

**(2021) 02 DEL CK 0152**

**Delhi High Court**

**Case No:** Bail Application No. 3550 Of 2020

Mohd. Danish

APPELLANT

Vs

State (Nct Of Delhi)

RESPONDENT

**Date of Decision:** Feb. 16, 2021

**Acts Referred:**

- Constitution Of India, 1950 - Article 20(3)
- Code Of Criminal Procedure, 1973 - Section 161, 162, 162(1), 178(8), 439, 482
- Indian Penal Code, 1860 - Section 34, 109, 120B, 141, 144, 147, 148, 149, 153A, 186, 188, 201, 302, 307, 308, 323, 332, 333, 336, 353, 397, 412, 427, 436
- Prevention of Damage to Public Property Act, 1984 - Section 3, 4
- Arms Act, 1959 - Section 25, 27, 54, 59
- Evidence Act, 1872 - Section 25, 26, 27

**Hon'ble Judges:** Suresh Kumar Kait, J

**Bench:** Single Bench

**Advocate:** Salman Khurshid, Bilal Anwar Khan, Anshu Kapoor, S.V. Raju, Amit Mahajan, Rajat Nair, Shantanu Sharma, Dhruv Pande, Sairica Raju, A. Venkatesh, Guntur Pramod Kumar, Shaurya R. Rai, Zeal Shah, Aarushi Singh, Anshuman Singh

**Final Decision:** Disposed Of

**Judgement**

..

Suresh Kumar Kait, J",,,

1. The present petition has been filed by the petitioner under Section 439 Cr.P.C. for grant of bail in case FIR No.60/2020, for the offences punishable",,,

under

Sections

186/353/332/323/109/144/147/148/149/153A/188/333/336/427/307/308/397/412/302/201/120-I

IPC read with Sections 3 & 4 PDPP,,

Act and 25/27 Arms Act, registered at PS Dayal Pur, North East District, Delhi.",,

2. It is stated in the present petition that the petitioner is a Cab Driver by Profession and he is currently working with HCL Gurgaon on contractual,,

basis. Petitioner used to be on night duty from evening till morning. He was attached with HCL through one vendor, namely, Ravi Tour and Travels",,

for past six months.,,

3. Case of the petitioner is that one maternal aunt, one elder sister and maternal uncle of the petitioner reside in the Chandbagh area. The said",,

maternal aunt is mother-in-law of the elder sister of the petitioner residing currently at C-89, Street No.1, Moonga Nagar, Karawal Nagar Road",,

Delhi-110094 while the maternal cousin named Ikram of the petitioner resides at Street No.3, Karawal Nagar Road, Chandbagh. On 23rd February",,

2020, petitioner along with his cousin Ashu decided to leave for Chandbagh to pay a visit to the relatives. On said day, things were as usual calm and",,

normal. It was only on 24th February that things started worsening up. Late mother (she was alive on that day) of the petitioner called and asked the,,

petitioner to stay at maternal aunt's/elder sister's place till the things get normal and return home at Loni thereafter. On 25th February around,,

6:00 am in the morning, petitioner returned to his residence where his parents were residing, i.e. H. No.110, Gali No.3, Rabbani Masjid, Prem Nagar",,

Loni Ghaziabad, UP. However, on 10.03.2020 that petitioner got a call from one lady customer asking for petitioner's cab on monthly basis.",,

Accordingly, petitioner left his residence at Loni to reach at the customer's location on 10.03.2020 and while petitioner was en-route, that he was",,

confronted by Nandnagri Police Personnel. He was brought to Nandnagri Police Station and thereafter, he was taken to Crime Branch, Lodhi Road.",,

Petitioner was arrested while being at work.,,

4. Mr. Salman Khurshid, learned Senior Counsel appeared on behalf of petitioner and submitted that there is no recovery from the petitioner which",,

could connect him with the alleged charges in the present FIR. Alleged statement by the petitioner herein is false, fabricated and illegal. It is factually",,

incorrect that petitioner deposed any information to the Police officials. He is educated only till class X. He was made to sign some plain papers which,,

later found out to be disclosure statements attributed to him.,,

5. Further submitted that as per Section 162(1) Cr.P.C., no statement that has been given to the police official be signed by the person making it.",,,

â€œ162. Statements to police not to be signed: Use of statements in evidence.,,

(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be",,,

signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of",,,

such statement or record, be used for any purpose.â€",,,

6. Therefore, the alleged disclosure statement suffers from gross illegality and it is in the teeth of Section 162(1) Cr.P.C. and cannot be relied upon at",,,

this juncture. Moreover, statement under Section 161 Cr.P.C. given to the police officials is not the substantive piece of evidence as held by Hon'ble",,,

Supreme Court speaking through Hon'ble Justice GP Mathur in case of Rajendra Singh vs State of UP (2007) 7 SCC 378:,,

â€œ...7. ...A statement under Section 161 Cr.P.C. is not a substantive piece of evidence. In view of the proviso to sub-section (1) of section,,

162 Cr.P.C., the statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said",,,

proviso.....,,

....11. Having considered the submissions made by learned counsel for the parties, we are of the opinion that the statements of the witnesses",,,

under Section 161 Cr.P.C. being wholly inadmissible in evidence could not at all be taken into consideration. The High Court relied upon,,

wholly inadmissible evidence to set aside the order passed by the learned Sessions Judge. That apart, no finding on a plea of alibi can be",,,

recorded by the High Court for the first time in a petition under Section 482 Cr.P.C. As mentioned above, the burden to prove the plea of",,,

alibi lay upon the accused which he could do by leading evidence in the trial and not by filing some affidavits or statements purported to,,

have been recorded under Section 161 Cr.P.C. The whole procedure adopted by the High Court is clearly illegal and cannot be,,

sustained....â€",,,

7. Learned Senior Counsel submitted that the alleged statements given to the police personnel suffered from gross illegalities and patently in violation,,

of Sections 161 and 162 of the Cr.P.C. Beside that the statements are absolutely photocyclic in nature. Petitioner did not know any of the co-accused,,

either. Therefore, the alleged statements appear to be fabricated and copied, hence, inadmissible as per law. In addition, alleged statements suffer",,,

from gross illegality as per Sections 25 & 26 of the Indian Evidence Act which states that:,,

“Section 25: Confession to police officer not to be proved.- No confession made to a police officer, shall be proved as against a person",,,

accused of any offence.”,,

Section 26: Confession by accused while in custody of police not to be proved against him.-No confession made by any person whilst he is,,

in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.”,,

8. Further submitted that the collective reading of the preceding section of Indian Evidence Act bars any kind of statement given to the police by the,,

accused. The alleged statement was given in the police custody. Henceforth, it has no evidentiary value as per Indian Evidence Act. The extent to",,,

which statement made during police custody to the police is limited to the discovery aspect. Section 27 of the Indian Evidence Act says;,,

“Section 27: How much of information received from accused may be proved.-Provided that, when any fact is deposed to as discovered",,,

in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such",,,

information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”,,

9. It is further submitted that there is no recovery of weapon from the petitioner which can with any stretch of imagination substantiate the alleged,,

charges mentioned in the FIR No.60/2020 registered PS Dayalpur. There is no piece of alleged recovery as per charge-sheet. The illegal disclosure,,

statement sans discovery can in no way be scrutinised to satisfy the legal ingredients to either make a constituents of crime or any ingredients of any,,

offence mentioned in the FIR or defined in the Indian Penal Code or Arms Act. The disclosure statement is in teeth of doctrine of self-incrimination,,

enshrine under Article 20(3). Article 20(3) of Constitution of India states:,,

â€œ(3) No person accused of any offence shall be compelled to be a witness against himself.â€,,

The disclosure statement is violative of Article 20(3) patently and henceforth cannot be relied upon to form a prima facie view regarding involvement,,  
of the petitioner in the alleged incident.,,

10. Mr. Khurshid further submits that the case against the petitioner is unfounded on the main charges. The entire case is on either 149, 120-B or 34",,,

IPC. In event of Section 149 IPC, there is nothing on record to suggest that the petitioner acted with 'common object'â€. The entire case rests upon",,,

the Section 149 IPC. The Three Judges Bench of Hon'ble Supreme Court while reversing the conviction under Section 302 r/w Section 149 IPC in,,

Amrika Bai vs State of Chhattisgarh 2019 4 SCC 620 at Para 12.,,

â€The above observation cast a serious doubt on the involvement of the appellant in the incident in which the deceased was beaten to,,

death and she suffered unexplained injuries. Thus, she cannot be termed to be a member of the unlawful assembly, much less one which was",,,

alleged to have been constituted with the common object of murdering the deceased. The law is well settled on the aspect that mere presence,,

in an unlawful assembly cannot render a person liable unless there was a common object, being ones of those set out in Section 141 IPC",,,

and she was actuated by that common object....â€,,

11. Therefore, in the instant case there is nothing in the charge-sheet to suggest that the petitioner herein acted with any common object. The",,,

conspiracy aspects hold no water. The implicating material is the CDRs of the petitioner. However, as per CDRs of his mobile number is 8076340702",,,

the location on 24.02.2020 (from 11:16:47 am till 14:58:05 pm) is of F-586, Khajuri Khas, Karawal Nagar Road, Delhi- 110094. As per CDRs records",,,

there is no outgoing or incoming call/sms from the mobile number of the petitioner to any of the co-accused numbers. Moreover, the location as per",,,

CDRs is 200-250 meters away from the place of incident i.e. Main Wazirabad Road Near Chandbagh area. Thus, it is submitted that the petitioner is",,,

innocent. Charge-sheet has already been filed. The petitioner is in judicial custody since 11.03.2020 and he is no more required for investigation. The,,

fact remains that the trial shall take substantial time, therefore, there is no purpose to keep him behind the bar. Thus, he may be released on bail.",,

12. The present case pertains to communal riots which erupted in North East, Delhi on 24.02.2020. An illegal protest site was being run at Chandbagh",,

i.e. the place of occurrence and misinformation was continuously being spread from the protest site against CAA/NRC that it would take away the,,

citizenship of Muslims. On 24.02.2020, a police team deployed at the protest site was brutally attacked without provocation. HC Ratanlal was shot",,

dead while several policemen including DCP Amit Sharma were injured with grievous injuries. Accordingly, case was registered for the offences",,

punishable under Sections 186/353/332/333/323/109/144/147/148/149/153A/188/336/427/307/308/397/412/302/201/120-B/34 IPC r/w 3 & 4 PDPP,,

Act, 25/27/54/59 Arms Act.",,

13. Mr. S.V. Raju, learned Sr. Adv. and learned Additional Solicitor General of India, while opposing the petition submits that there were weapons in",,

the hands of the accused, i.e. gun, stones, logs, sword, petrol bombs, chemical bombs, iron rod etc. Petitioner is a resident of Loni, Ghaziabad",,

however, on 23rd February and 24th February and at the time of incident, his location was at Chandbagh at the place of incident as per call detail",,

records. Petitioner was actively involved in riots and was identified by the witnesses Ct. Sunil and Ct. Gyan of PS Dayalpur. Their statements in this,,

regard have been recorded u/s 161 Cr.P.C. It is a case of murder of one public servant while performing his official duties, the petitioner actively",,

participated in the riots and as a part of unlawful assembly the petitioner is responsible for the act too.,,

14. Further submitted that in close vicinity to the incident under investigation in the present case, huge arson and rioting took place. A petrol pump was",,

burnt, several shops/showrooms were also set ablaze and at least three other persons lost their lives. All the cases are presently under investigation",,

separately. In the present case, accused persons had killed HC Ratanlal and tried to kill the police party including DCP Shahdara and ACP Gokulpuri",,

who received serious injury on head.,,

15. Learned ASG fairly conceded that who gave fatal blow to the deceased is not known, however, medical evidence on record shows as under:",,,

â€œ(a) Oval shape firearm wound of size 1.2 CM X 1 CM placed lateral aspect of left upper arm, 6 CM away from tip of left shoulder and",,,

12.5 CM away and above to left anterior axillary fold and 140 CM above left hill. An abrasion collar was present over the antero-lateral,,,

margin of the wound. On dissection of the wound, the underlying left humerus bone was fractured, direction of the track was downward",,,

back ward and left to right, track entered the left chest cavity after fracturing the 3rd rib at anterior axillary lying, passing through and",,,

through to the apical lobe of left lung, body of T3 vertebrae and apical lobe of right lung then exit the right chest cavity after fracturing 4th",,,

Rib up and then to the posterior muscles of right arm where a copper jacketed bullet of size 1.5 CM in length and 0.8 CM in diameter of,,,

base was found. Total length of the track was 48 CM bullet was removed, preserved and sealed after making an 'X' mark on the base. Both",,,

chest cavities were filled with blood and blood clots of about 1 litre.,,,

(b) Reddish abrasion of size 0.5 CM X 0.5 CM present over dorsal aspect of left hand, 3.5 CM above the knuckle of index finger.",,,

(c) Reddish abrasion of size 0.3 CM X 0.3 CM present over knuckles of middle and ring fingers of left hand.,,,

(d) Reddish abrasion of size 1 CM X 0.4 CM present over dorsal aspect of ring finger of right hand.,,,

(e) Reddish abrasion of size 0.6 CM X 0.3 CM present over dorsal aspect of middle finger of right hand.,,,

(f) Lacerated wound of size 1 CM X 0.4 CM X muscles deep present over medial phalanx of middle finger of right hand.,,,

(g) Reddish abrasion of size 1.8 CM X 1 CM present over left upper eyelid with underlying bruise of size 3 CM X 2 CM.,,,

(h) Reddish abrasion of size 2 CM X 1 CM obliquely placed, present over left side of head, 5.5 CM away from midline and 7.5 CM above",,,

left eyebrow.,,,

(i) Reddish abrasion of size 2.5 CM X 0.4 CM, horizontally placed, present over left side of forehead, 5 CM away from midline and 5.5 CM",,,

above lateral margin of left eyebrow.,,

(j) Reddish bruise of size 4 cm X 3.5 cm present over the middle of forehead placed across the midline.,,

(k) Reddish abrasion of size 0.5 cm X 0.3 cm present over antihelix of left ear.,,

(l) Reddish abrasion with reddish bruise of size 3.5 CM X 0.5 CM, horizontally placed, present over left on the neck, 2 CM below left ear",,,

lobe.,,

S.No.,Time,Location

1.,9:39:15 am,"Sharaft Ali S/o Mohd. Ishaq, Plot No.5A Gali No.1A, Khasra

Number 123/21, Moonga Nagar, Karawal Nagar|110094

2.,11:10:49 am â€" 15:11:53 pm,"F-586, Khajuri Khas, Karawal Nagar Road, Delhi â€

110094

3.,15:22:31 pm,"D Block Khajuri Khas, Delhi 110094

4.,15:35:25 pm â€" 15:49:34 pm,"Sharaft Ali S/o Mohd. Ishaq, Plot No.5A Gali No.1A, Khasra

Number 123/21, Moonga Nagar, Karawal Nagar|110094

5.,15:57:20 pm,"F-586, Khajuri Khas, Karawal Nagar Road, Delhi â€

110094

6.,16:17:52 pm,"D Block Khajuri Khas, Delhi 110094

7.,16:54:04 pm â€" 18:33:26 pm,"F-586, Khajuri Khas, Karawal Nagar Road, Delhi â€

110094

8.,18:54:44 pm â€" 19:15:41 pm,"Sharaft Ali S/o Mohd. Ishaq, Plot No.5A Gali No.1A, Khasra

Number 123/21, Moonga Nagar, Karawal Nagar|110094

9.,19:21:42 pm â€" 19:22:30 pm,"D Block Khajuri Khas, Delhi 110094

10.,19:32:40 pm,"F-586, Khajuri Khas, Karawal Nagar Road, Delhi â€

110094

11.,19:49:15 pm â€" 19:52:33 pm,"Khasra No.1/60 & 1/61, Village Ziauddinpur, Gali No.7,

Bhagirath Vihar, Delhi-110094



12.,19:54:37 pm,"D-5/70 Village Ziauddinpur, Abadi of Main Nala Road, Gal  
No.5, D-Block Brijpuri, Delhi 110094

13.,19:57:07 pm,"House No.112, Gali No.2, New Mustafabad, Delhi 110094  
Brijpuri

14.,20:20:12 pm " 21:44:31 pm,"Sharaft Ali S/o Mohd. Ishaq, Plot No.5A Gali No.1A,  
Khasra

Number 123/21, Moonga Nagar, Karawal Nagar|110094

30. The petitioner shall not influence the prosecution witnesses during trial.,,

31. The petition is, accordingly, allowed and disposed of.".,,

32. Copy of this order be transmitted to the Jail Superintendent concerned and Trial  
Court for necessary compliance.,,

33. It is made clear that the Trial Court shall not get influenced by the observations  
made by this Court while passing the order.,,

34. The judgment be uploaded on the website of this Court forthwith.,,