

Bail Matters 942/2021
CNR No. DLCT010026682021
FIR No. 96/2021
PS: Kotwali
U/s: 147/148/149/152/186/269/279/353/332/
307/308/395/397/427/188/120B/34 IPC
R/w Section 25/27/54/59 Arms Act
R/w Section 3 PDPP Act
R/w Section 30 AMASR Act
Akashpreet Singh Vs. State

22.03.2021

Present: Sh. Virender Singh, Ld. Addl. PP for State.

1. This order shall decide an application u/s 439 Cr.PC filed on behalf of applicant/accused Akashpreet Singh, seeking regular bail. Reply and additional reply already filed by the IO. Copy has been supplied.
2. Arguments on the bail application heard.
3. Ld. Counsel for applicant submitted that applicant has been falsely implicated in the present case. No active role has been assigned to him in the alleged crime. It was contended that investigation qua applicant is completed. He is in JC since 03.02.2021, therefore, no purpose shall be served by keeping him behind bar. He further submitted that even as per the case of the State, the applicant was only present at the Red Fort and was climbing on the wall but his mere presence and climbing on the wall will not make him member of the unlawful assembly. For this, he strongly placed reliance on **“Usmangani @ Bhura Abdul Gafar & Anr. Vs. Gujrat”, (2020) 12**

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SCC 503, and submits that in this judgment the Hon'ble Apex Court has held that mere presence of accused at the scene of crime will not make him member of the unlawful assembly". He further relied upon **"Ambica Bai Vs. State of Chattisgarh" MANU/SC/074/2019**. The relevant portion of **"Usmangani @ Bhura Abdul Gafar." (Supra)**, is re-produced as under:-

"Mere presence of the accused/appellants at the scene of the crime will not make the accused/appellants members of the unlawful assembly. Much less a common object to do a criminal act can be attributed to the accused/appellants".

He has also argued that applicant is victim of the crime since he suffered a firearm injury and other injuries in the incident, while performing sewa of distribution of water to the people near the spot. It was also argued that otherwise also applicant is suffering from Epilepsy disorders from last five years for which he is under treatment at Uttrakhand and due to the Epilepsy disorders he repeatedly suffer seizures.

4. Ld. APP, duly assisted by IO, strongly opposed the bail application as he submitted that the allegations against the applicant

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are serious in nature that he alongwith other protestors while breaking the police barricades initially at Sanjay Gandhi Nagar then at Burari, thereafter, violating all the rules and regulations, finally forcibly entered into the area of Red Fort where they attacked on the Cops and vanished the police vehicles. It was also argued that from the photographs placed on record by the IO, the applicant can be clearly seen present at the spot i.e. Red Fort and climbing the wall of Red Fort located at the back side of rampart and at this stage of bail, the presence of the applicant and the photographs showing him climbing the wall is suffice to show his culpability in the offence. Investigation is stated to be at initial stage. Ld. APP further submitted that various CCTV Footage of the spot has been collected which are under scrutiny and role of other perpetrators of the crime still has to be digged out and there is every possibility that if applicant is admitted on bail, he may try to influence the investigation.

5. I have considered the rival contentions of Ld. APP & Ld. Counsel for applicant and perused the record.

6. Presently, the only material against the applicant with the prosecution is his photographs at the spot i.e. Red Fort showing that he is climbing at the wall. No active role as of instigator or attacker on the police personnel has been assigned to the applicant in the alleged crime. At this stage of the matter, mere presence and climbing on wall by the accused cannot justify his further incarceration as he is already

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in JC since 03.02.2021. Investigation qua him is already completed. His medical documents have been verified by the IO which are found to be genuine. Looking into the entire facts and circumstances, applicant is admitted on bail subject to furnishing of personal bond to the tune of Rs.25,000/- and surety bond of like amount to the satisfaction of concerned Ld. MM/Duty MM/Link MM.

The application is disposed off accordingly.

(Charu Aggarwal)
ASJ-02/Centre/THC/Delhi
22.03.2021