NE)/KKD COURTS/15.05.2021