

DLNE010005572021



**IN THE COURT OF SH. PULASTYA PRAMACHALA  
ADDITIONAL SESSIONS JUDGE-03,  
NORTH-EAST DISTRICT  
KARKARDOOMA COURTS: DELHI**

**CNR No. DLNE01-000557-2021  
Sessions Case No. 70/21  
FIR No. 91/20  
PS Dayalpur  
U/s 147/148/149/153-A/505/436/307/120-B/34 IPC  
& 27/30 Arms Act**

**In the matter of: -**

**STATE**

**Versus**

- 1. SH. TANVEER MALIK**  
S/o. Sh. Rajuddin,  
R/o. H.No. A-1/94, Nehru Vihar, Delhi.
- 2. MOHD. TAHIR HUSSAIN**  
S/o. Sh. Kallan Saifi,  
R/o. H.No. E-7, Khajuri Khas,  
Main Karawal Nagar Road, Delhi.
- 3. SH. GULFAM @ VIP**  
S/o. Sh. Shabbir Ahmed,  
R/o. H.No. A-1/1, Nehru Vihar, Delhi.
- 4. SH. NAZIM**  
S/o. Sh. Azeem,  
R/o. H.No. 1378, Gali No.15,  
Nala Road, Mustafabad, Delhi.

**5. SH. KASIM**

S/o. Sh. Azeem,  
R/o. H.No. 1378, Gali No.15,  
Nala Road, Mustafabad, Delhi.

**6. SH. SHAH ALAM**

S/o. Sh. Kallan Saifi,  
R/o. H.No. A-1/112, Gali No.3,  
Nehru Vihar, Delhi.

13.10.2022

**ORDER ON THE POINT OF CHARGE**

Vide this order, I shall decide the question of charges to be framed against accused Tanvir Malik, Mohd. Tahir Hussain, Gulfam @ VIP, Nazim, Kasim and Shah Alam.

1. Brief facts of the present case are that, FIR was registered on 02.03.2020, on receipt of information vide GD No.163-A, dated 25.02.2022 at PS Dayalpur, from Shushrut Trauma Center, Delhi, regarding fire arm injury to one Sh. Ajay Jha, S/o. Sh. Pramod, R/o. H.No. E-460/19, Khajuri Khas, Delhi, near Lakhpat School, Chand Bagh, Delhi. The injured was admitted to Shushrut Trauma Center, Civil Line, by his brother Manoj, vide MLC No. 1970/2020. On receipt of this GD, ASI Hukam Singh along with Ct. Ankit reached aforesaid hospital and obtained MLC of injured, wherein doctor opined that "*A/H/O Fire arms injury over (R) arm near Chand Bagh Khajoori Khas around half an hour.*" ASI Hukam Singh could not record statement of injured at that time. FIR was registered for offences punishable under Section 147/148/149/ 436/307/34 IPC on the basis of aforesaid GD entry.

2. Subsequently, ASI Hukam Singh examined injured Ajay Kumar Jha, wherein injured stated that when on 25.02.2020 at about 4pm, he reached near house of accused Tahir Hussain while going towards Chand Bagh, he saw a number of persons present on the terrace of house of Tahir Hussain, who were firing gunshots and pelting petrol bombs and stones on the nearby houses. Tahir Hussain and his brother Shah Alam along with other companions, were pelting stones and throwing petrol bombs on the houses of Hindus. They were also firing occasionally. The mob present there was raising religious slogans. Some boys saw Ajay and started pelting stones on him. In the meantime, one boy namely Gulfam @ VIP (a local resident) standing downstairs of the house of Tahir, fired at Ajay, which injured him on his shoulder and chest. Ajay knew him. Ajay had identified and he named some persons from that mob, who were Tahir Hussain, Shah Alam, Tanveer, Nazeem and Kasim. He also stated that due to pain he did not give his statement on that day.
3. During further investigation, site plan was prepared and stones, bottles, gulel, mobile phones, DVR etc. were seized. Various articles were seized from the house of Tahir Hussain, which included stones and materials to prepare petrol bombs. IO examined several other witnesses and arrested accused Tanvir Malik, Gulfam @ VIP, Nazim, Kasim and Shah Alam on 30.04.2020 and accused Mohd. Tahir Hussain on 06.05.2020.
4. After completion of investigation, on 28.07.2020, a chargesheet

was prepared by IO/SI Kuldeep Bhati against six accused persons namely Tahir Hussain, Tanvir Malik, Gulfam @ VIP, Nazim, Kasim and Shah Alam for offences punishable under Section 147/148/149/153-A/505/436/307/120-B/34 IPC & 27/30 Arms Act and was filed before Duty ACMM (North East), Delhi. On 18.12.2020, ld. CMM (North East), Delhi, took cognizance of offences punishable under Section 147/148/149/307/436/120-B IPC. Vide this order, ld. CMM (N/E) declined to take cognizance of offences punishable under Section 153-A IPC for want of sanction under Section 196 Cr.P.C. Thereafter, this case was committed to the sessions court vide order dated 14.01.2021.

5. Thereafter, on 06.10.2021, first supplementary chargesheet was filed by IO/SI Manoj Kumar, before 2<sup>nd</sup> Link MM, North East, Delhi, against aforesaid accused persons, for offences punishable under Section 147/148/149/153-A/188/505/307/436/120B/34 IPC and 27/30 Arms Act. Sanction u/s 196 Cr.P.C. and complaint u/s 195 Cr.P.C. were also filed. Thereafter, on 21.10.2021, said supplementary chargesheet was committed to the sessions court.
6. I have heard ld. Special PP and ld. defence counsels on the point of charge. I have perused the entire material on the record, including written submissions.

### **Written Arguments of Defence and Prosecution**

7. In his written submissions, **Sh. Salim Malik**, ld. counsel for accused Tanvir Malik and Gulfam @ VIP, submitted that neither is there any cell ID location to show location of both accused at the time of alleged incident, nor CDR reflects connectivity of

both these accused with other accused in the present case or any other riot cases. He further submitted that Ct. Saudan, Ct. Pawan, Sh. Harish and Sh. Prashant, are not reliable witnesses, who are cited as common witnesses in the present case as well as in other riot cases. He further submitted that witnesses Ct. Saudan and Ct. Pawan had given statement on 03.03.2020 regarding injury to one Prince Bansal, who is not cited as witness in the present case, but neither they made any DD entry, nor made any complaint in respect of incident of the present case. Ld. counsel further submitted that statement of witnesses Sh. Harish Chandra and Sh. Prashant Kumar, were recorded at a later stage i.e. on 15.06.2020. He further submitted that identification of a few select persons in a large mob by a witness, in the absence of TIP, cannot inspire the confidence of court. Ld. counsel further submitted that there must be strong suspicion, which may lead the court to think that there is ground for presuming that the accused has committed an offence. Ld. counsel further submitted that neither accused persons have been specifically named in the FIR, nor they have been assigned any specific role. He further submitted that no recovery has been shown from both these accused persons. He further submitted that there is no CCTV footage/video-clip of the incident(s) in question available on the record, to confirm the presence of accused persons at the spot/SOC at the relevant time. It was also argued that as far as CDR is concerned, accused persons are residents of the same area/locality and it is quite natural, if their CDR locations are found in the said area. Ld. counsel further submitted that though

at the stage of charge, scrutiny of material is not permissible, but if two views are possible and the court is satisfied that the evidence gives rise to some suspicion, but not grave suspicion against the accused, the court will be within its right to discharge the accused. Suspicion has to be strong grave suspicion leading the court to presume that the accused has committed an offence. Thus, ld. counsel prayed for discharge of accused Tanvir Maik and Gulfam @ VIP.

8. In support of his contentions, **Sh. Salim Malik**, ld. counsel for accused Tanvir Malik and Gulfam @ VIP, relied upon certain case laws, which are as follows: -

- ***Usmangani @ Bhura Abdul Gaffar & Anr. v. State of Gujarat, Crl. Appeal No. 1041/2061, decided on 09.08.2018, by Supreme Court.***
- **Kallu Mal Gupta v. State, 2000 IAD Delhi 107 .**
- **Umar Abdula Sakoor Sorathia v. Intelligence Officer Narcotic Control Bureau”, JT 1999 (5) SC 394.**
- **Sapna Ahuja v. State, 1999 VAD Delhi 407.**
- **Dilawar Balu Kurane v. State of Maharashtra, 2002 (2) SCC 135.**
- **State of Bihar v. Ramesh Singh, 1977 (4) SCC 39.**
- **Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4.**
- **Niranjan Singh K.S. Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76.**
- **Soma Chakravarty v. State through CBI, (2007) 5 SCC403.**
- **P. Vijayan v. State of Kerala and Anr, (2010) 2 SCC 398.**
- **State of Maharashtra v. Priya Sharan Maharaj & Ors. AIR 1997 SC 2041.**

9. In his written submissions, **Sh. Rizwan**, ld. counsel for accused

Mohd. Tahir Hussain submitted that neither investigating agency nor complainant had explained satisfactorily about inordinate delay of 5 days in the registration of FIR. He further submitted that in his complaint, victim Sh. Ajay Kumar Jha has not named accused Tahir Hussain and he named this accused after improving his statement u/s 161 Cr.P.C. with connivance of the investigating agency. Ld. counsel further submitted that there is not even a single video to show involvement of accused either in using petrol bombs, or in any kind of rioting or in destruction of any kind of property. Ld. counsel further submitted that statements of omnipresent public witnesses are same and are identical to each other, as they have been made witnesses in number of other FIRs. Prosecution adopted copy, cut and paste theory, which seems to be forged and manufactured statements, to falsely implicate accused Mohd. Tahir Hussain and which throw a serious doubt on the credibility of their statements. He further submitted that licensed pistol released by accused before the day of incident, is nothing, but a circumstance in nature. He further submitted that there is no concrete evidence against present accused to prove either his involvement in the shooting, or any direct link between his licensed pistol being used and the firing that happened with the victim. Ld. counsel further submitted that licensed pistol was never used by accused to fire at anybody and there is no electronic or any other evidence, to show that licensed pistol was used by accused to cause hurt to anybody. Therefore, applicability of Sections 27 & 30 of Arms Act and Sec. 307 IPC against accused is questionable. Ld.

counsel further submitted that there is no allegation of applicability of Section 436 IPC as prosecution has failed to establish as to who set the fire. He further submitted that credibility of eye witnesses namely Ct. Saudan and Ct. Pawan is also questionable. He further submitted that Section 120-B and 149 IPC are incompatible and cannot be invoked together, especially when there is no evidence produced by the investigating agency to connect accused with the unlawful assembly and conspiracy. He further submitted that police lodged multiple FIRs covering the same offences and the facts, which does not only lead to multiplicity of proceedings, but also causes unnecessary harassment to the accused. Ld. counsel further submitted that accused cannot be subjected to a fresh investigation by the Police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing multiple FIRs, which in any case, is an infringement of the right of accused, guaranteed under Article 20 (3) of the Constitution. Ld. counsel relied upon order dated 07.10.2020 passed in the case of **Irshad Ahmed v. State NCT of Delhi**, by High Court of Delhi and he prayed for discharge of accused Mohd. Tahir Hussain.

10. **Sh. Rizwan**, ld. counsel for accused Mohd. Tahir Hussain, relied upon certain case laws, in support of his contentions, which are as follows: -
  - **Jameer @ Saddam v. State of Karnataka, Crl. Petition No. 100086 of 2018, decided on 23.03.2018 by High Court of Karnataka.**

- **Yogesh @ Sachin Jagdish Josh vs. State of Maharashtra, (2008) 10 SCC 394.**
- **Narender Kumar Vs. State (NCT of Delhi) Criminal Appeal Nos.2066-67 of 2009, decided on 25.05.2012 by Supreme Court.**
- **C. Muniappan and Others vs. State of Tamil Nadu, (2010) 9 SCC 567.**
- **Amitbhai Anilchandra Shah Vs Central Bureau of Investigation and Another, (2013) 6 SCC 348.**
- **TT Antony v. State of Kerala (2001) 6 SCC 181.**
- **Arnab Ranjan Goswami v. Union of India & Ors. 2020 SCC OnLine SC 462.**

11. In his written submissions, **Sh. Dinesh Kumar Tiwari**, ld. counsel for accused Shah Alam, submitted that accused Shah Alam was not present at the spot during the riots and he was present at his house. He further submitted that eyewitness Sh. Pradeep Verma in his statement under Section 161 Cr.P.C. named accused Shah Alam stating that he was throwing stone on crowd. Ld. counsel further submitted that this witness is cited as an eyewitness in several FIRs registered in several police stations on same date, but for different occasions. He further submitted that neither Sh. Pradeep Verma made any PCR call at 100 number, nor did he file any other complaint, hence this witness is not credible in this case. Ld. counsel further submitted that neither there was meeting of minds for criminal conspiracy, nor was there recovery of any weapon from his possession, nor is there allegation of using communal slogan by him, nor the accused was named in the statement of any other witness, hence, offences punishable under Section 307/120-B/153-A IPC as well as 25/27

Arms Act, are not made out against accused Shah Alam, in the present case. Thus, ld. counsel prayed for discharge of accused Shah Alam.

12. Written submission was not filed on behalf of accused Nazim and Kasim. **Sh. Abdul Gaffar**, ld. counsel for accused Nazim and Kasim, made oral arguments adopting the arguments of other defence counsels and argued that these accused persons have been falsely implicated in the case by planting the witnesses.

### **Written Arguments of Prosecution**

13. Per contra, **Sh. D.K. Bhatia**, ld. Special PP submitted that accused Tahir Hussain was the central figure for occurrence of riots in North East Delhi, in February, 2020, right from preparation level till its execution. He further submitted that Tahir Hussain with other conspirators including Khalid Saifi was responsible for financing the protest and riots, which is subject matter of case FIR No. 59/20 under the provisions of UAPA. Ld. Special PP further submitted that accused Tahir Hussain got released his licensed pistol from PS Khajuri Khas on 22.02.2020, just before the commencing of riots, which also smells of a big conspiracy behind these riots. He further submitted that out of 100, accused Mohd. Tahir Hussain could not give account of remaining 14 live cartridges and 22 empty/fired cartridges, as to when and where the same were fired/used. Ld. Special PP further submitted that the aforesaid pistol along with live and fired cartridges had been seized by the SIT, Crime Branch in FIR No. 101/20, PS Khajuri Khas, Delhi. He further submitted that all

these facts indicate a well-designed and pre-planned execution of overt act by accused Mohd. Tahir Hussain. He further stated that house of accused Mohd. Tahir Hussain, was used for committing violence and arson in the area. Ld. Special PP further submitted that offensive materials like stones, bricks and several empty crates of glass bottles and several crates containing glass bottles having some liquid filled in them and their necks stuffed with clothes were recovered from the house of this accused. He further submitted that accused Mohd. Tahir Hussain being the councillor of the area, enjoyed mass base of supporters of his local community, which acted as a man power behind the execution of riots. Ld. Special PP further submitted that this accused controlled the riots as a commander, under whose instructions and supervision the other accused participated in riots and acted as “human weapons”. He further submitted that accused had installed CCTV cameras in his office at the first floor in the same building to keep a check or eye on his employees and visitors. He also submitted that 4 DVRs had been seized and as per the FSL report, there was no recording/footage available after the month of January 2020 in any of the DVRs, meaning thereby they were purposefully kept off. This aspect points to his involvement in hatching the conspiracy of a large scaled riots in collusion with other accused persons.

14. In respect of role of accused Tanvir Malik and Gulfam @ VIP, Id. Special PP submitted that they were spotted as part of mob, which caused the incident of the present case and they were also

seen while firing on the people belonging to different community. In respect of accused Nazim and Kasim, he submitted that they were named as active members of the mob. In respect of accused Shah Alam, he submitted that he is brother of accused Mohd. Tahir Hussain, who was spotted on the terrace of house of accused Mohd. Tahir Hussain along with him and other members of the mob. He further submitted that accused Shah Alam had actively participated in the riots as alleged in the present case.

15. Ld. Special PP further submitted that witnesses i.e. injured Sh. Ajay Kumar Jha, Ct. Pawan and Ct. Saudan, in their statement under Section 161 Cr.P.C. named accused Tahir Hussain, Shah Alam, Gulfam, Tanvir, Nazim and Kasim. Ld. Special PP further submitted that other witnesses namely Sh. Harish Chander, Sh. Prashant Kumar, Sh. Rishab Sharma, Sh. Ashok Kumar and Sh. Priyanka Gaur, have also named accused persons in their respective statements. He further submitted that CDR location of accused show their presence at the scene of crime on 25.02.2020. He further submitted that there are various viral videos which show that accused Mohd. Tahir Hussain was leading the mob from his terrace and was also instigating the rioters to commit riot in the area.

**Appreciation of arguments, facts and law: -**

16. First of all, I shall refer to the provisions dealing with the alleged offences and other relevant offences.
  - Section 141 IPC defines unlawful assembly as assembly of five or more persons with common object to overawe by criminal

force or show of criminal force, any public servant in the exercise of the lawful power of such public servant; or to commit any mischief or other offence etc.

- Section 142 IPC provides that whoever being aware of facts rendering any assembly as an unlawful assembly, initially joins that assembly or continues in it, is said to be a member of unlawful assembly.
- Section 146 IPC defines rioting providing that whenever force or violence is used by unlawful assembly or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.
- Section 148 IPC provides punishment for rioting being armed with a deadly weapon or with any-thing which being used as a weapon, is likely to cause death.
- Section 149 IPC provides liability of each member of unlawful assembly for any offence committed by any member of that assembly in prosecution of the common object of that assembly or within knowledge of members of that assembly to be likely committed in prosecution of that object.
- Section 153-A IPC provides punishment for promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.
- Section 505 IPC provides punishment for statements conducing to public mischief.

- Section 307 IPC provides punishment for attempt to murder.
  - Section 436 IPC provides for punishment for committing mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property.
17. The ingredients of offence defined under Section 120-B IPC were explained by Supreme Court in ***Lennart Schussler v. Director of Enforcement, (1970) 1 SCC 152*** in following manner: -

*“9. It now remains to be seen whether the alleged agreement which A-1 and A-2 arrived at in Stockholm in 1963 and again in Madras in 1965, would, if established, amount to a criminal conspiracy. The first of the offence defined in Section 120-A of the Penal Code which is itself punishable as a substantive offence is the very agreement between two or more persons to do or cause to be done an illegal act or a legal act by illegal means subject however to the proviso that where the agreement is not an agreement to commit an offence the agreement does not amount to a conspiracy unless it is followed up by an overt act done by one or more persons in pursuance of such an agreement. There must be a meeting of minds in the doing of the illegal act or the doing of a legal act by illegal means. If in the furtherance of the conspiracy certain persons are induced to do an unlawful act without the knowledge of the conspiracy or the plot they cannot be held to be conspirators, though they may be guilty of an offence pertaining to the specific unlawful act. The offence of conspiracy is complete when two or more conspirators have agreed to do or*

*cause to be done an act which is itself an offence, in which case no overt act need be established. It is also clear that an agreement to do an illegal act which amounts to a conspiracy will continue as long as the members of the conspiracy remain in agreement and as long as they are acting in accord and in furtherance of the object for which they entered into the agreement.”*

18. Now, I shall deal with the arguments related to credibility of eye witnesses in the case. My attention was taken to an observation made by hon’ble High Court of Delhi, passed in Bail Application 2696/20 dt. 07.10.2020. Vide this order accused Irshad was granted bail in FIR 80/20 P.S. Dayalpur. While granting bail, the court made following observations-:

“As per the statement of Constable Pawan and Constable Ankit (both are eye witnesses and were present at the spot), they had identified the petitioner and other co accused. However, they have not made any complaint on the date of incident, i.e. 25.02.2020, whereas the FIR was lodged on 28.02.2020. Thus, the said witnesses seem to be planted one.”

Similar observations were made by High Court while passing bail orders in this case. The defence counsels used same analogy to discredit the statements of eye witnesses of this case, submitting that their statements were recorded much later in time, from incident and they are planted as witnesses.

19. However, in the same order hon’ble High Court also observed that the trial court should not get influenced by the observations made by that court while passing the order. This principle is well

settled that any observations made in order on bail, is not treated as a concrete and final finding on facts in the case. Legal principles if explained, can only act as precedent. First of all, just because statements of the eye witnesses were recorded in the case at belated stage, without affording an opportunity to the prosecution and the witnesses to explain the reasons, court cannot declare them to be unreliable. Secondly, one must not forget that at the relevant time riots continued in Delhi for some days. Delhi Police and other security forces were pressed into service to stop the riots. Hence, focus of police was more on the aspect of controlling the riots rather than start investigating each incident of the riots. At a time of panic, everything cannot be expected to happen in very streamlined manner. Even the victims and witnesses did not have courage to make complaints against anyone. They were more concerned about their safety. Thereafter, people fought against the pandemic of Covid and there was complete lockdown. Delay in registration of FIR or recording of witnesses in a case, thus, may be due to any such reasons and requires scrutiny during the trial. At this stage, therefore, this court cannot raise any presumption against veracity of the statement of the cited witnesses on account of delay.

20. Defence has recognised the settled principles of law for framing of the charge, which have been mentioned herein above, while discussing their arguments. The test is to see if strong suspicion arises against the accused persons named herein for their involvement in the crime alleged by the prosecution.

21. Arguments were made to say that for same incident several FIRs were lodged by police including present case and almost same set of witnesses have been made eye witnesses in all these cases. According to defence, this scenario casts serious doubt over the credibility of the prosecution case. However, there cannot be a fixed criteria for witnessing a particular number of the incidents. Therefore, if some witnesses are common to several cases, that reason in itself cannot be sufficient to cast aspersions over their credibility. If in the course of indulging into riotous acts, different incidents of injury to different persons or damage to different properties, were caused by same mob comprising of more than five persons, in pursuance to the common object of the mob, then Section 149 IPC comes into play, to make every member of this mob liable for such incidents. Therefore, if some witnesses identified the accused persons in this mob and gave account of actions of the accused persons in more than one case, no exception can be taken for the same. As already observed, their credibility cannot be looked into at this stage, and same shall be subject matter of test during the trial. The commonality of witnesses in several cases, is natural when several incidents took place at and around same place and at close interval of time.
22. Another argument based of locations of mobile phones allegedly being used by the accused persons at the relevant time, does not have much scope at this stage. I say so because, this piece of evidence in itself is not sufficient to either frame the charges or to discharge any accused. Such evidence is for the purpose of

corroboration. Description of locations of mobile phones will require to be explained by the person having knowledge of the working of this software. Prosecution and defence will have to prove use and non-use of the given mobile numbers.

23. As far as allegation of conspiracy is concerned, the prosecution itself has referred to FIR 59/20 Crime branch, wherein the conspiracy behind start of riots in Delhi, was the subject matter of investigation. There is concept of an Umbrella Conspiracy being the larger conspiracy and several smaller conspiracies under the larger conspiracy. The objective of Umbrella Conspiracy may be wider than the objective of smaller conspiracy. Planning to ignite a communal riot and taking steps for prosecution of such plan, could be Umbrella Conspiracy and participants to this conspiracy may or may not be part of each smaller conspiracies and vice versa. In pursuance to the objective of the larger conspiracy, when smaller plans are made and executed to cause incident of riot at a particular place or area involving some other persons (perhaps including local persons), this becomes a case of smaller conspiracy under Umbrella Conspiracy. Therefore, FIR 59/20 as referred herein above is to be treated to cover the aspect of Umbrella Conspiracy. The allegations and evidence in this case, have to be assessed to find out existence of smaller conspiracy peculiar to incident covered in this case.
24. Now if I look into the statements of the witnesses, then statement of injured Ajay reveals that when on 25.02.2020 at about 4pm, he

reached near house of accused Tahir Hussain while going towards Chand Bagh, he saw a number of persons present on the terrace of house of Tahir Hussain, who were firing gunshots and pelting petrol bombs and stones on the nearby houses. Tahir Hussain and his brother Shah Alam along with other companions, were pelting stones and throwing petrol bombs on the houses of Hindus. They were also firing occasionally. The mob present there was raising religious slogans. Some boys saw Ajay and started pelting stones on him. In the meantime, one boy namely Gulfam @ VIP (a local resident) standing downstairs of the house of Tahir, fired at Ajay, which injured him on his shoulder and chest. Ajay knew him. Ajay had identified and he named some persons from that mob, who were Tahir Hussain, Shah Alam, Tanveer, Nazeem and Kasim. He also stated that due to pain he did not give his statement on that day.

25. Other witnesses namely Mukesh Jha, Jai Shankar and Manoj Jha also reached near house of Tahir Hussain shortly after aforesaid incident and they also saw mob on the terrace of house of Tahir Hussain indulging into firing and pelting stones as well as petrol bombs. They met Ajay and Manoj took him for medical assistance.
26. Ct. Pawan and Ct. Saudan were present on duty to control the riots at Karawal Nagar road near Lakhpat school. They also saw mob on the terrace of house of Tahir Hussain indulging into pelting stones and petrol bombs on the houses of Hindus and also firing the gunshots. They saw Tahir and his brother Shah Alam

on the terrace. They also saw incident of firing at a boy by Gulfam near Lakhpat school and they took that boy into another street. They came to know name of that boy as Prince. These two witnesses had also identified other accused persons of this case in that mob. They had heard shouting of mob before firing at Prince, in the terms of “Hindu hai maro salon ko”. Timing of seeing aforesaid mob and gun fire at Prince was near and around the time of injury to Ajay, hence, their statements assume importance in this case also.

27. Other witnesses namely Harish Chander and Prashant Kumar were local residents. They saw Tanveer and Gulfam firing blindly with pistol alike weapon. They also saw another person Ajay Goswami being hit by bullet shot, who was known to them. They also stated that two more boys were hit at that place during same time period and subsequently they came to know their names as Prince and Ajay Jha. They had also seen Tahir and his companions on the terrace of his house, taking charge of the riot. Witnesses namely Rishabh, Amit, BudhPal, Ekansh etc had seen mob assembled at the house of Tahir Hussain and indulging into firing and pelting stones and petrol bombs.
28. Witness Ashok Kumar saw Tahir Hussain among the mob positioned on the road downstairs the house of Tahir. The mob was pelting stones. Tahir was inciting the mob with religious slogans. Gulfam was also seen standing along with Tahir. Mob was also present on the terrace of house of Tahir and they also indulged into same riotous acts. He had seen Tahir moving in and

out of his house.

29. From the statements of above-mentioned witnesses, presence of all named accused in the mob is well reflected. It is also well apparent that this mob continuously indulged into firing of gunshots, pelting of stones and petrol bombs towards Hindus and houses of Hindus. These acts of the mob make it clear that their objective was to harm Hindus in their body and property to maximum possible extent. Indiscriminate firing at others makes it clear that this mob consciously wanted to even kill Hindus. It cannot be said that accused persons were oblivious of such objective of this mob. Apparently, this was an unlawful assembly, acting in pursuance of aforesaid object. Tahir Hussain or for that matter, any other accused are not supposed to be static in their movement. Different witnesses hence, saw them in different manner. Though role of Gulfam, Tanveer, Tahir and Shah Alam have been mentioned by some witnesses, as seen by them, but in such cases, by virtue of Section 149 IPC description of specific role of every accused is not required. Participating and being member of this mob is sufficient, to make all named accused liable for the deeds of this mob.
30. The statements of witnesses also make it clear that because of indiscriminate as well as pointed firing by members of this mob, several persons were hit by bullet. Ajay Jha was one of them. Therefore, if police are prosecuting accused persons separately for separate incidents, it cannot be said that they are being prosecuted for same facts and for same cause of action in

different cases. Accused persons have to be prosecuted for every criminal act and incident, which took place because of their indulging into riot with a particular common object.

31. There was no need of TIP as the witnesses named accused persons in their statements. TIP is required only when accused is unknown to the witness. Absence of video of the incident in question or absence of name of accused in the FIR or absence of recovery of actual weapon of the offence, do not make the case of prosecution unbelievable. Significance of such omissions, depends upon facts of each case and that too at the final stage of the case. Actual weapon used for firing in this case could not be recovered. IO of other case had seized one pistol at the instance of Gulfam, in FIR No.101/20 of same PS. This fact cannot wash away the evidence of witnesses, who stated about firing of gunshots by Gulfam and Tanveer. Hence, non-recovery of actual weapon cannot be a ground to discard the case of prosecution.
32. I do not find any clash or rivalry between ingredients of Section 120B and Section 149 IPC. The facts and evidence of this case show that a number of persons assembled at the house of Tahir Hussain. Some of them were equipped with firing weapons. Petrol bombs were also arranged, by accumulating the required materials in the house of Tahir Hussain. All these things were done to target Hindus. Every member of the mob assembled there, participated in achieving and encouraging others, to target Hindus. Such conducts of the members of this mob, show that they were acting out of meeting of their mind and with a clear-cut

objective in mind, to kill and harm Hindus. It is well recognized by the courts that there remain least chances of getting direct evidence of conspiracy. Therefore, the court raises inferences on the basis of conduct of the accused persons and probable reason behind such conduct. On the basis of same criteria, it can be said that this mob acted out of a criminal conspiracy and hence, all accused are liable to be tried for hatching criminal conspiracy to indulge into riot and kill Hindus and harm properties of Hindus and consequent to such conspiracy firing and causing gunshot injury to Ajay Jha.

33. Section 153A(1)(b) IPC, shows that if any person does such act, which is prejudicial to the maintenance of harmony between different religious groups or communities and which disturbs or is likely to disturb the public tranquillity, he becomes liable to be punished under this provision. In this case, all accused indulged into targeting Hindus and their such acts were apparently prejudicial to the harmony between communities of Muslims and Hindus. They did disturb the public tranquillity as well. Therefore, all named accused are also liable under this provision.
34. Thus, on the basis of above-mentioned description of evidence and discussion, I find all accused persons liable to be tried for offence punishable u/s 120B IPC r/with Sections 147, 148, 153A, 302 IPC. They are also liable to be tried for offences punishable u/s 147, 148, 307 r/with 120B and 149IPC. They are also liable to be tried for offences punishable u/s 153A r/with 120B and 149 IPC. Accused Gulfam and Tanveer are also liable to be tried for

offence punishable u/s 27 Arms Act. At present I could not find statement of witness related to pronouncing the order passed u/s 144 Cr.P.C., hence, decision regarding such charge is deferred, awaiting clarification from IO.

35. However, on the record I do not find specific allegation, description or evidence related to any property as covered within description given in Section 436IPC, with clear indication of such property being set ablaze by this mob in the present case. Similarly, I do not find any evidence in support of allegation of offence under Section 505 IPC. Hence, all accused are discharged for offences punishable u/s 436 and 505 IPC.

Ordered accordingly.

Announced in the open court (PULASTYA PRAMACHALA)  
today on 13.10.2022 ASJ-03(North East)  
(This order contains 24 pages) Karkardooma Courts/Delhi