

Registration No. 431, 463, 476, 482, 491
Bail Application No. 623 , 676, 692, 706, 717
Mohd. Saleem, Sameer Ansari, Khalid Saifi & Ishrat Jahan @ Pinki &
Vikram Thakur V/s State
FIR No. 44/20
PS: Jagat Puri
U/s. 147/148/149/186/353/332/307/109/34 IPC & 25/27 Arms
Act.

21-03-2020 at 4.00 p.m.

Present: Sh. Vikas Kumar, Ld. Addl PP for the State.

IO/SI Kiran Pal is present.

None for the applicants.

The present bail applications arise out of protest against
Citizenship Amendment Act(CAA).

The five applicants, namely, Mohd. Saleem, Sameer
Ansari, Khalid Saifi & Ishrat Jahan @ Pinki & Vikram Thakur have
filed separate bail applications. Arguments were heard earlier by this
court on the four bail applications filed on behalf of
applicants/accused Mohd. Saleem, Sameer Ansari, Khalid Saifi &
Ishrat Jahan @ Pinki, whereas arguments on the bail application of
Vikram Thakur have been heard today. Name of Arguing counsels
is stated hereunder as:-

Sh. Abdul Gaffar and Ms. Surbhi Dhar, Advocates for the
accused Mohd Saleem.

Sh. Sarfaraj Asif, Advocate for applicant Sameer Ansari.

Ms. Rebecca John Sr. Advocate with Bhavook Chauhan
and Harsh Bora, Advocates for applicant Khalid Saifi.

Sh. Mohd. Amanullah and Sh. Mishba Bin Tariq,
Advocates for applicant Ishrat Jahan @ Pinki.

Sh. D.K. Singh, Advocate for accused Vikram Thakur.

Ld. Counsels for the applicant Sameer Ansari and Mohd. Salim submit that the applicants are not named in the FIR and have not participated in unlawful assembly, they are in J/C since 26.02.2020; the applicants have been falsely implicated in the present case by lifting them from their respective houses in the evening of 26.02.2020; the complainant has only sustained simple injury; no recovery has been effected from the said applicants and the applicants have no criminal antecedents.

Ld. Senior Counsel for the accused Khalid Saifi submitted that the applicant was brutally beaten inside the Police Station as a result of which he suffered fracture on both of his legs and injury on his hands. She has also drawn attention of this Court to the photograph of the applicant filed along with the application to show plaster on both his legs. She further submitted that the applicant Khalid has been falsely implicated in the present case; no case under Section 307 IPC and Section 25 of Arms Act is made out against the applicant; Section 332 & 353 IPC are not serious offence as they are punishable upto three years, whereas remaining offences under Sections 147/148/186 IPC are bailable offences. It is also her contention that no police custody remand of the applicant was sought, which shows that he has been falsely implicated in the present case. She further submitted that the applicant has already spent 22 days in the custody and there is no apprehension of his absconding as the applicant is a social worker.

Ld. Counsel for the accused Ishrat Jahan submitted that bare reading of FIR reveals that the applicant has committed no offence; the applicant was only a supporter of the peaceful protest and no specific role is attributed to the applicant except allegedly making a statement "*will die but will not move from the protest site whatever the police do...*". It is further submitted that the applicant

is a woman and is an enrolled lawyer since 2006 at Delhi Bar Council and is entitled for benefit under Section 437 (1) Cr.P.C. It is further submitted that CCTV footage shows the conversation of the applicant with police from 1.27 p.m. to 1.32 p.m. and her arrest at 1.32 p.m., while the protest as per FIR was from 12.30 p.m. to 1.15 p.m. It is further submitted that the applicant is in J/C since 26.02.2020 i.e. more than 20 days and has no criminal record except FIR no. 654/14 PS Jagat Puri, which was quashed by Hon'ble High Court vide order dated 29.05.2019.

Ld. counsel for the applicant Vikram Thakur has submitted that no specific allegation has been levelled against the applicant in the FIR; the applicant was not present at the spot and was lifted from his house situated at a distance of about one kilometer from the spot, which can be verified from the CCTV footage. It is further submitted that the name of the applicant is Vikram Pratap and not Vikram Thakur, which is reflected in his educational documents and Aadhar Card; the applicant is a second year law student and he is in J/C since 27.02.2020.

On the other side, Ld. Addl PP on instruction from IO submits that bail application of applicant Vikram Thakur and applicant Ishrat Jahan were dismissed by Ld. ASJ having bail roaster vide order dated 02.03.2020 and 28.02.2020 respectively. He has further submitted that the applicant Mohd. Salim is named in the FIR as 'Samir Pradhan Khureji' and he was arrested at the instance of complainant HC Yograj, who has clarified the said fact in his under Section 161 Cr.P.C. dated 27.02.2020. He also submitted that applicant Samir Ansari is named in the FIR as Sameer @ Shamim. It is also his submission that one live cartridge and katta was recovered from JCL 'A', who opened fire on the police party and he disclosed that accused Khalid had provided him the Katta. It is further submitted that 8 co-accused are yet to be arrested and three

public witnesses have identified Ishrat Jahan and Khalid, who were leaders of unlawful assembly.

Heard and perused the police file.

Allegations against the applicants as per FIR are that Section 144 IPC was imposed in the area of Khajuri Khas. On 26.02.2020, flag march with large police force was held; at about 12.15 p.m. when the police staff reached at PPG Road, SBI Bank, they heard commotion and noise of firing. They turned back and reached near community Hall, Masjid Wali Gali, Khureji Khas where they found large gathering of people whom they asked to disperse. Some of members of the crowd including the applicants were identified by Beat Constable whom he asked to vacate the road but they refused to do so and incited other members of the crowd to remain there. Upon this, SHO declared and announced the assembly as 'unlawful' and again asked the people present there to disperse. But the protesters refused to obey the direction and applicant Ishrat Jahan incited the crowd by stating that they would not remove themselves even if they die and whatever police may do, they shall have their freedom. Khalid exhorted the crowd to pelt stones on the police so that the police flee away and they continue obstructing the way in the same manner. After hearing this, Sabu Ansari and other members of the crowd started pelting stones on the police and one of them fired at HC Yograj, who hardly escaped. Police used appropriate force to control the situation and upon seeing the situation as out of control, police used tear gas shells and fired in the air. Some of them scrambled with the police and Ct Vinod sustained injuries due to stone pelting. Ct Vinod was sent to hospital for medical treatment. Applicants Ishrat Jahan, Khalid and Sabu Ansari were apprehended on the spot and present FIR was registered.

In the night of the same day, co-accused Vikram Pratap,

Mohd. Salim @ Sameer Pardhan and JCL 'A' were arrested and one desi loaded katta was recovered from accused JCL 'A' who had fired at police party and ran away from the spot. JCL 'A' made disclosure statement wherein he disclosed that accused Khalid had provided loaded desi katta to him.

Role assigned to applicant Ishrat Jahan is that she incited the crowd to remain present at the spot as well as raised slogan of freedom while Khalid exhorted the crowd to pelt stones on police. Upon such instigation, Sabu Ansari as well as some other members of the crowd pelted stones on the police personnel present there. Ct Vinod also sustained injuries which were opined to be simple. One JCL 'A' present there also fired at HC Yograj, who hardly escaped. Pistol was recovered from JCL 'A' who disclosed that accused Kahlid had provided desi loaded Katta to him.

Right to peaceful protest is enshrined in Article 19(1)(a) and Art 19(1)(b) of the Constitution of India. Therefore, rights of citizens to protest and gather peacefully without arms is permissible and said right is backbone of democracy in India. However, the right to protest is also subject to certain limitations. The problem arises when the peaceful protest becomes violent and the protestors transgress the rights and freedom of others. In other words, right to protest is not absolute right but is subject to certain restrictions.

In our democratic Country, every citizen has right to peaceful protest, however, resorting to violence during peaceful protest is not legally permissible under Constitution of India.

In the instant case, protest appears to have become violent which disturbed law and order situation and to control the same, police had fired in air and used tear gas shells.

Bail application of applicant KHALID

It is submission of Id. Senior Counsel for the accused Khalid that disclosure statement of co-accused 'JCL' is inadmissible

in evidence. It has also been argued by Ld. Senior Counsel for accused Khalid that the provisions invoked by the prosecution, are by and large,ailable ones except sections 353, 332 and 307 IPC. With respect to section 307 IPC, she stated that same has been wrongly invoked by the IO as the bullet did not hit HC Hemraj and the injured Ct Vinod sustained simple injury.

The contention of Id. Senior Counsel that section 307 IPC has been wrongly invoked by the prosecution, cannot be gone into at this stage when there are allegations of use of Katta and its recovery from JCL 'A' who has named the applicant Khalid in his disclosure statement as the one who provided him loaded katta.

Allegations against accused Khalid are serious as he had instigated the mob to pelt stones on police party and his name has also emerged in disclosure statement of co-accused JCL, as the one who provided him Katta to fire at police party. Investigation is not yet complete. The contention of Ld. Senior Counsel that accused Khalid was beaten by police party and he sustained injuries has been strongly opposed by Ld. Addl PP by submitting that had it been so, said fact would have been mentioned by counsel for Khalid before the Ld. MM where he is stated to have been beaten by public. Considering the seriousness of allegations against accused Khalid and the fact that investigation is not yet complete, this court does not deem fit to grant bail to accused Khalid at this stage. Accordingly, bail application of accused Khalid is hereby dismissed.

Applicants Ishrat Jahan @ Pinki, Mohd. Salim, Samir Ansari and Vikram Thakur:

Role assigned to applicant Ishrat Jahan is that she incited the crowd to remain present at the spot as well as raised slogan of freedom, however, no overt act has been imputed to her whereby she incited the crowd to take law in their hands and use force against the police. She is a woman and is in J/C since

26.02.2020. There are no allegation of use of katta by her or providing the same to any other member of the crowd and thus invocation of Section 307 IPC against her is debatable. In the considered opinion of this Court, the applicant Ishrat Jahan @ Pinki being a woman is entitled to benefit of proviso to Section 437(1) Cr.P.C. and it is in the fitness of things to extend her benefit of bail.

No overt act has been ascribed to accused Samir, Mohd Salim and Vikram Thakur. Indeed, as per story of prosecution, 'Mohd Salim' is also known as 'Samir Pradhan Khureji'. If one looks at copy of identity documents filed alongwith affidavit of Sheroon, wife of Mohd Salim, all the said documents records only one name i.e. Mohd Salim and 'Sameer Pradhan Khureji' is not mentioned in any of his identity documents. Said documents were given to IO for verification but IO has only replied with respect to Volunteer I card of applicant Mohd Salim stating that the said I card was issued by Beat Incharge on demand. Applicant Vikram Thakur has also disputed that he is only known by the name of 'Vikram Pratap' and not as Vikram Thakur, which is also shown by his counsel vide copy of Election I Card and Aadhar Card filed with the application. Be that as it may, considering the nature of allegations and especially the fact that no overt act has been imputed to either of these applicants except that they were part of the mob, the applicants, namely, Vikram Thakur, Mohd. Salim and Samir Ansari are entitled to benefit of bail.

In view of above, applicants Vikram Thakur, Mohd. Salim, Samir Ansari and Ishrat Jahan @ Pinki are admitted to bail on their furnishing personal bail bond in the sum of Rs.50,000/- each with surety of like amount to the satisfaction of Ld. M.M./Link M.M./Duty M.M. on the following terms and conditions:

(1) That they are restrained from leaving the country without prior permission of Trial Court;

- (2) That they shall surrender passport, if any, to the IO within 7 days of their release;
- (3) That they shall participate and join the investigation as and when called by the IO;
- (4) They shall not make any attempt to tamper with the evidence or influence any of the witnesses;
- (5) That they shall inform about change in their address/ telephone number, if any; &
- (6) They are restrained to participate even in peaceful agitation until the pandemic of CoronaVirus subsides.

Accordingly, all the five bail applications are disposed of.

(Manjusha Wadhwa)
ASJ-03/Shahdara District
Delhi/21-03-2020