

DLNE010009352021



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

CNR No. DLNE01-000935-2021
Sessions Case No. 121/2021
State v. Rafat etc.
FIR No. 136/2020
PS Dayalpur
U/s 147/148/149/188/427/435/436/120-B/34 IPC

**In the matter of: -
STATE**

Versus

1. Rafat S/o. Sh. Shakir, R/o. F-35, Gali No.1, Chand Bagh, Delhi. Also At: - Village Udaypur, PS Wazirganj, Tehsil Bisoli, Distt. Badaun, U.P.	2. Imran S/o. Sh. Sharif, R/o. F-Block, Gali No.13, Chand Bagh, Delhi. Also At: - Mohalla Bhuspura, near Chand Bagh Majar, Aligarh, U.P.	3. Dildar S/o. Sh. Shakur, R/o.F-52,Gali No.2, Chand Bagh, Delhi. Also At: - Mohalla Bhuspura Panwadi, near Chand Bagh Majar, Aligarh, U.P.
4. Faraz S/o. Sh. Atik-ur- Rehman, R/o. F-35, Gali No.1, Chand Bagh, Delhi.	5. Ayub S/o. Sh. Ali Sher, R/o. H.No. F/66, Gali No.2. 24 Foota Road, Chand Bagh, New Delhi.	6. Saleem Malik @ Munna S/o. Sh. Ajmeri Khan, R/o. H.No.F/80A, Gali No.3, Chand

CNR No. DLNE01-000935-2021
State v. Rafat etc.
SC No.121/2021, FIR No. 136/2020, PS Dayalpur
Order on Charge dated 24.07.2023

		Bagh, New Delhi.
7. Salim Khan S/o. Sh. Bunde Khan, R/o. H.No.F/75, Gali No.3, Chand Bagh, New Delhi.	8. Arif S/o. Sh. Mustaq, R/o. H.No.F/80, Gali No.3, Chand Bagh, New Delhi.	9. Mohd. Mansoor S/o. Mohd. Maqsood, R/o. H.No.F/460, Gali No.16, Chand Bagh, New Delhi.
10. Shahanwaz S/o. Sh. Qadir, R/o. H.No.E/283, Gali No.1, Chand Bagh, New Delhi.	11. Sadiq S/o. Sh. Ramjaan, R/o. H.No.F/42, Gali No.2, Chand Bagh, New Delhi.	12. Shadab S/o. Sh. Shamshad Ahmed, R/o. H.No.F/46, Gali No.7, Jagatpuri, New Delhi.
13. Irshad Ali S/o. Sh. Hasmuddin, R/o. H.No.437, Gali No.6, New Mustafabad, N.D.	14. Mansoor S/o. Mohd. Saleem, R/o. H.No.F/353, Gali No.12, Chand Bagh, New Delhi.	15. Kasif S/o. Shakir Ali, R/o. H.No.217, Gali No.7, Nehru Vihar, New Delhi.
16. Wasif S/o. Shakir Ali, R/o. H.No.217, Gali No.7, Nehru Vihar, New Delhi.	17. Shamim S/o. Sh. Azmatullah, R/o. H.No.887, Gali No.11, New Mustafabad, N.D.	18. Mohd. Aftab S/o. Sh. Ashfaq, R/o. H.No.E-232, Gali No.9, Chand Bagh, New Delhi.
19. Khalid S/o. Hamid Ali, R/o. H.No.412, Gali No.6, New Mustafabad, N.D.	20. Salman S/o. Sh. Azimuddin, R/o. H.No.E/229, Gali No.9, Chand Bagh, New Delhi.	21. Shibu Khan S/o. Rakib Khan, R/o. H.No.1070, Gali No.12, New Mustafabad, N.D.
22. Hamid S/o. Abdul Razzak, R/o. H.No.339, Gali No.5-1/2, Near Bharat Dairy, New Mustafabad, New Delhi.	23. Zuber Alam S/o. Sh. Zamat Ali, R/o. Hotel Madina at 25 Foota Road, Chand Bagh, New Delhi.	24. Athar Khan S/o. Afzal Khan, R/o. C/31, Gali No.2, Chand Bagh, New Delhi.

CNR No. DLNE01-000935-2021
State v. Rafat etc.
SC No.121/2021, FIR No. 136/2020, PS Dayalpur
Order on Charge dated 24.07.2023

25. Shakeel Ahmed S/o. Shaukat Ali, R/o. E/336, Gali No.6, Chand Bagh, New Delhi.	26. Jaan Mohammed S/o. Lal Mohammed, R/o. F/464, Gali No.15A, Chand Bagh, New Delhi.	27. Asif S/o. Babu Khan, R/o. C/75, Gali No.1, Chand Bagh, New Delhi.
28. Javed S/o. Zakir Hussain, R/o. F/454, Gali No.16, Chand Bagh, New Delhi.	29. Saqib S/o. Sh. Akhtar Ali, R/o. E/208, Nala Main Road, Chand Bagh, New Delhi.	30. Ubesh @ Manni S/o. Sahid Khan, R/o. F/52, Gali No.2, Chand Bagh, New Delhi.
31. Bablu @ Sajeb S/o. Sahid Khan, R/o. F/52, Gali No.2, Chand Bagh, New Delhi.	32. Gulzar S/o. Noor Hasan, R/o. 119, Gali No. D-1, Nehru Vihar, New Delhi.	33. Irfan S/o. Sattar Ali, R/o. 65B, Gali No.D-1, Nehru Vihar, New Delhi.
34. Dildar S/o. Sh. Saraju, R/o. 452, Gali No.6, New Mustafabad, New Delhi.	35. Imran S/o. Sh. Nasreem, R/o. A/480, Gali No.7, New Mustafabad, New Delhi.	36. Asrar S/o. Kamruddin, R/o. 1282, Gali No.14, New Mustafabad, New Delhi.
37. Siraj Ahmed S/o. Abdul Hakim, R/o. C/417, Gali No.9, Brijpuri, New Delhi.	38. Mohd. Ahsan S/o. Mohd. Ali Jaan, R/o. E/301, Gali No.12, Chand Bagh, New Delhi- 94.	39. Firoz S/o. Sh. Naim, R/o. E-119, Gali No.4, Chand Bagh, New Delhi.
40. Sharif S/o. Sh. Mehboob, R/o. E/118, Gali No.4, Chand Bagh, New Delhi.	41. Suleman Siddiqi @ Salman (since absconding) S/o. Sh. Ashraf Ali, R/o. 2212, Gali No.23, Old Mustafabad, New Delhi-94.	42. Faizan S/o. Mohd. Ahsan, R/o. H.No.E/338, Gali No.13, Chand Bagh, Delhi-94.
43. Akeel S/o. Shaukat Ali,	44. Mohd. Shakir S/o. Mohd. Sharif,	45. Mohd. Nadeem S/o. Mohd. Sharif,

CNR No. DLNE01-000935-2021
State v. Rafat etc.
SC No.121/2021, FIR No. 136/2020, PS Dayalpur
Order on Charge dated 24.07.2023

R/o. H.No.E/336, Gali No.13, Chand Bagh, Delhi-94.	R/o. C/234, Gali No.1, Chand Bagh, New Delhi.	R/o. A-126, Gali No.7, Chand Bagh, New Delhi-94.
46. Abdul Razak S/o. Abdul Sattar, R/o. H.No.C-165, Gali No.1, Nehru Vihar, Delhi-94.	47. Zakir Malik S/o. Mohd. Allah Mehar, R/o. D-2/282, Gali No.2, D/Block, New Delhi-94.	48. Tazuddin S/o. Mohd. Kamaruddin, R/o. H.No.1282, Gali No.14, Rajeev Gandhi Nagar, New Mustafabad, Delhi.
49. Haseen Ahmad Saifi , S/o. Naseem Ahmad, R/o. H.No. E-202, Gali No.7, Chand Bagh, Karawal Nagar, New Delhi.	50. Sabir S/o. Gul Mohmad, R/o. H.No. D-121, Gali No.1, Nehru Vihar, Delhi.	51. Suhail Sultan S/o. Istafa Ali, R/o. H.No. 281, Gali No. D-2, Nehru Vihar, Delhi.

... Accused Persons

24.07.2023

ORDER ON THE POINT OF CHARGE

Vide this order, I shall decide the question of charges against aforesaid accused persons. Since accused Suleman Siddiqui is yet to be arrested, therefore, charges cannot be decided qua him.

1. Brief facts of the present case are that, on receipt of PCR calls dated 24.02.2020, at PS Dayalpur, Delhi, regarding riot and arson at Maruti Showroom on Main Wazirabad Road, Opposite Petrol Pump Bhajanpura, Delhi, SI Shiv Charan reached the spot i.e. Fairdeal Maruti Car Showroom, Chand Bagh, Main Wazirabad. SI Shiv Charan saw that mob had damaged the Fairdeal Maruti Car Showroom and set the showroom on fire. The mob had also

CNR No. DLNE01-000935-2021
State v. Rafat etc.
SC No.121/2021, FIR No. 136/2020, PS Dayalpur
Order on Charge dated 24.07.2023

set the other vehicles on fire and window panes of the cars were broken. Complainant of the case Sh. Rajesh Singh, S/o Sh. K.M.P. Singh being General Manager of Fair Deal Cars Pvt. Ltd. (Maruti Authorized Showroom) situated at E-1, Main Wazirabad Road, Chand Bagh, Dayalpur, Delhi, gave his written complaint dated 28.02.2020 (recorded vide DD No.34). In his complaint, Rajesh Singh alleged that due to riots broke out in the area on 24.02.2020, they had closed their showroom and sent the staff to their respective houses. It was further alleged that on 25.02.2020 at around 6:00 PM, someone called the complainant to inform that his showroom was set on fire. When complainant came to his showroom and assessed the situation, he came to know that six cars, accessories, computers, printers, air conditioners, furnitures etc. were set on fire and were completely burnt, which caused a loss of 3.5 Crores (approximately) to the complainant. On the basis of written complaint of Rajesh Singh, present FIR was registered on 05.03.2020 for offences u/s. 147/148/149/427/436/437 IPC and further investigation was conducted by ASI Mahipal Singh.

2. ASI Mahipal Singh took photographs of scene of crime by his personal mobile phone and enclosed copies of some of the photographs in the file of the present case. During investigation, another complaint dated 27.02.2020 (recorded vide DD No.30-B) of one Vikas (s/o. Munna Rai) was received in the PS, wherein he alleged that on 24.02.2020, crowd of rioters trespassed, vandalized and set fire in this car showroom. Same mob had also

set bike make and model Hero Ismart 110 CC, belonging to his brother bearing Ch. No. MBLJA06AXHHB09020 having engine no.JA06EPHBB09526.

3. During the course of investigation, efforts were made to identify the persons involved in the crime with the help of CCTV Cameras, viral footages on social media and public witnesses. It was also urged to the general public to come forward to share any material/video/photographs of the rioters, with the police to help in the investigation of the case.
4. After completion of investigation, chargesheet was filed against accused Rafat, Imran (s/o. Sharif), Dildar (s/o. Shakur) and Faraz (s/o. Atik-ur-Rehman) for offences u/s. 147/148/149/427/435/436 /120-B IPC, before Id. Duty MM, North East District, Karkardooma Court, Delhi on 04.05.2020. Ld. CMM (N/E) took cognizance of aforesaid offences and summoned these four accused persons vide order dt. 18.12.2020. Thereafter on 29.01.2021, Id. CMM (N/E) committed the case to the court of sessions.
5. On 26.03.2023, first supplementary chargesheet impleading 36 additional accused persons namely Ayub, Salim Malik @ Munna (s/o. Ajmeri Khan), Salim Khan (s/o. Bunde Khan), Arif (s/o. Mustaq), Mohd. Mansoor (s/o. Mohd. Maqsood), Shahnawaz (s/o. Qadir), Sadiq (s/o. Ramjaan), Shadab, Irshad Ali, Mansoor (s/o. Saleem), Wasif, Kasif, Shamim (s/o. Azmatullah), Mohd. Aftab, Khalid, Salman (s/o. Azimuddin), Shibu Khan, Hamid,

Zuber Alam, Athar Khan, Shakeel Ahmed (s/o. Shoukat Ali), Jaan Mohd., Aasif (s/o. Babu Khan), Javed (s/o. Zakir Hussain), Saqib (s/o. Akhtar Ali), Ubesh @ Manni, Bablu @ Sajeb, Gulzar, Irfan (s/o. Sattar Ali), Dildar (s/o. Saraju), Imran (s/o. Nasreem), Asrar, Siraj Ahmed, Mohd. Ehsan, Firoz (s/o. Naim), Sharif (s/o. Mehboob) and Suleman Siddiqui (since declared PO) for aforesaid offences, was filed before Duty MM (N/E). Thereafter on 15.11.2021, ld. CMM (N/E) sent this supplementary chargesheet to the court of sessions.

6. Thereafter on 07.05.2022, second supplementary chargesheet impleading six additional accused persons namely Faizan (s/o. Mohd. Ahsan), Akeel, Shakir (s/o. Sharif), Mohd. Nadeem (s/o. Sharif), Abdul Razzak and Zakir Malik (s/o. Mohd. Allah Mehar) with addition of Section 188 IPC, along with complaint u/s. 195 Cr.P.C. and other documents, was filed before ld. CMM (N/E). On 05.07.2022, ld. CMM (N/E) sent this supplementary chargesheet to the court of sessions.
7. Thereafter on 05.08.2023, third supplementary chargesheet impleading additional accused persons namely Tazuddin, Haseen Ahmed Saifi, Sabir (s/o. Gul Mohammad) and Suhel Sultan, was filed by IO/SI Rajeev Kumar, directly before this court.

Arguments of Defence and Prosecution

8. I have heard ld. Special PP and ld. defence counsels on the point of charge. I have perused the entire material on the record.

9. In his written argument filed by **Sh. Nasir Ali**, ld. counsel for accused Kasif, Wasif, Shamim (s/o. Azmatullah), Salman (s/o. Azimuddin), Zuber Alam, Asif Khan, Ubesh @ Manni, Bablu @ Sajeb, Gulzar, Irfan, Firoz, Sharif, Irshad Ali (s/o. Hasmuddin), Dildar (s/o. Saraju), Sabir (s/o. Gul Mohmad) and Mansoor submitted that that there is inordinate delay in registration of the FIR as alleged incident took place on 25.02.2020 as per the complainant, which was reported to police on 28.02.2020, but the FIR in the matter was registered on 05.03.2020. It was further submitted that neither accused persons were named in the FIR, nor any specific role was assigned to them in the matter. It was further submitted that investigation in the matter has not been conducted in impartial and fair manner and persons belonging to a particular community have been falsely roped by the police. It was further submitted that there were public witnesses namely Girish Gupta, Manish and Vikas at the spot, who had seen the incident, but they did not identify the accused persons. Complainant Rajesh Singh and Vikas did not identify accused persons. Reliance was placed upon the case of **Usmangani @ Bhura Abdul Gaffar & Anr. v. State of Gujrat**, decided on 09.08.2018 by Supreme Court in CrI. Appeal No.1041/2061, to submit that identification of a few persons in large mob by a witness, in the absence of TIP, could not inspire the confidence of court. It was further submitted that CCTV footage which was placed on the record, did not relate to the incident. It did not show the incident as well as accused persons at all. It was further

submitted that there is no evidence regarding criminal conspiracy against accused persons and there is nothing to show that accused persons were in touch of other co-accused persons. It was further submitted that there is no material to show that accused persons had participated in criminal conspiracy. It was further submitted that there is no evidence regarding mischief against accused persons. There is no evidence to connect accused persons with unlawful assembly with deadly weapon that attacked at Fair Deal Car Showroom. There is no evidence showing accused persons to be present at scene of crime at the time of incident. It was further submitted that there is no electronic evidence available against accused persons either in the form of CCTV footage/video-clip or CDR location, to confirm presence of accused persons at the spot on the date and time of incident. Even no recovery of any sort has been effected from accused persons.

10. It was further submitted that only one witness HC Sunil identified accused Firoz, Sharif, Asif Khan, Zuber Alam, Salman (s/o. Azimuddin) and Dildar. While Ct. Mukesh identified accused Mansoor, Bablu @ Sajeb, Ubesh @ Manni, Shamim, Wasif and Kasif. Therefore, charges should not be framed against them on the basis of statement of the said sole witness Ct. Sunil and Ct. Mukesh, respectively, as it did not pass test set on this aspect by Supreme Court in the case of **Masalti v. State of U.P. AIR 1965 SC 202**, wherein it was observed that: -

“Where a criminal court has to deal with evidence pertaining to commission of an offence involving a large number of victims, it is usual to adopt the test that conviction could be sustained only if it is

CNR No. DLNE01-000935-2021
State v. Rafat etc.
SC No.121/2021, FIR No. 136/2020, PS Dayalpur
Order on Charge dated 24.07.2023

supported by two or three or more witnesses who give consistent account of the incident.”

11. On behalf of accused Zuber Alam, **Sh. Nasir Ali**, also submitted that he is a blind person and he was undergoing treatment at the time of incident. Even when he was arrested, he could not see anything and the police knew that fact, yet police arrested accused without any concrete evidence and sent him to jail.
12. On behalf of accused Salman, **Sh. Nasir Ali**, also submitted that accused Salman was using phone number 7982718866 and location of his phone was shown at Main Wazirabad Road Yamuna Vihar, Delhi, but CDR attached by prosecution of said phone shows that accused was not moving anywhere on 24.02.2020 and chargesheet itself shows that accused was not using any phone on that day.
13. On behalf of accused Shamim, Wasif and Kasif, **Sh. Nasir Ali**, also submitted that as per chargesheet CDR of these accused not be available on the record for establishing their exact location on 24.02.2020 and as per report of IO, these accused persons were not using any phone on 24.02.2020. On 24.02.2020, accused Wasif was not in the area of Chand Bagh. He was in Seelampur in his in-law's house with his wife and returned back to his house on 01.03.2020, so no question arises that he was at SOC on 24.02.2020.
14. In his written submissions filed by **Sh. Salim Malik**, ld. counsel for accused Khalid, Shakil Ahmad, Jaan Mohd., Javed Ali, Saqib, Imran (s/o. Nasreem), Asrar, Mohd. Ahsan, Faizan, Abdul

CNR No. DLNE01-000935-2021
State v. Rafat etc.
SC No.121/2021, FIR No. 136/2020, PS Dayalpur
Order on Charge dated 24.07.2023

Razzak, Shakir, Siraj Ahmed, Asrar, Imran (s/o. Naseem), Javed (s/o. Sh. Zakir Hussain), Salim Malik @ Munna (s/o. Ajmeri Khan), Khalid, Akeel (s/o. Shoukat Ali), Tajuddin, Suhail Sultan, Zakir Malik (s/o. Allah Mehar) and Mohd. Nadeem; submitted that there is no explanation regarding delay in registration of FIR. It was further submitted that the ocular evidence from Ct. Gyan, Ct. Mukesh, Ct. Sunil and HC Sunil have been improved time to time. It was further submitted that CDR is not concerned with the accused persons. It was further submitted that accused Faizan was identified by Ct. Gyan Singh on the basis of information of secret informer. It was further submitted that police witnesses/stock witnesses are also witnesses in many other FIRs of riot cases regarding incident dated 24.02.2020. Due to this reason, neither these witnesses are credible nor trustworthy. On behalf of Javed and Saqib Ali, it was submitted that one witness namely HC Sunil identified this accused in FIR No.99/20 on 09.01.2021, after approximately more than 10 months. It was further submitted that HC Sunil is not trustworthy witness and his statement does not create confidence in this case as he is stock witness.

15. In additional written submission filed by **Sh. Archit Krishna, Ahmad Ibrahim, Tamanna Pankaj and Priya Vats**, Id. counsels for accused Salim Malik @ Munna, it was submitted that in the FIR accused has not been named and no specific role has been assigned. There is no CDR regarding the presence of accused at the place of incident at the relevant time and the

investigating agency has deliberately failed to produce any CDR details of accused in the chargesheet presumably because same is exculpatory in nature. There is no evidence to show that accused was part of unlawful assembly or he shared common object of the unlawful assembly. It was further submitted that prosecution failed to show through either direct or circumstantial evidence that accused was part of unlawful assembly, which was involved in violence and arson at Fair Deal Car Showroom. It was further submitted that there is not even a whisper of allegation against accused having been present at the time of violence or arson at scene of crime. Reliance was placed upon certain case laws, which are as follows: -

- 15.1 **Shreya Singhal v. Union of India, (2015) 5 SCC 1.**
 - 15.2 **Masalti** (supra)
 - 15.3 **Musa Khan v. State of Maharashtra, (1977) 1 SCC 733.**
 - 15.4 **Usmangani** (supra)
 - 15.5 **Pandurang Chandrakant Mhatre and Others v. State of Maharashtra, (2009) 10 SCC 773.**
 - 15.6 **Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4.**
16. In his written submissions filed by **Sh. Z. Babar Chauhan**, ld. counsel for accused Shahnawaz and Sadiq @ Sahil, submitted that accused persons were falsely implicated by citing new stock witnesses i.e. Ct. Sunil and Ct. Mukesh, in the present case and there is no satisfactory explanation regarding delay in registration of FIR. It was further submitted that no TIP was conducted with respect to accused persons in the present case.

17. In his written submissions filed by **Sh. Mohd. Javed** and **Sh. Rizwan Ahmed**, Id. counsels for accused Mansoor (S/o. Mohd. Saleem), Hamid, Sibul Khan and Haseen Ahmed; submitted that there is inordinate delay in registration of FIR. It was further submitted that neither there is any independent witness, nor any specific role of accused persons is assigned in the FIR, nor TIP was conducted, nor any electronic evidence is available on the record either in the form of CCTV footage or video clip nor there is any CDR to confirm location of accused persons in the present case. It was further submitted that there is no evidence regarding criminal conspiracy against accused persons and there is nothing to show that accused persons were in touch of other co-accused persons. It was further submitted that there is no material to show that accused persons had participated in criminal conspiracy. It was further submitted that there is no evidence regarding mischief against accused persons. There is no evidence to connect accused persons with unlawful assembly with deadly weapon that attacked at Fair Deal Car Showroom. There is no evidence showing accused persons to be present at scene of crime on the time of incident. In support of their contention, they also relied upon the case of **Masalti** (supra) and **Usmangani** (supra).

18. In her written submissions filed by **Ms. Varisha Sharma**, Id. counsel for accused Athar Khan, it was submitted that he was arraigned in the supplementary chargesheet. It was further submitted that prosecution failed to produce any material to

CNR No. DLNE01-000935-2021
State v. Rafat etc.
SC No.121/2021, FIR No. 136/2020, PS Dayalpur
Order on Charge dated 24.07.2023

establish that accused was a part of an alleged unlawful assembly and in absence of any material, there remains no case to frame charges against accused. It was further submitted that none of the witnesses had seen accused participating in any alleged unlawful assembly in any unlawful assembly with the common object of committing arson. It was further submitted that police officials whose statements are relied upon, had been recorded with unexplainable delay suggesting planting of witness. It was further submitted that none of the statements reveal that accused was found doing any act which makes him prima facie liable for commission of offences as alleged in the chargesheet. It was further submitted that no TIP of accused was conducted by the prosecution, especially when prosecution placed reliance on the statement of PW Zahid Hassan, who was not aware of the identity of accused. It was further submitted that prosecution has failed to show any video footage of accused having participated in setting ablaze the Fair Deal Car Showroom. It was further submitted that CDR cannot be taken as conclusive proof of the accused, being involved in the incident of arson because he was resident of Chand Bagh and mere by location of CDR, nobody can be levelled as being involved in committing arson. It was further submitted that ingredients required to be proved for establishing the charges prima facie against accused, have not been satisfied.

19. In support of her contentions, **Ms. Varisha Sharma**, ld. counsel relied upon certain case laws, which are as follows: -

- 19.1 **Kammoon v. Emperor, 1941 SCC OnLine All 90.**
- 19.2 **Markande Chand & Ors. v. The State of U.P. 1989 CrI.L.J. 1735.**
- 19.3 **Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135.**
- 19.4 **Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4.**
- 19.5 **Yogesh v. State of Maharashtra, (2008) 10 SCC 394.**

20. In his written submissions, **Sh. A.A. Khan**, ld. counsel for accused Arif and Mohd. Mansoor, submitted that accused Arif was formally arrested on the basis of his disclosure statement and on the basis of statement of Ct. Gyan Singh, Ct. Mukesh, HC Sunil and Zahid Hassan. It was further submitted that as per prosecution story, in video accused Mohd. Mansoor is allegedly shown at Entry point of 22 ft. Road, Main Wazirabad Road, while the spot is E-1, Main Wazirabad Road, Chand Bagh, Delhi, which was half kilometer away. It was further submitted that accused Mohd. Mansoor was arrested on the basis of statement of Ct. Mukesh Kumar after 8 months of the date of incident, while accused was in custody in FIR No.99/20, PS Dayalpur. It was further submitted that there is unexplained delay of 90 days and neither accused Mohd. Mansoor was named in the FIR, nor any specific role been alleged upon him. It was further submitted that accused Arif and Mohd. Mansoor were not present at alleged SOC on the day of incident. Accused persons never shared any common object with the rioters and statement of all the witnesses create doubt as they are not credible. It was further submitted that neither there is any scientific evidence, nor independent

eyewitnesses, nor public witness, nor clear CCTV footage of accused persons, nor CDR location, nor any recovery from accused persons, in the present case. It was further submitted that accused persons are totally innocent and have been falsely implicated in the present case in mechanical manner.

21. In his written submissions, **Sh. Bilal Anwar Khan**, ld. counsel for accused Mohd. Ayyub, submitted that there is no CCTV footage indicating accused Mohd. Ayyub partaking or entering the showroom to arson or loot the valuable. It was further submitted that accused was not named in the FIR and there is neither TIP nor any independent eyewitness nor primary witness to testify and corroborate in any manner, in this case. It was further submitted that CDRs entry on the date of incident does not correspond to the place of incident. There is no video/CCTV footage against accused in the present case. There was no prior meeting of mind of any accused with accused Mohd. Ayyub or any agreement to do an illegal act, which could satisfy the ingredient of conspiracy. In support of his contentions, ld. counsel relied upon certain case laws, which are as follows: -

- 21.1 **Anil Thakur v. State of NCT of Delhi, 2018 SCC OnLine Del 6989.**
- 21.2 **Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.**
- 21.3 **Deepa Bajwa v. State & Ors., 2004 (77) DRJ 725.**
- 21.4 **Amrika Bai v. State of Chhattisgarh, 2019 4 SCC 620.**
- 21.5 **Kuldip Yadav v. State of Bihar, (2011) 5 SCC 324.**

22. In his written submissions, **Sh. Kartik Murukutla**, ld. counsel for accused Shadab Ahmad, submitted that he was falsely implicated in the present matter. It was further submitted that there is no material on the record to connect the accused to the specific cognizable offence in the present case. It was further submitted that there is no reference to accused Shadab and the Fair Deal Car Showroom. Despite specifically identifying accused being present on 24.02.2020 at Chand Bagh protest site, there is no identification being involved in the crime of the present case. There is no evidence of CDR location at the scene of crime as accused was not using phone. Statement of police officers are wholly contradictory to the CDR and Cell ID details. It was further submitted that merely being one of the organizers of the protest as well as being in touch with others who participated in the protest, is also not sufficient enough to justify the connection that accused was involved in the pre-planning of the alleged incident. It was further submitted that no prima facie case exists against accused for any of the offences sought to be charged. In support of his contentions, ld. counsel relied upon certain case laws, which are as follows: -

- 22.1 **UOI v. Prafulla Kumar Samal, (1979) 3 SCC 4.**
 - 22.2 **Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715.**
 - 22.3 **Shambhu Nath Singh v. State of Bihar, AIR 1960 SC 725.**
 - 22.4 **Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381.**
23. A calendar of evidence was filed by prosecution. In his written submissions filed by **Sh. Madhukar Pandey**, ld. Special PP, he

submitted that all the accused persons have been identified by the witnesses. It was also submitted that all these accused persons were part of same rioting mob, which set fire in Fair Car Deal Showroom. It was further submitted that all the accused persons were present in the mob at the relevant time with common object to set fire in aforesaid showroom. Ld. Special PP further submitted that presence of accused persons was also shown through CDR of their mobile phones.

Appreciation of arguments, facts and law: -

24. I have perused the statements of the witnesses and other materials placed on the record. First of all, I shall refer to the provisions dealing with the alleged offences and other relevant offences.
- 24.1 Section 147 IPC provides punishment for guilty of rioting.
- 24.2 Section 148 IPC provides punishment for committing riot being armed with a deadly weapon or with any-thing which being used as a weapon, is likely to cause death.
- 24.3 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.
- 24.4 Section 188 IPC provides punishment for disobedience to order duly promulgated by public servant.
- 24.5 Section 427 IPC provides punishment for committing mischief and thereby causing loss or damage to the amount of fifty rupees or upwards.
- 24.6 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

CNR No. DLNE01-000935-2021
State v. Rafat etc.
SC No.121/2021, FIR No. 136/2020, PS Dayalpur
Order on Charge dated 24.07.2023

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.

24.7 Section 450 provides for punishment for committing house-trespass in order to the committing of any offence punishable with imprisonment for life.

25. List of accused persons, who were identified by certain witnesses, is as under: -

Sl. No.	Name of Acused	Witnesses who gave statement to identify accused in the mob
1	Rafat	Ct. Gyan Singh, Ct. Deepak and Ct. Satbir
2.	Imran	Ct. Gyan Singh, Ct. Deepak and Ct. Satbir
3.	Dildar	Ct. Gyan Singh, Ct. Deepak and Ct. Satbir
4.	Faraz	Ct. Gyan Singh, Ct. Deepak and Ct. Satbir
5.	Ayub	HC Sunil, Ct. Mukesh, Ct. Gyan Singh, Ct. Sunil and Zahid Hasan.
6.	Saleem Malik @ Munna	Zahid Hasan, Mukesh, Sunil, HC Sunil, Gyan Singh.
7.	Salim Khan	Ct. Gyan Singh, Ct. Sunil, Zahid Hasan, Ct. Mukesh and HC Sunil
8.	Arif	Ct. Gyan Singh, Zahid Hasan and HC Sunil
9.	Md. Mansoor (s/o. Mohd. Maqsood)	Ct. Mukesh
10	Shahnawaz	Ct. Mukesh, HC Sunil, Ct. Gyan Singh and Ct. Sunil
11	Sadiq	Ct. Sunil, Ct. Gyan Singh, Ct. Mukesh and HC Sunil
12	Shadab	Ct. Gyan Singh, Ct. Sunil, Zahid Hasan and Ct. Mukesh
13	Irshad Ali	Ct. Mukesh
14	Mansoor (s/o. Mohd. Saleem)	Ct. Mukesh

CNR No. DLNE01-000935-2021
State v. Rafat etc.
SC No.121/2021, FIR No. 136/2020, PS Dayalpur
Order on Charge dated 24.07.2023

15	Kasif	Ct. Mukesh
16	Wasif	Ct. Mukesh
17	Shamim	Ct. Mukesh
18	Mohd. Aftab	
19	Khalid	Ct. Sunil
20	Salman	Ct. Gyan Singh and Ct. Sunil
21	Shibu Khan	Ct. Mukesh
22	Hamid	Ct. Mukesh
23	Zuber Alam	Ct. Mukesh
24	Athar Khan	Ct. Sunil, Ct. Gyan Singh, Ct. Mukesh, HC Sunil and Zahid Hasan
25	Shakeel Ahmed	Ct. Mukesh
26	Jaan Mohammed	Ct. Mukesh
27	Asif	Ct. Sunil
28	Javed	Ct. Sunil
29	Saqib	Ct. Sunil
30	Ubesh @ Manni	Ct. Mukesh
31	Bablu @ Sajeb	Ct. Mukesh
32	Gulzar	Ct. Mukesh
33	Irfan	Ct. Mukesh
34	Dildar	Ct. Sunil
35	Imran	Ct. Mukesh
36	Asrar	Ct. Mukesh
37	Siraj Ahmed	HC Siraj
38	Mohd. Ahsan	HC Sunil
39	Firoz	HC Sunil
40	Sharif	HC Sunil
41	Faizan	HC Sunil
42	Akeel	Ct. Mukesh and Ct. Amit
43	Mohd. Shakir	Ct. Rohit

CNR No. DLNE01-000935-2021
State v. Rafat etc.
SC No.121/2021, FIR No. 136/2020, PS Dayalpur
Order on Charge dated 24.07.2023

44	Mohd. Nadeem	Ct. Mukesh and Ct. Amit
45	Abdul Razak	Ct. Gyan Singh
46	Zakir Malik	HC Sunil and Ct. Gyan Singh
47	Tazuddin	Ct. Mukesh, Ct. Sunil and Ct. Gyan Singh
48	Haseen Ahmad Saifi	Ct. Mukesh, Ct. Sunil and Ct. Gyan Singh
49	Sabir	Ct. Mukesh, Ct. Sunil and Ct. Gyan Singh
50	Suhail Sultan	Ct. Mukesh, Ct. Sunil and Ct. Gyan Singh

26. It is apparent that each and every accused has been identified by one or another eye witness. They are police witnesses, whose presence was natural as they were on duty during the riot prevailing period in North East area. Hence, I find that the argument of defence that these witnesses are stock witnesses is not tenable at this stage. The credibility of these witnesses cannot be looked into at the stage of trial. It was so observed by Supreme Court in the case of Prafulla (supra) as well. At present, it is sufficient to find that all the accused except Aftab have been identified by Ct. Sunil, Ct. Mukesh, Ct. Gyan Singh, HC Sunil and Zahid Hasan (public witness), as member of the mob behind the riotous incidents at that place, including the incident at the car showroom in question.
27. As far as inordinate delay in registration of FIR is concerned, the alleged incident happened on 24.02.2020 and complaint was made on 28.02.2020. FIR was registered on 05.03.2020. It is well known that riots were prevailing in North East Delhi upto 26.02.2020. Police was dealing with this problem, coupled with problem of Covid-19 Pandemic. There may be any other the

reason also for delay in registering FIR, which can be explained at the time of trial. Therefore, the argument of defence regarding delay in registration of FIR is not sufficient to discharge the accused persons.

28. Plea of alibi as taken by some accused, has to be proved by such accused. Same cannot be accepted at this stage of charge. The evidence based on CDR is also supplemental evidence only. It cannot be solely used either for pressing charge or to seek discharge. The surrounding and ancillary facts are required to be proved, before CDR can be acted upon.
29. As far as specific role of every accused person is concerned, I find that it is not so required to explain overt act on the part of every member of an unlawful assembly. The evidence on the record prima facie shows that accused persons were part of unlawful assembly, which was present there at the spot and which came into action with common object to go on rampage, damage the properties. In pursuance to that common object, they set fire in Fair Car Deal Showroom. Section 149 IPC provides that every member of such assembly is liable for an offence committed by any member of unlawful assembly, in prosecution of the common object of that assembly. Therefore, the argument of defence regarding absence of specific role assigned to particular accused is insignificant.
30. The test mentioned in the case of **Masalti** (supra), was deliberated upon by Supreme Court in the case of **State of**

Maharashtra v. Ramlal Devappa Rathod, (2015) 15 SCC 77,
and the court made following observations: -

“24. The liability of those members of the unlawful assembly who actually committed the offence would depend upon the nature and acceptability of the evidence on record. The difficulty may however arise, while considering the liability and extent of culpability of those who may not have actually committed the offence but were members of that assembly. What binds them and makes them vicariously liable is the common object in prosecution of which the offence was committed by other members of the unlawful assembly. Existence of common object can be ascertained from the attending facts and circumstances. For example, if more than five persons storm into the house of the victim where only few of them are armed while the others are not and the armed persons open an assault, even unarmed persons are vicariously liable for the acts committed by those armed persons. In such a situation it may not be difficult to ascertain the existence of common object as all the persons had stormed into the house of the victim and it could be assessed with certainty that all were guided by the common object, making every one of them liable. Thus, when the persons forming the assembly are shown to be having same interest in pursuance of which some of them come armed, while others may not be so armed, such unarmed persons if they share the same common object, are liable for the acts committed by the armed persons. But in a situation where assault is opened by a mob of fairly large number of people, it may at times be difficult to ascertain whether those who had not committed any overt act were guided by the common object. There can be room for entertaining a doubt whether those persons who are not attributed of having done any specific overt act, were innocent bystanders or were actually members of the unlawful assembly. It is for this reason that in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] this Court was cautious and cognizant that no particular part in respect of an overt act was assigned to any of the assailants except Laxmi Prasad. It is in this backdrop and in order to consider “whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly”, this Court at SCR pp. 148-49 in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 observed that his participation as a member of the unlawful assembly ought to be spoken by more than one witness in order to lend corroboration. The test so adopted in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 was only to determine liability of those accused against whom there was no clear allegation of having committed any overt act but what was alleged against them was about

CNR No. DLNE01-000935-2021
State v. Rafat etc.
SC No.121/2021, FIR No. 136/2020, PS Dayalpur
Order on Charge dated 24.07.2023

their presence as members of the unlawful assembly. The test so adopted was not to apply to cases where specific allegations and overt acts constituting the offence are alleged or ascribed to certain named assailants. If such test is to be adopted even where there are specific allegations and overt acts attributed to certain named assailants, it would directly run counter to the well-known maxim that “evidence has to be weighed and not counted” as statutorily recognised in Section 134 of the Evidence Act.”

In the same case, Supreme Court explained the nature of cases wherein test mentioned in the case of Masalti, can be applied, while making following observations: -

“26. We do not find anything in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] which in any way qualifies the well-settled principle that the conviction can be founded upon the testimony of even a single witness if it establishes in clear and precise terms, the overt acts constituting the offence as committed by certain named assailants and if such testimony is otherwise reliable. The test adopted in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] is required to be applied while dealing with cases of those accused who are sought to be made vicariously responsible for the acts committed by others, only by virtue of their alleged presence as members of the unlawful assembly without any specific allegations of overt acts committed by them, or where, given the nature of assault by the mob, the Court comes to the conclusion that it would have been impossible for any particular witness to have witnessed the relevant facets constituting the offence. The test adopted in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] as a rule of prudence cannot mean that in every case of mob violence there must be more than one eyewitness.”

31. Above mentioned observations of Supreme Court, make it clear that for inviting liability by virtue of Section 149 IPC, it is not required to prove overt act on the part of every member of the mob, but at the same time rule of prudence has been spoken about, for fastening vicarious liability with aid of S.149 IPC. That rule of prudence is the genesis of test mentioned in the case of Masalti. In that case also, it was approved as a mark of

precaution, rather than laying it down as a hard and fast rule. Such rule can be applied at the time of appreciation of evidence after trial only.

32. As far as TIP is concerned, in the case of **Mahaveer vs. State of Delhi AIR 2008 SC 2343**, Supreme Court while dealing with aspect of TIP made following observations: -

“12. “9. As was observed by this Court in Matru v. State of U.P. [(1971) 2 SCC 75 : 1971 SCC (Cri) 391] identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See Santokh Singh v. Izhar Hussain [(1973) 2 SCC 406 : 1973 SCC (Cri) 828] .) The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act, 1872 (in short ‘the Evidence Act’). It is desirable that a test identification parade should be conducted as soon as possible after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

13. “7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement

CNR No. DLNE01-000935-2021
State v. Rafat etc.
SC No.121/2021, FIR No. 136/2020, PS Dayalpur
Order on Charge dated 24.07.2023

made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached In the case of Mahaveer vs. State of Delhi AIR 2008 SC 2343, Supreme Court while dealing with aspect of TIP made following observations: -

“12. “9. As was observed by this Court in Matru v. State of U.P [(1971) 2 SCC 75 : 1971 SCC (Cri) 391] identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See Santokh Singh v. Izhar Hussain [(1973) 2 SCC 406 : 1973 SCC (Cri) 828] .) The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act, 1872 (in short ‘the Evidence Act’). It is desirable that a test identification parade should be conducted as soon as possible after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown

CNR No. DLNE01-000935-2021
State v. Rafat etc.
SC No.121/2021, FIR No. 136/2020, PS Dayalpur
Order on Charge dated 24.07.2023

to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

13. “7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration.”

On the basis of above-mentioned observations and the underlined portions of this judgment, it can be said that TIP is a matter of prudence and additional safeguard for the case of prosecution. Absence of the same cannot be used by accused for seeking discharged to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration.”

On the basis of above-mentioned observations and the underlined, it can be said that TIP is a matter of prudence and

additional safeguard for the case of prosecution. Absence of the same cannot be used by accused for seeking discharge.

33. Allegedly, all accused persons were outside their home on the road and were part of unlawful assembly in order to achieve aforesaid common object, in violation of proclamation made u/s. 144 Cr.P.C. This proclamation was made for all the public; hence, it was not required to be served upon each person in North East Delhi. Announcement of this proclamation was made by the police official and accused persons acted in violation of the same, which satisfies the ingredient of offence u/s 188 IPC.
34. The complaint made by Sh. Rajesh Singh, establishes the damage caused to the articles in the showroom and the fact of the showroom as well as articles being set on fire. Such facts make out a case for offence punishable u/s. 427, 435 and 436 IPC. Ingredients of Section 435 IPC is satisfied because the articles were burnt. Ingredients of Section 436 IPC is satisfied because the showroom which was a place for custody of the articles/cars, was set on fire.
35. The second complainant Vikas (s/o. Munna Rai), made complaint on 27.02.2020, vide DD No.30-B, wherein he alleged that on 24.02.2020, crowd of rioters trespassed, attacked and set fire in car showroom. In view of the complaint and statement made by Vikas and other employee of Fair Deal Car Showroom, it is prima facie apparent that the accused persons committed house-trespass in order to commit offence punishable with

CNR No. DLNE01-000935-2021
State v. Rafat etc.
SC No.121/2021, FIR No. 136/2020, PS Dayalpur
Order on Charge dated 24.07.2023

imprisonment for life, which makes out a case of offence punishable u/s 450 IPC.

36. However, the evidence of the witnesses especially the police officials present on duty like Ct. Mukesh, Ct. Gyan etc. do not establish the ingredients of offence of criminal conspiracy. From their statement the scenario appears to be that mob had gathered on Service Road, near Main Wazirabad Road, which was initially being addressed by different speakers in the name of protest against CAA/NRC. The mob became violent subsequently and started indulging into riot, vandalism and arson. From these circumstances, the element of prior agreement among the accused persons and others, cannot be inferred. Therefore, I do not find a case being made out for existence of a criminal conspiracy from the record.

37. Thus, on the basis of above-mentioned observations and the description of evidence and discussion, I find that a prima facie case for offence punishable u/s. 147/148/427/435/436/450 IPC read with Section 149 IPC as well as u/s. 188 IPC, against all the accused persons. All the accused persons are liable to be tried accordingly. Since there is no concrete evidence of identification of accused **Mohd. Aftab** (s/o. Sh. Ashfaq) in the mob behind incident probed in this case, therefore, he is discharged.

Ordered accordingly.

Announced in the open court (PULASTYA PRAMACHALA)
today on 24.07.2023 ASJ-03(North East)
(This order contains 29 pages) Karkardooma Courts/Delhi