

**IN THE COURT OF SH. AMITABH RAWAT,
ADDITIONAL SESSIONS JUDGE-03
(SHAHDARA), KARKARDOOMA COURT, DELHI**

RIOTS CASE

Sessions Case No.	298/2021
FIR No.	55/2020
Police Station	Jyoti Nagar
Under Sections	147/148/149/427/436/188/380/34 IPC and 3 of Delhi Prevention of Defacement of Public Property (DRDPP) Act, 2007

STATE

.... Prosecution

Versus

- (1) Rahul Kumar**
S/o Sh. Raj Karan
R/o H.No. D-585/7, Gali No.03, Ashok Nagar,
Jyoti Nagar, Delhi.
- (2) Suraj**
S/o Sh. Vijay Singh
R/o H.No. D-748, Gali No.03,
Ashok Nagar, Jyoti Nagar, Delhi.
- (3) Yogender**
S/o Sh. Chottev Singh
R/o H.No. D-1/326, Gali No.14,
Ashok Nagar, Jyoti Nagar, Delhi.
- (4) Naresh @ Monu**
S/o Sh. Gopal
R/o H.No. B-442, Gali No.01,
Ashok Nagar, Jyoti Nagar, Delhi.

..... Accused Persons

Dated : 11.08. 2023

ORDER ON THE POINT OF CHARGE

1. The present case First Information Report pertains to police station Jyoti Nagar and arraigned in the charge-sheet are four accused persons namely Rahul Kumar, Suraj, Yogender Singh and Naresh @ Monu under Section 147/148/149/427/436/380/34 Indian Penal Code & 3 of Delhi Prevention of Defacement of Public Property, (DPDPP) Act, 2007.

2. Cognizance was taken under Section 147/148/149/188/380/427/436 IPC and 3 DPDPP Act against all the four accused persons vide order dated 24.09.2021.

3. 3.1. The present charge-sheet arises out of a culmination of the investigation conducted in the present FIR. The present case emanates from a DD Entry No. 25A received on 25.02.2020 at 1.15 PM by ASI Naresh Kumar in respect of PCR a call regarding arsoning at Maula Baksh Masjid. As per the said entry, the complainant informed that there is gathering of around 1000 people who have burnt the Maula Baksh Masjid and heading towards his house.

3.2 ASI Vijay Kumar and Ct. Sanjay Bhati reached at the spot. They reached near Maula Baksh Masjid in gali no.5, Ashok Nagar, Chappal market where lot of rioters have assembled and same were taking videos. The masjid was burning and seven shops on the ground floor of the said masjid were burning. He informed the fire brigade and was trying to control the fire with help of local people when 200-250 people started sloganeering

and some were carrying inflammatory articles while some were carrying lathi and dandas. He gave warning to them to move away but the crowd started putting fire to the vehicles stationed nearby, where they tried to control the crowd. The rioters ran towards gali no.6 and also burnt motorcycles. They then went towards Wazirabad Road, opposite T.R. Sawhney Showroom and thereafter burnt two vehicles at 25 foota road, Meet Nagar. By that time, senior officer came and they tried to control the rioters. In all, apart from seven shops in the masjid, four adjacent houses were burnt alongwith four motorcycles, one battery rickshaw, one Honda city car, one TSR and one delivery van.

3.3 The FIR was later on, registered on 26.02.2020. During investigation, on 05.03.2020, the complainant Gul Mohd. told the police that he can identify the rioters who were doing arsoning and looting on 25.02.2020, if shown to him. On 07.03.2020, ASI Vijay Kumar alongwith complainant reached at his shop at Ashok Nagar where complainant pointed out towards one person stating that he was involved in rioting on 25.02.2020. Accused Rahul Kumar was interrogated and he admitted his involvement. He was arrested on the instance of complainant Gul Mohd.

3.4 During investigation, on 08.03.2020, on the pointing out of secret informer, one juvenile was apprehended whose video was also viral.

3.5 Accused Suraj and Yogender were also arrested in this case based upon video footage and made a disclosure about their involvement in the present case.

3.6 Based upon the disclosure, one Sonu was arrested in FIR No. 68/2020 PS-Jyoti Nagar where he had made a disclosure that he can get an accused involved in the present case arrested. At his instance, accused Naresh @ Monu was identified as the person, who on 25.02.2020 had taken part in the arsoning of masjid and who had flaunted flag on the top of masjid.

3.7 During the investigation, the site plan was prepared and photographs of the spot taken. Seizure memo of the burnt material inside the shop was prepared.

4. The complaint u/s.195 Cr.P.C was also given for the purpose of Section 188 IPC as the prohibitory order were enforced at the time and place of incident.

5. Ld. Counsel for the accused persons Suraj and Yogender had stated that the same video has been cited by the prosecution in many cases and accused persons should be discharged in the present matter.

Ld. Counsel for accused Rahul Kumar stated that there is no evidence against him and he should also be discharged.

Ld. counsel for the accused Naresh @ Monu stated that there is no evidence against him, the CCTV footage is not verified by the FSL. Moreover, there is no witness, who has identified the accused Naresh @ Monu.

6. Arguments on the point of charge were heard at length on behalf of both prosecution and accused persons. The record has been painstakingly scrutinized.

7. **Section 228 Code Of Criminal Procedure, 1973**

228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

8. **8.1.** It has been held in catena of judgments that at the time of framing of charge, only prima facie case has to be seen and whether the case is beyond reasonable doubt is not to be seen at this stage. It is not required that detailed reasons must be recorded at the stage of charge.

8.2. Hon'ble Supreme Court of India in a case titled as ***Bhawna Bai***

vs. Ghanshyam And Others.,(2020) 2 Supreme Court Cases 217 held as follows :-

16. After referring to Amit Kapoor, in [Dinesh Tiwari v. State of Uttar Pradesh and another](#) (2014) 13 SCC 137, the Supreme Court held that for framing charge under Section 228 CrI.P.C., the judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence.

17.For framing the charges under Section 228 CrI.P.C., the judge is not required to record detailed reasons. As pointed out earlier, at the stage of framing the charge, the court is not required to hold an elaborate enquiry; only prima facie case is to be seen. As held in [Knati Bhadra Shah and another v. State of West Bengal](#) (2000) 1 SCC 722, while exercising power under Section 228 CrI.P.C., the judge is not required record his reasons for framing the charges against the accused. Upon hearing the parties and based upon the allegations and taking note of the allegations in the charge sheet, the learned Second Additional Sessions Judge was satisfied that there is sufficient ground for proceeding against the accused and framed the charges against the accused- respondent Nos.1 and 2. While so, the High Court was not right in interfering with the order of the trial court framing the charges against the accused-respondent Nos.1 and 2 under [Section 302 IPC](#) read with [Section 34 IPC](#) and the High Court, in our view, erred in quashing the charges framed against the accused. The impugned order cannot therefore be sustained and is liable to be set aside.

9. Hon'ble Supreme Court of India in the case of State of Rajasthan Versus Ashok Kumar Kashyap in Criminal Appeal No. 407 of 2021 (Arising from SLP (Crl.) No. 3194 of 2021) observed that :

23. In the case of P. Vijayan (supra), this Court had an occasion to consider Section 227 of the Cr.P.C. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

24. In the recent decision of this Court in the case of M.R. Hiremath (supra), one of us (Justice D.Y. Chandrachud) speaking for the Bench has observed and held in paragraph 25 as under:

25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the

record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N.v. N. Suresh Rajan [State of T.N.v. N. Suresh Rajan, (2014) 11 SCC 709, adverting to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29)

“29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

.....

.....It was held that as observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible.”

10. After, hearing Ld. Counsels for the parties and perusing the charge-sheet and supplementary charge-sheet alongwith accompanying record, I am of the view that prosecution has met its case for the purpose of charge.

11. 11.1 As per the charge-sheet, all 4 accused persons namely Rahul

Kumar, Suraj, Yogender and Naresh @ Monu have been charge-sheeted for criminal mischief, theft and destruction by fire of the Masjid Maula Baksh and 7 shops on the ground floor of the said Maszid along with 4 adjacent houses, 4 motorcycles, 1 battery rickshaw, 1 Honda City car, 1 TSR and 1 delivery van, on 25.02.2020 in Gali no. 5, Near Masjid, Ashok Nagar. It is also alleged that on the top of the Minar of the said Maszid, one saffron flag was planted.

11.2 Complainant Gul Mohammad who runs a shop in the said Masjid had stated that his shop was ransacked and thereafter burnt. There is a complaint on behalf of Masjid Maula Baksh (D/538-39, Ashok Nagar) regarding destruction and arsoning of 7 shops and 3 houses/rooms on 25.02.2020 by the rioters. One Vinod Kumar made a complaint regarding arsoning of his rented shop at D-540, Gali no. 5, Near Masjid, Ashok Nagar on 25.02.2020. Similar complaints were made by Khurshid Alam, Sayed Zahir Hussain, Muzzafar Khan, Shoaib, Kamruddin, Muzzamil, Mursalin Ahmad, Abdul Rahim, Mobin Ahmad and Afsar Alam regarding shops and adjacent houses.

11.3 Public witness Gul Mohammad in his statement on 07.03.2020 has stated that he runs a shop at D-538/2, Gali no. 5, Maszid Maula Baksh, Ashok Nagar, Delhi and when rioters were ransacking on 25.02.2020, he had seen certain faces. When IO ASI Vijay Kumar had come to Gali no. 3, Ashok Nagar, in the evening of 07.03.2020 Gul Mohammad identified accused **Rahul Kumar** as amongst the rioters who pelted stones on the said Maszid.

11.4 ASI Devender Kumar stated that on the instance of a secret informer, accused Suraj and Yogender were arrested. Accused Suraj got recovered 8 pair of shoes of children from his house which he had committed theft of from shoe shop near Masjid on 25.02.2020, the same was seized. There is a footage of the accused persons Suraj and Yogender at near the place of incident.

11.5 As regards accused Naresh @ Monu, on the instance of Sonu who is an accused in FIR no. 68/2020, he was arrested as a person who had planted the saffron flag atop the masjid and ransacked the masjid. There is a CD/Video footage filed showing accused Naresh @ Monu with the flag atop the masjid, which was sent to the FSL. As per the last FSL report received, “On laboratory examination of Audio-video files in pen drive marked Exhibit-1, it was observed that, each video file contains one identified shot. There was no indication of alteration in the identified video shot on the basis of frame-by-frame examination using video analyst system.....

On auditory analysis of audio track of audio-video recordings of pendrive marked Exhibit-1, by critical listening and subsequent waveform and spectrographic analysis, there was no indications of any form of alteration in audio recordings.”

11.6 Thus, as per charge-sheet and accompanying documents, an unlawful assembly of hundreds of rioters had gathered at the spot in Gali no. 5, Near Masjid, Ashok Nagar, Delhi on 25.02.2020 in violation of the prohibitory order u/s. 144 Cr.P.C and in furtherance of their common

intention committed the act of rioting with deadly weapons, mischief, house trespass, defiance of prohibitory order u/s. 144 Cr.P.C, arsoning, theft in shops, as stated above, thereby attracting Sections 147 IPC (**Punishment for rioting**), 148 IPC (**Rioting, armed with deadly weapon**), 427 IPC (**Mischief causing damage to the amount of fifty rupees**), 436 IPC (**Mischief by fire or explosive substance with intent to destroy house, etc.**) 450 IPC (**House-trespass in order to commit offence punishable with imprisonment for life**), 380 IPC (**Theft in dwelling house, etc.**), Section 295 IPC (**Injuring or defiling place of worship with intent to insult the religion of any class**), 188 IPC (**Disobedience to order duly promulgated by public servant**) read with Section 149 IPC (**every member of unlawful assembly guilty of offence committed in prosecution of common object**). By putting fire to a place of worship/masjid and planting a saffron flag atop the same, accused persons have also committed the offence under Section 295 IPC (**Injuring or defiling place of worship with intent to insult the religion of any class**). Though they were not charge-sheeted for the said offence by the investigating officer, yet, Section 295 IPC, prima facie, is clearly made out.

However, Section 34 IPC is not attracted (as Section 149 IPC has been invoked) as also Section 3 of Delhi Prevention of Defacement of Public Property (DRDPP) Act, 2007.

12. Thus, on the basis of material on record, I am of the opinion that there are grounds for presuming that the accused persons namely Rahul Kumar, Suraj, Yogender and Naresh @ Monu have committed offences under Section 147,148,427,436,450,188,380,295 IPC read with Section 149 IPC. However, all accused persons namely Rahul Kumar, Suraj, Yogender

and Naresh @ Monu are discharged from the offences punishable under Section 34 IPC as also Section 3 of Delhi Prevention of Defacement of Public Property (DRDPP) Act, 2007.

Ordered accordingly.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 11.08.2023