

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 27<sup>th</sup> September, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 2704/2021**

MOHD. IBRAHIM

..... Petitioner

Through: Mr. Shahid Ali, Advocate.

versus

STATE( NCT OF DELHI)

..... Respondent

Through: Mr. S. V. Raju, ASG with Mr. Amit Prasad, SPP for the State along with Mr. Anshuman Raghuvanshi and Mr. Ayodhya Prasad, Advocates and DCP Rajesh Deo, Legal and Crime Branch and Insp. Gurmeet Singh, Crime Branch

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**SUBRAMONIUM PRASAD, J.**

1. The Petitioner seeks bail in FIR No.60/2020 dated 25.02.2020 registered at PS Dayalpur for offences under Sections 186/353/332/323/147/148/149/336/427/302 of the Indian Penal Code, 1860 (hereinafter, "IPC") and Sections 3/4 of the Prevention of Damage to Public Property Act, 1984 (hereinafter, "PDPP Act").
2. The FIR relates to the violence that took place in the National Capital Territory of Delhi in the month of February 2020.
3. The brief facts leading to the instant Bail Application are that a protest against the Citizenship (Amendment) Act, 2019 (hereinafter, "CAA") had been taking place for 1.5 months prior to the incident at Khajuri Square to Loni Circle at Wazirabad Road, Chand Bagh near 25 Futa Service Road by

the Muslim community.

4. It is stated in the instant FIR that the Complainant, i.e. Constable Sunil Kumar, was on duty with the deceased, HC Ratan Lal, and others, namely Giri Chand, Ct. Mahavir, Ct. Jitender, HC Narender, HC Brijesh, W/HC Savitri, as well as DCP Shahdara District Amit Kumar and his staff.

5. It is stated that on 24.02.2020, at about 01:00 PM the protestors had mobilized near the Chand Bagh area and 25 Futa Road, and were moving towards the Main Wazirabad Road. When they assembled near Main Wazirabad Road, it is stated that the Complainant and other police officers present attempted to convince the protestors to not move towards the Main Wazirabad Road, however, it is stated that the protestors were carrying sticks, baseball sticks, iron rods and stones. It is stated that ACP Gokalpuri and DCP Shahdara warned the protestors via loudspeaker of a government vehicle that lack of adherence to legal warnings would necessitate strict action against the crowd. It is stated that some people amongst the crowd started pelting stones at the police officials, and beat them as well as other passersby with aforementioned weapons that had been hidden.

6. It is stated that the Complainant received an injury on his right elbow and right hand due to a huge stone. It is further stated that the crowd even snatched tear gas balls and lathis from the police, and started beating them with it. It is stated that ACP Gokalpuri, HC Ratan Lal and DCP Shahdara Amit Kumar were also beaten with sticks and stones, and as a result, they fell down and suffered grievous head injuries.

7. The FIR states that post the incident, the protestors fled away and the injured were sent to a hospital, with the Complainant receiving treatment at Panchsheel Hospital, Yamuna Vihar, Delhi.

8. The Complainant then states that he was informed that HC Ratan Lal had succumbed to a bullet injury, and some other police officers as well as public persons had also suffered injuries. It is stated that the protestors had also set fire to the vehicle of DCP Shahdara and private vehicles of police officers, and also damaged public and private property.

9. It is stated that investigation is now completed and chargesheet has been filed against the Petitioner on 08.06.2020 wherein the Petitioner has been added. The chargesheet states that there is sufficient material to proceed against the Petitioner herein under Sections 186/353/332/323/109/144/147/148/149/153A/188/333/336/427/307/308/302 /201/120-B/34 of the IPC, read with 3/4 of the PDPP Act. Thereafter, supplementary chargesheets were filed on 30.06.2020, 20.08.2020, 17.11.2020 and 30.12.2020.

10. Mr. Shahid Ali, learned Counsel for the Petitioner, has submitted that the Petitioner herein was arrested on 30.03.2020, and he has been falsely and illegally implicated in FIR No. 60/2020. He has stated that this is the first bail application which has been preferred before this Hon'ble Court.

11. Mr. Ali has argued that as per the Injury Report, which is a part and parcel of the chargesheet, the death of the deceased was due to a gunshot injury and the same was possibly fired by the gun of a police official. He has stated that the death has not been caused by the sword which was carried by the Petitioner, and further, there has not been any allegation that there was a protestor at the site of the alleged incident with a sword. The learned Counsel for the Petitioner has submitted that the Petitioner is not visible in any footage that could prove his presence at the Scene of Crime (SOC), and therefore, Section 149 read with Section 302 cannot be made out against

him.

12. He has submitted that the deadly nature of the riots prompted both Hindus and Muslims to guard their neighbourhoods by carrying various weapons such as *lathis*, stones etc., not with the intention to participate in the protests or riots, but to defend themselves only in the event of an attack as the police had allegedly become either mere spectators or were helping the rioters. He has further submitted that the police, instead of being fair and unbiased, has conducted the investigations with *mala fide* intentions and illegally roped in those who had never even participated in the riots, but were only protecting their neighbourhoods.

13. Mr. Ali has argued that the Petitioner herein has never participated in the protest or in the riots at any point of time. He has stated that the material placed on record by the prosecution itself places the Petitioner nowhere close to the Scene of Crime, and that the location of Cell IDs around 1 PM have not been placed on record. On the basis of this, Mr. Ali has submitted that the involvement of the Petitioner in the gruesome murder of HC Ratan Lal is ruled out.

14. The learned Counsel for the Petitioner has submitted that the video footage procured by the prosecution cannot be relied upon as it is the case of the police that the Petitioner was seen at 12:02 PM in one of the CCTV footages installed at F 141 Chand Bagh. However, the Cell ID of the Petitioner indicates that he was present at New Mustafabad or Village Ziauddinpur till 12:47 PM. Therefore, the video footage and the Cell ID location of the Petitioner are contradictory to each other. Mr. Ali has also submitted that the allegation pertaining to the Petitioner being seen carrying a sword at F443 Chand Bagh, which is opposite the residence of the

Petitioner, is also contrary to the allegation that the Petitioner was at the SOC as F443 Chand Bagh is approximately 1 kilometre away from the SOC.

15. Mr. Ali has submitted that no evidence has been placed on record to state that the Petitioner was in contact with any of the organisers during the protest. The learned Counsel for the Petitioner has brought to the Court's attention that more than 21 injuries had been found on the person of the deceased HC Ratan Lal, and that, as per the prosecution, Injury No.1 was caused by projectile of rifled firearm and that rest of the injuries were caused by blunt force object/impact. Mr. Ali has submitted that it is evident that none of the injuries were caused by the sword which the Petitioner was allegedly holding and that on this basis, it cannot be said that he perpetrated any act that may have led to the crime.

16. With regard to the disclosure statement, the learned Counsel for the Petitioner has submitted that the same has no value as it does not lead to any discovery of facts or evidence, and that the shirt of the Petitioner which has been recovered is of no relevance as similar clothing is available in the market.

17. Mr. Amit Prasad, learned SPP for the State, has painstakingly taken this Court through the videos pertaining to the topography of the area where the incidents had occurred. Mr. Prasad brought to the attention of the Court three videos that had been found during the course of investigation which depict the scene of crime - Vishal Chaudhry Video (1.48 minutes) shot from Gym Body Fit Garage, Skyride Video (1.37 minutes) and Yamuna Vihar Video (40 seconds), and has submitted that the three videos shed a light on how the assault on the police personnel was pre-meditated. The learned SPP has further taken this Court through all the available CCTV footage

displaying timestamps and respective *galis* (lanes) wherein the accused have been caught on camera. He has further pointed out the timestamps which showcase the dislocation and deactivation of the CCTV cameras and has submitted that the same has been done in a synchronised and planned manner.

18. Mr. Prasad has submitted to this Court that the Petitioner herein, who was wearing a skull cap, black Nehru jacket, and salwar-kurta, was identified on GNCTD Camera ID No.7033301 installed at F-443 Chand Bagh at 12:02:26 PM with a sword in his hand. He was further seen on Camera ID No. 7033302 installed at F 443 Chand Bagh at 12:02:34 PM with a sword in his hand, as well as on Camera ID No. 7033462 installed at F 288 Gali No. 10 Chand Bagh at 12:02:34 PM with the sword in his hand. The learned SPP further submitted that the Petitioner was also seen on Camera ID No. 7033242 installed at F 348 Chand Bagh at 12:03:17 PM, and on Camera ID No. 7033232 installed at F 155 Chand Bagh at 12:04:08 PM. Mr. Prasad has further submitted to this Court that the Petitioner herein is a resident of Mustafabad, and that his residence is at a distance of 1.6 Kms. from the SOC.

19. It has been submitted to this Court by the learned SPP that the clothes which were worn by the Petitioner on the day of the alleged incident and are visible in the CCTV footage, have been recovered. Furthermore, the analysis of the CDR indicates that the Petitioner was at the SOC during the time of the alleged incident. It has also been submitted that the Petitioner was in contact with the main organiser-cum-conspirator Suleman Siddiqui who is a Declared PO, and that during the period between 25.01.2020 to 21.03.2020, he had had 74 telephonic conversations with him. It has further been

submitted that the identity of the Petitioner was confirmed by Ct. Sunil in the statement recorded on 26.03.2020 under Section 161 Cr.P.C., and by HC Tejveer in his statement recorded on 31.03.2020 under Section 161 Cr.P.C.

20. The learned ASG Shri SV Raju, opposing the Bail Application herein, has submitted that the instant case is regarding the brutal assault on police officials wherein HC Ratan Lal succumbed to his injuries, and DCP Shahdara Amit Sharma and ACP Gokalpuri suffered grievous injuries along with more than 50 police officials also getting injured.

21. It has been submitted that the death of HC Ratan Lal was the first death in the North-East Delhi riots, and that the Trial Court has been dealing with the riot cases since then. It has also been submitted that the Trial Court has been apprised of the matter and has already dismissed the bail application of the Petitioner herein, and that the order of rejection of bail does not contain any legal infirmities.

22. The learned ASG has iterated that on 23.02.2020, the protestors who were convened at Wazirabad Main Road, Chand Bagh, unauthorizedly came onto the road and blocked the same. He submitted that in response to the same, the local police had issued a proclamation under Section 144 of the Cr.P.C. in order to bring the law and order under control. He further submitted that the protestors held a meeting on the night of 23.02.2020 at Chand Bagh to finalise a plan for 24.02.2020 as the President of the United States, Donald Trump, was coming to New Delhi. This meeting was subsequently attended by several of the accused persons.

23. The learned ASG has submitted that on the morning on 24.02.2020, CCTV cameras which had been installed by GNCTD for security in the area were systematically disconnected or damaged or dislocated right from

08:00:41 AM to 12:50:57 PM. He argued before the Court that the protest at Chand Bagh continued despite the proclamation of Section 144 Cr.P.C. orders. As a consequence, police officials had been deployed for law and order arrangements. The learned ASG averred that between 12:30 PM and 1:00 PM, at the behest of the organisers of the protest, a crowd carrying various weapons such as *dandas*, *lathis*, baseball bats, iron rods, and stones convened at the main Wazirabad Road, and refused to pay heed to the orders of the senior officers and police force. The crowd soon got out of control and started pelting stones at the police officers and resultantly, more than fifty police personnel suffered injuries and HC Ratan Lal was shot dead. It was further submitted by the learned ASG that the protestors turned violent, burnt private and public vehicles, as well as other properties in the vicinity, including a petrol pump and a car showroom.

24. It was then submitted by the learned ASG that absence of an accused from a video does not translate into absence of the accused from the scene of crime. He has stated that identification of an accused in videography was a Herculean task, and therefore, if an accused has been identified, that would be a positive point. Additionally, he relied upon Masalti and Ors. v. State of Uttar Pradesh, (1964) 8 SCR 133, and submitted that by way of application of Section 149 IPC, the Petitioner herein would be deemed to be a member of the unlawful assembly and, therefore, would be equally and squarely liable for the crime committed.

25. The learned ASG has also contended that the addition of the offence under Section 302 IPC meant that ordinarily bail should not be granted. He has argued that it was not a case of a simple offence; if it was a grievous offence which was specially punishable with death, then bail could not be

granted. On the issue of the parameters of bail, the learned ASG has submitted that in Gurcharan Singh v. State (Delhi Administration), (1978) 1 SCC 118, the Supreme Court has reiterated that the principle underlying Section 437 is towards grant of bail *except* in cases where there appears to be reasonable grounds for believing that the accused is guilty of an offence punishable with death or imprisonment for life, and also when there are other valid reasons to justify refusal of bail. He has argued that the overriding considerations in granting bail are, *inter alia*, the nature and gravity of the circumstances in which the offence is committed. The learned ASG has submitted that in P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791, the Supreme Court had held that in addition to the triple test or tripod test, gravity of the offence had to be considered while making a decision on grant of bail. Further, one of the circumstances to consider the gravity of offence would be the term of sentence that is prescribed for the offence which the accused is said to have committed. The learned ASG has argued that as the instant case pertains to the offence of murdering of a police officer and that Section 302 IPC has been invoked, the matter lies within the four corners of the gravest of grave offences, and therefore, the accused cannot be entitled to bail.

26. Mr. Raju, the learned ASG, has then contended that conspiracy had been established on 23 February, 2020, and that the offence was pre-planned. He has submitted that meetings were held 1-2 days prior to the alleged incident wherein the protestors were motivated to gather at the site of the alleged incident on 24.02.2020 in order to instigate violence, and therefore, there was a meeting of minds due to which Section 149 and Section 120B of the IPC were made out. Furthermore, secret codes had been

used, and the Petitioner herein was fully involved.

27. It was also submitted by the learned ASG that there was only a small contingent of police officers present, and they were trying to protect themselves from the frontal attack by the crowd as they were heavily outnumbered. He argued that had it been a simple protest, the crowd would not have been required to come with sticks, weapons etc. Furthermore, if sticks and other weapons were to be utilised for self-defence, then the damage and dislocation of CCTVs defeated the case because such an action would only lead to the inference that the accused wished to destroy the evidence or to ensure that the evidence did not surface. It has additionally been submitted that during police custody, when the Petitioner was asked to produce the clothes he had worn on the day of the alleged incident, he had stated that he burnt the same, and as per the prosecution, this amounts to deliberate destruction of evidence as stipulated under Section 201 of the IPC.

28. The Court has heard the learned ASG Shri SV Raju with Mr. Amit Prasad, learned SPP for the State, and Mr. Shahid Ali, learned Counsel for the Petitioner. The Court has also perused the material on record.

29. A perusal of the material on record indicates that the Petitioner was added by way of chargesheet dated 08.06.2020 for offences under Sections 186/353/332/333/323/109/144/147/148/149/153A/188/336/427/307/308/302/201/120B/34 IPC, read with Sections 3 and 4 of PDPP Act. The Petitioner was arrested on 07.12.2020 and has been in judicial custody since then.

30. It is stated in the chargesheet dated 08.06.2020 that the Petitioner, who is a resident of Mustafabad, was identified on various CCTV footages with a sword in his hand, leading other rioters who were coming from the

Mustafabad side. It is also stated that the Petitioner had admitted in his disclosure statement that he had assaulted the police personnel with his sword. Furthermore, the chargesheet reveals that the clothes which were worn by the Petitioner on the day of the alleged incident and were visible on the CCTV footage have been recovered from the house of the Petitioner at his instance. The chargesheet further states that the CDR of the Petitioner places him at the SOC. It also states that the Petitioner was in constant touch with the main organiser-cum-conspirator Suleman Siddiqui. The Petitioner herein has further been identified by Ct. Sunil and HC Tejveer in statements recorded under Section 161 Cr.P.C. on 26.03.2020 and 31.03.2020.

31. A perusal of the video footage reveals that the Petitioner, who was wearing a skull cap, black Nehru jacket, and salwar-kurta, was seen on GNCTD Camera ID No.7033301 installed at F 443 Chand Bagh at 12:02:26 PM with a sword in his hand. He was further seen on Camera ID No. 7033302 installed at F 443 Chand Bagh at 12:02:34 PM with a sword in his hand, as well as on Camera ID No. 7033462 installed at F 288 Gali No. 10 Chand Bagh at 12:02:34 PM with the sword in his hand. The learned SPP further submitted that the Petitioner was also seen on Camera ID No. 7033242 installed at F 348 Chand Bagh at 12:03:17 PM, and on Camera ID No. 7033232 installed at F 155 Chand Bagh at 12:04:08 PM.

32. In the instant case, the issue which arises for consideration is whether a case for criminal conspiracy for an allegation of murder, i.e. Section 120B IPC read with Section 302, is made out against the Petitioner. In order to delve into the issue, it would be appropriate to reproduce Sections 120A and 120B IPC at this juncture:

*“120A. Definition of criminal conspiracy. –When two*

*or more persons agree to do, or cause to be done, -*

*(1) an illegal act, or*

*(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*

*Provided no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.*

***Explanation.-It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”***

***“Section 120B. Punishment of criminal conspiracy. –***

*(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*

*(2) Whoever is a party to the criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”*

33. For a criminal conspiracy to be established, there must be in existence two or more persons who agree to do, or cause to be done, an illegal act or an act which is not illegal by illegal means. The Explanation to Section 120A categorically notes that whether or not the illegal act is the ultimate object of the agreement, or is incidental to it, is completely immaterial. In Pratapbhai Hamirbhai Solanki v. State of Gujarat, (2013) 1 SCC 613, the Supreme Court had observed as follows:

*“23. In the said case it has been highlighted that in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.”* (emphasis supplied)

34. In Ram Narayan Popli v. CBI, (2003) 3 SCC 641, the Supreme Court, while dealing with the question of conspiracy, laid down as follows:

*“342. ...The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime is designed to curb immoderate power to do mischief*

*which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. For an offence punishable under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.”*

(emphasis supplied)

35. Therefore, in order to contend the application of criminal conspiracy under Section 120-B and for an indictable offence to be accomplished, there is no requirement for an overt act to be done in furtherance of the conspiracy. It is the common design which gains utmost importance, and the conspiracy is held to be continued and renewed with regard to all its members wherever and whenever any member of the conspiracy acts in furtherance of this common design. There is also emphasis which is placed on the encouragement and support which co-conspirators render to such

enterprises because in the absence of the same, accomplishing such a common design would otherwise be impossible. Furthermore, in order to discern the complicity of the accused, one needs to examine the circumstances before, during and after the occurrence.

36. With regard to the submission that if there appears to be reasonable grounds that the accused has committed an offence which is punishable with death or life imprisonment, then there is a bar imposed by Section 437(1) Cr.P.C on granting of bail, this Court states that the case of Gurcharan Singh (supra) also acknowledges that it is the Court which has the last say on whether there exists any reasonable grounds for believing that the accused is guilty of committing the said offence. However, it is for the Courts to bear in mind that the judicial discretion in granting bail is to be exercised in a such a manner which ensures that the liberty of an individual is not unnecessarily and unduly abridged, and that at the same time, the cause of justice does not suffer. In Gurcharan Singh (supra), the Supreme Court observed as under :

*“19. Section 437, Cr.P.C. deals, inter alia with two stages during the initial period of the investigation of a non-bailable offence. Even the officer incharge of the police station may, by recording his reasons in writing, release a person accused of or suspected of the commission of any non-bailable offence provided there are no reasonable grounds for believing that the accused has committed a non-bailable offence. Quick arrests by the police may be necessary when there are sufficient materials for the accusation or even for suspicion. When such an accused is produced before the Court, the Court has a discretion to grant bail in all non-bailable cases except those punishable with death or imprisonment for life if there appear to be*

*reasons to believe that he has been guilty of such offences. The Courts over-see the action of the police and exercise judicial discretion in granting bail always bearing in mind that the liberty of an individual is not unnecessarily and unduly abridged and at the same time the cause of justice does not suffer. After the Court releases a person on bail under sub-section (1) or sub-section (2) of Section 437, Cr.P.C. it may direct him to be arrested again when it considers necessary so to do. This will be also in exercise of its judicial discretion on valid grounds.”*

37. The Supreme Court has also held that, *inter alia*, the circumstances which are peculiar to the accused should also be a factor that must be taken into consideration while granting or refusing bail. There should, further, exist reasonable grounds for the Court to believe that there exists a genuine case against the accused. In Prahlad Singh Bhati v. NCT, Delhi, (2001) 4 SCC 280, it had been observed by the Supreme Court as follows:

*“8. ...While granting the bail, the Court has to keep in mind the nature of the accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or the State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words ‘reasonable grounds for believing’ instead of ‘the evidence’ which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have*

*evidence establishing the guilt of the accused beyond reasonable doubt”.*

38. A perusal of the material on record has revealed to the Court that the Petitioner has been clearly identified on multiple CCTV footages, carrying a sword and instigating the crowd. The clinching evidence that tilts this Court towards prolonging the incarceration of the Petitioner is that the weapon which is being carried by the Petitioner is capable of causing grievous injuries and/or death, and is *prima facie* a dangerous weapon. The argument of the Counsel for the Petitioner that the sword being carried by the Petitioner was merely for self-defence of the Petitioner in a bid to protect himself and his family does not hold any water as the video footage places the Petitioner 1.6 kilometres away from his residence and does not reveal any immediate impending harm to the Petitioner.

39. Furthermore, the Petitioner does not satisfy the ingredients to claim bail on ground of parity with the co-accused of the Petitioner who have been enlarged on bail *vide* Orders in Bail Appln. 1360/2021 dated 24.05.2021, and Bail Appln. 3550/2021 dated 16.02.2021, and Bail Appln. Nos. 774/2021, 2411/2021, 1882/2021, 2487/2021, 2775/2021 dated 03.09.2021 as, unlike the Petitioner herein, none of the co-accused have been caught with a dangerous weapon capable of inflicting grievous injuries and/or even causing death which indicate that there was in existence a design to commit an offence perpetrating the offences mentioned in FIR No. 60/2020.

40. In Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446, while dealing with individual liberty and cry of the society for justice, the Supreme Court has observed as under:

*"18. It is also to be kept in mind that individual liberty*

*cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilised milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organised society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires."*

41. The riots which shook the National Capital of the country in February 2020 evidently did not take place in a spur of the moment, and the conduct of the protestors who are present in the video footage which has been placed on record by the prosecution visibly portrays that it was a calculated attempt to dislocate the functioning of the Government as well as to disrupt the normal life of the people in the city. The systematic disconnection and destruction of the CCTV cameras also confirms the existence of a pre-planned and pre-meditated conspiracy to disturb law and order in the city. This is also evident from the fact that innumerable rioters ruthlessly descended with sticks, *dandas*, bats etc. upon a hopelessly outnumbered cohort of police officials.

42. This Court is of the opinion that even though the Petitioner cannot be seen at the Scene of Crime, he clearly was a part of the mob for the sole reason that the Petitioner had consciously travelled 1.6 kms away from his neighbourhood with a sword which could only be used to incite violence and

inflict damage. This Court has previously opined on the importance of personal liberty in a democratic polity, but it is to be categorically noted that individual liberty cannot be misused in a manner that threatens the very fabric of civilised society by attempting to destabilise it and cause hurt to other persons. In light of this, the footage of the Petitioner with the sword is quite egregious, and is therefore sufficient to keep the Petitioner in custody.

43. In view of the facts and circumstances of the cases, without commenting on the merits of the matter, this Court is of the opinion that the Petitioner is not to be granted bail.

44. This bail application is, therefore, dismissed, along with the pending application(s), if any

45. It is made clear that the observations made in this Order are only for the purpose of denial of bail and cannot be taken into consideration during the trial.

**SUBRAMONIUM PRASAD, J.**

**SEPTEMBER 27, 2021**

*Rahul*

नात्यमेव जयते