

FIR No. 98/21

PS : Kotwali (Crime Branch)

Sandeep Singh Sidhu @ Deep Sidhu Vs. State (The NCT of Delhi)

U/s 147/148/149/153/452/34 IPC, 25/27 Arms Act, 3/4 of PDPP Act, 2 PINH Act, 30A/30B AMASR Act

26.04.2021

Vide Office Order No.256/RG/DHC/2021 dated 08.04.2021 of Hon'ble High Court of Delhi, the cases are being taken up through Video Conferencing today.

Joined through Video conferencing.

The present application for grant of bail U/s 437 Cr.P.C. has been moved on behalf of applicant/accused Sandeep Singh Sidhu @ Deep Sidhu S/o Late Shri Surjit Singh in FIR No. 98/2021.

Present : Sh. Rajiv Kamboj, Ld. APP for the State.

Ld. Counsel for applicant/accused has submitted that the FIR No. 96/2021 was registered at PS Kotwali on 27.01.2021 in connection with violence that erupted on Republic Day at the Red Fort. That the present FIR No. 98/2021 was registered on 28.01.2021, at PS Kotwali, again in connection with violence and resultant damage at Red Fort. That the accused was arrested in the aforesaid FIR on 09.02.2021 and was sent to police custody for 14 days where he fully cooperated with the investigation of the case. Thereafter, the accused was sent to Judicial Custody on 23.02.2021 and has been in custody for about 70 days till date. That the facts and allegations in both the FIR's are identical as both relate to violence and alleged damage caused to the Red Fort on the Republic Day and registration of subsequent FIR is an abuse of process of law. Further, it is submitted that an application for the regular bail u/s 439 Cr.P.C with respect to FIR No. 96/2021 was heard at length by the Learned Addl. Sessions Judge and was granted regular bail vide order dated 16.04.2021 which was communicated in the morning of 17.04.2021. That before the accused could be released from jail, he was arrested in present FIR No. 98/2021 in respect of same incident at Red Fort. That the need and timing of arrest is extremely questionable as the said arrest has been made in the present FIR on the day when the petitioner secured regular bail in FIR No. 98/2021 and was to be released. That the said arrest is clearly Mala fide and is a desperate attempt to defeat the bail order dated 16.04.2021 of Ld. ASJ. Further, it is submitted that the accused has been arrested in the present FIR only on 17.04.2021 i.e. after an inordinate and unexplainable delay of 80 days after registration of the FIR No. 98/2021 on 28.01.2021.

Reply of IO has been filed electronically. Copy of same has been sent to Ld. Counsel for the applicant/accused electronically. IO, in his reply, has stated that during the course of investigation, CCTV footage as well as media clips were obtained and analysed and the accused Sandeep Singh Sidhu @ Deep Sidhu was seen at Red Fort at the time of the incident and was also seen in some videos, instigating protestors against the government well before the incident dated 26.01.2021 at Red Fort, Delhi. That at the time of the incident, accused Deep Sidhu was live on his Facebook page covering the incident and was also seen appreciating co-accused Jugraj Singh, who was seen hoisting a religious flag on the flagpole of rampart at Red Fort. That it has come on record that the above unruly mob attacked the police and security personnel and caused injuries with deadly weapons, destroyed public property at large, robbed arms and ammunitions. That during this riot at Red Fort, a total of 167 individuals sustained injuries, out of which 144 were policemen (Delhi Police / CRPF / CISF & SSB) and 23 were civilians including media persons. That the riotous mob carrying spears, swords, lathis etc. indulged into such act of terror, that created mayhem at Red Fort and sabotaged government property and also damaged the building of Red Fort, a national heritage site and pride of India. IO has opposed the bail application on the following grounds:

a) That the present case is very sensitive in nature involving damage to red Fort property, symbol of national pride by rioting, and allegations are grave and serious in nature.

b) That the accused was well conversant with the fact that the protestors were not following the prescribed route with the terms and conditions as provided by Delhi Police, still he reached Red Fort in pursuance of criminal conspiracy to join the riotous mob during agitation and he is equally liable for the commission of all the offences committed by the unruly mob.

c) That the accused is one of the main conspirators, who was seen most of the time with one Jugraj Singh at Red Fort, who hoisted the religious flag who hoisted the religious flag on the rampart of Red Fort.

d) That the accused had recorded various videos in & outside the periphery/walls of Red Fort, wherein he is seen instigating the rioters. Furthermore, in these videos the rioters are seen carrying spears, lathis, swords etc.

e) That the accused was instigating the riotous mob by raising slogans "JHUL TE NISHAN REHAN" and the same was completed by the members of the unlawfully assembled riotous lobby saying "PANT MAHARAJ DI". That all this time applicant/accused was. Live on Facebook, capturing his presence & incident live from his mobile camera.

f) That there is every apprehension that if the accused is enlarged on bail, he may help absconding accused Jugraj Singh and other accused persons evade their arrests, who were part of the riotous mob.

g) That if the accused is enlarged on bail, he will again make his presence at the different borders of Delhi, where the farmers are still protesting, to instigate and provoke them against the Bill, continue protest and this might again give rise to another incident like Red Fort riots in Delhi.

Ld. APP for the State has vehemently opposed the bail application on the ground that though timing of arrest of the accused in present FIR may be questionable but the Ld counsel for the accused has no answer as to why they did not go for quashing of the FIR No. 98/2021 if they so believed that both the FIR's were identical. Further it is submitted that FIR No. 98/2021 is registered on different cause of action and role/conduct of the accused is different in both the FIR's. That the accused was well conversant with the fact that the protestors were not following the designated route with the terms and conditions as prescribed by Delhi Police, still he voluntarily chose to join the riotous mob. Further it is submitted that the allegations are serious in nature and the accused may tamper with the evidence which is evident from the fact that the accused had already destroyed both his mobile phones along with the SIMs which he was using on the date and time of the incident and therefore, the bail application may be dismissed.

Submissions heard.

From prima facie perusal of contents of both the FIR's, it appears that the allegations levelled against the accused are similar in both the FIR's. FIR No. 96/2021 registered on 27.01.2021 provides a comprehensive overview of the incident relating to violence and alleged damage caused to the Red Fort on the Republic Day and the present FIR merely reiterates the allegations, against the accused, as to the damage caused to the Red Fort.

It would be worthwhile to observe that the Learned Addl. Sessions judge granted regular bail to the accused in FIR No. 96/2021, vide order dated 16.04.2021, after considering all the submissions of the prosecution and after noticing all the facts of violence and damage to Red Fort and held –

'None of the above acts are attributed specifically to have been committed by the accused-applicant'.

Further it was observed –

'The prosecution seeks to make an example out of the case of the accused,

he being a popular public figure, such an endeavour however hazards a failure of justice as a result of compromised objectivity'.

During the arguments, Ld. Counsel for the accused highlighted the striking similarities between the contentions that had been laid to rest vide order dated 16.04.2021, granting bail to the accused after considering all arguments and detailed submissions and the similar contentions that have been raised in the present FIR No. 98/2021.

The sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIR's whether before or after filing the final report. Fresh investigation based on the second and successive FIR's, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under section 173(2) has been forwarded to the magistrate, is an abuse of process and impermissible.

The applicant-accused was arrested in the FIR No. 96/2021 on 09.02.2021 and the Investigating agency was given a total period of 14 days towards the police custody in the said FIR. Thereafter, the accused was sent to Judicial Custody on 23.02.2021 and has been in judicial custody since then. It would be worthwhile to observe that the accused was granted regular bail u/s 439 Cr.P.C by the Ld. ASJ in FIR No. 96/2021 vide order dated 16.04.2021 and the said order was communicated in the morning of 17.04.2021. However, before the accused could be released from jail, he was arrested in the present FIR dated 28.01.2021 also registered in respect of same incident at Red Fort. The need and timing of the arrest is highly questionable because despite knowing that the accused has been lodged in JC since 09.02.2021, he was arrested only on 17.04.2021, when he was granted regular bail in FIR No.96/2021. This clearly suggests that it was an attempt to defeat the bail order dated 16.04.2021 of the Ld. ASJ and is a grave affront to personal liberty of the accused and runs foul of rights guaranteed under Article 21. Such vicious and sinister action of investigative authorities amounts to playing fraud with established criminal process and shows scant regard to constitutional protections enshrined, protected and cherished under the Constitution of India. Ld. APP for the state, during the course of arguments, fairly conceded that timing of arrest may be questionable but argued that Ld. Counsel for the accused should have moved an application for quashing of the FIR No. 98/2021 under Section 482 Cr.P.C. The court is of the opinion that it is the discretion of the accused whether to invoke the jurisdiction of the High Court U/s 482 Cr.P.C and it in no way precludes the accused from moving an application for regular bail before the concerned court.

Considering the submissions made, I am of the considered opinion that Applicant's further incarceration in the present case would bear no fruit and therefore would be unjustified, nor would the restoration of Applicant's liberty be detrimental to the investigation being conducted by the police authorities. The accused has already been interrogated in PC for 14 days and has been in custody for about 70 days when he has been granted regular bail by Ld. ASJ on similar facts. Any further restraint upon his liberty would be neither logical nor legal. Hence, applicant/accused **Sandeep Singh Sidhu @ Deep Sidhu is admitted to bail in case FIR No. 98/2021** subject to furnishing of **personal bond in the sum of Rs. 25,000/- with one surety of like amount**, to the satisfaction of Ld. Duty MM as per prevailing duty roster, subject to the following conditions:-

- 1. That the accused person(s) shall join investigation as and when called.**
- 2. That the accused person(s) shall attend the Court as per conditions of bond to be executed.**
- 3. That the accused person(s) shall not commit similar offence and;**
- 4. That the accused person(s) shall not directly/indirectly induce, give threat, or in any way dissuade the witnesses/persons acquainted with the facts of the case and also shall not tamper with the evidence.**

Accordingly, the present application is disposed off.

One copy of the order be uploaded on Delhi District Court Website. Copy of order be also sent to the e-mail of jail superintendent and SHO PS Kotwali (Crime Branch) and Ld. Counsel for the applicant. The printout of the application, reply and order be kept for records and be tagged with the final report.

(Sahil Gupta)
Reliever MM (Central)/THC/Delhi
26.04.2021