

**IN THE COURT OF SH. SONU AGNIHOTRI, ADDITIONAL
SESSIONS JUDGE-03, SAKET COURTS, NEW DELHI**

**Bail application No. 268/2023
State Vs. Asif Mohd. Khan
FIR No. 09/2023
U/sec 186/353/341/153-A IPC
PS Shaheen Bagh**

28.01.2023

This is bail application U/sec 439 Cr. P. C moved on behalf of accused/applicant Asif Mohd. Khan.

Present : Sh. Nischal Singh, Ld. Addl. (Sub.) PP for State.
Sh. Ramesh Gupta, Senior Advocate with Sh. Shailendra Singh, counsel for accused.
IO SI Ashish Sharma, PS Shaheen Bagh is present.
Inspector Devender Singh, SHO PS Shaheen Bagh and
Inspector Vinay Kumar, ATO PS Shaheen Bagh are present.

Reply to bail application of accused alongwith previous involvement report of accused, copy of bail order dated 25.01.2023 and transcription of videos filed by IO. Perused.

Arguments on bail application of accused addressed by respective counsels heard.

During course of arguments, copy of judgment in CA No. 61/2018, copy of local police certificate issued by Additional DCP, South-East and certain judgments filed by counsels for accused.

During course of arguments, police file was taken from IO and perused and thereafter returned.

IO is directed to file updated status of cases against accused /applicant during course of the day.

Be put up for order on bail application of accused at 05:00 PM today itself.

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At 05:00 PM

Present: None.

Updated previous involvement report of accused was filed by IO during course of the day which shows that wrong involvement / non updated involvement report of accused has been filed before this court.

During course of arguments, counsels for accused submitted that Section 153 A IPC is not made out against accused in present case as per opinion of concerned Ld. Area MM in Bail order dated 25.01.2023. It was submitted that present false case was lodged against accused in order to detain him in custody as accused takes up social issues against police and police is adamant to keep accused in custody on one pretext or the other. It was submitted that prima facie no offence U/sec 353 IPC is made out against accused as for offence U/sec 353 IPC, assault or use of criminal force is a must which is absent in facts and circumstances of present case. It was submitted that rest of offences i.e. offences U/sec 186/341 IPC are bailable. It was submitted that accused is in custody in present case since last more than three weeks. It was submitted that no compliance of provisions of Section 41 and 41 A Cr. P. C was done by police in

present case. It was submitted that data of pending cases filed by IO with reply to bail application of accused is not correct and that only three cases at present are pending against accused and in rest of cases, accused has either been acquitted or discharged. It was submitted that investigation in the matter is since complete and no practical purpose shall be served by keeping accused in custody. It was submitted that accused is ready to abide by any terms and conditions imposed by this court while granting bail to accused. It was submitted that in these circumstances, accused may be enlarged on bail.

Judgments in cases titled as “***Sheo Charan Vs. State of U. P. MANU/ UP/1338 /1985, P. V. Mathai Vs. The State of Kerala and Ors MANU /KE/3170 /2022, Durgacharan Naik and Ors Vs. State of Orissa MANU /SC/0078/1966 and Manik Taneja Vs. State of Karnataka MANU/SC/0056/2015***” were filed by defence counsels in order to support their contentions that assault or use of criminal force is necessary to attract Section 353 IPC and that in this case, there is no assault or use of criminal force and as such, facts of present case do not attract Section 353 IPC which is sole non bailable offence as per police.

Counsels for accused further filed judgments in cases titled as “***Arnesh Kumar Vs. State of Bihar MANU /SC/0559/2014 and Satender Kumar Antil Vs. Central Bureau of Investigation and Ors MANU /SC/0851/2022***” to stress the point that no notice U/sec 41 A Cr. P. C has been served by police on accused before arrest of accused which is a must as all the offences alleged to have been committed by accused are punishable with imprisonment of less than

07 years and that contempt of court has been committed by police officials in present case for which reference should be sent to Hon'ble High Court of Delhi in terms of these judgments.

Ld. Addl. (Sub.) PP for State on the other hand opposed grant of bail to accused and submitted that it may be that previous involvement report of accused has been filed by police without updation but that conduct of accused has been consistent in attacking Government officials on duty and as much as three recent cases including present one concerning obstruction of public servants in discharge of their official duties are pending against accused. It was submitted that attack on law enforcers is a depreciable act and accused should not be granted bail. It was submitted that accused stopped way of complainant Ct. Dharampal while he was going from place of occurrence without his consent and uttered objectionable words and tried to incite public at large and hence can be said to have used criminal force against complainant squarely bringing act of accused within purview of Section 353 IPC which is non bailable offence. It was submitted that Section 41 (1) (e) Cr. P. C provides for arrest of a person without a warrant or order from Magistrate and as such, protection of Section 41 A Cr. P. C is not available to accused. It was submitted that recently accused was released on bail but he misused his liberty to commit further offence and in these circumstances, accused should not be released on bail. Grant of bail to accused is strongly opposed.

During course of arguments, videos of accused concerning present case and earlier cases played before this court by

IO on his mobile and laptop. These videos were also shown to counsels for accused.

Conduct of accused as is coming in the videos shown to the court prima facie shows that accused has no respect for law of the land and he considers himself to be above law. The manner in which he is seen speaking with police officials is depreciable. Whatever cause may be available to a person against Government Officials, he is not expected to take law unto in his own hands and misbehave and mishandle Government Officials who are discharging their official duties.

Now coming to the fact that whether allegations against accused prima facie attract provisions of Section 353 IPC or not, I am of the view that as per averments in FIR, accused stopped way of complainant Ct. Dharampal while he was going from place of occurrence without his consent, threatened him, used objectionable words and tried to incite public at large and hence can be said to have used criminal force against complainant squarely bringing act of accused within purview of Section 353 IPC. Hence, judgments filed by counsels for accused are not applicable in facts and circumstances of present case.

Section 41 (1) (e) Cr. P. C provides that any police officer may without an order from a Magistrate and without a warrant, arrest any person who obstructs a police officers while in execution of his duty. Section 41 A Cr. P. C is applicable to cases where arrest of accused is not required under provisions of Section 41 (1) Cr. P. C. When Section 41 (1) (e) Cr. P. C provides arrest of a person without

warrant who obstructs a police officer while in execution of his duty, Section 41 A Cr. P. C is as such not applicable in facts and circumstances of present case. Hence, judgments filed by counsels for accused are not applicable to facts and circumstances of present case. Otherwise also, during course of arguments, police file was taken from IO and perused which showed that reasons of arrest of accused in standard performa have been mentioned and one additional ground has been mentioned in the same which are justified as accused recently being released on bail in FIR No. 419/2022, PS Shaheen Bagh committed offences in present FIR.

If law enforcers are attacked /abused and accused are released on bail, it will send wrong signal in society. To my mind, in these circumstances, bail application of accused **Asif Mohammad Khan** does not deserve to be allowed and is accordingly dismissed.

Issue show cause notice to IO SI Ashish Sharma and SHO PS Shaheen Bagh U/sec 177 IPC to show cause as to why they should not be convicted and punished for furnishing false information to this court regarding previous involvement of accused through DCP, South-East for 10.02.2023.

Let copy of order be sent to SHO PS Shaheen Bagh for information.

Let copy of order be given dasti to counsels for accused and IO by Bail and Filing Section.

(Sonu Agnihotri)
ASJ-03 (South East)
Saket Courts, Delhi/28.01.2023