

DLNE010016552021



**IN THE COURT OF SH. PULASTYA PRAMACHALA
ADDITIONAL SESSIONS JUDGE-03,
NORTH-EAST DISTRICT
KARKARDOOMA COURTS: DELHI**

CNR No. DLNE01-001655-2021

Sessions Case No. 212/21

FIR No. 101/20

PS Khajuri Khas

U/s 109/114/147/148/149/186/212/353/395/427/435/436/

452/454/505/120B/34 IPC & 3/4 PDPP Act & 27/30 Arms Act

In the matter of: -

STATE

Versus

1. MOHD. TAHIR HUSSAIN



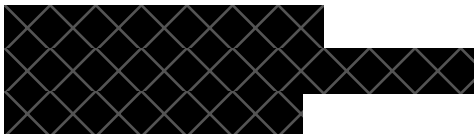
2. SH. LIYAKAT ALI



3. SH. RIYASAT ALI



4. SHAH ALAM



5. MOHD. SHADAB

[REDACTED]

6. MOHD. ABID

[REDACTED]

7. SH. RASHID SAIFI

[REDACTED]

8. SH. GULFAM @ VIP

[REDACTED]

9. SH. ARSHAD QAYYUM @ MONU

[REDACTED]

10.SH. IRSHAD AHMAD

[REDACTED]

11.MOHAMMAD RIHAN @ ARSHAD PRADHAN

[REDACTED]

12.SH. TARIQ MOIN RIZVI

[REDACTED]

13.SH. JAGAR KHAN

[REDACTED]

14.SH. HAZI ISHAQ MALIK @ MOHD. ISHAQ
(Since proceedings against him abated vide order dated
26.07.2022.)

[REDACTED]

15.SH. MOHD. ILLIYAS

[REDACTED]

16.SH. KHALID SAIFI

[REDACTED]

17.SH. UMAR KHALID

[REDACTED]

03.12.2022

ORDER ON THE POINT OF CHARGE

Vide this order, I shall decide the question of charges to be framed against accused Tahir Hussain, Liyakat Ali, Riyasat Ali, Shah Alam, Mohd. Shadab, Mohd. Abid, Rashid Saifi, Gulfam @ VIP, Arshad Qayyum @ Monu, Irshad Ahmad, Mohammad Rihan @ Arshad, Tariq Moin Rizvi, Jagar Khan, Mohd. Illiyas, Khalid Saifi and Umar Khalid.

1. Brief facts of the present case are that on 24.02.2020, a large crowd of muslims gathered in and around the house of Tahir Hussain and started stone pelting, throwing petrol bombs, firing from the outside/rooftop of house of Tahir Hussain, under his leadership. HC Vikram, HC Virender and Ct. Sangram Singh

from PS Khajuri Khas, were on duty there to control/maintain law and order. But they were overpowered by the huge number of the crowd. All three of them were compelled to move away and look for shelter to save themselves. Rioters burnt/damaged houses, shops, vehicles etc. and also looted persons nearby the house of accused Tahir Hussain and used his house as a base for the riots. A building bearing no. E-98/2, Khajuri Khas, just adjacent to the house of Tahir Hussain, which was being used as parking for vehicles, was also damaged by the rioters. Complainant Ct. Sangram Singh took shelter in this parking, but rioters broke open the shutter of the parking and burnt and damaged vehicles, which were parked there on two floors, including motorcycle of the complainant. One floor of parking was thus, set on fire.

2. On 25.02.2020, FIR was registered on the basis of complaint of Ct. Sangram Singh. In his complaint, Ct. Sangram Singh alleged that on 24.02.2020, he along with HC Vikram and HC Virender, was on duty at Chand Bagh pulia, E-Block, Khajuri Khas. He had parked his motorcycle bearing no. DL5SBW3316 make and model Hero Honda Hunk in Pradeep Parking. He further alleged that at 02:15 PM a large mob gathered there and started pelting stones and arsoning. Consequently, he went to nearby parking to save himself, but the mob opened the shutters of the parking and thrashed all the persons inside. Ct. Sangram Singh further alleged that the crowd set the vehicles on fire and his aforesaid motorcycle was also burnt. He further alleged that the mob

reached the first floor of Pradeep Parking, where foods were being cooked for a wedding ceremony. He further alleged that a large number of rioters gathered on the rooftop of Tahir Hussain, who were pelting stones, petrol bombs and firing gunshots towards the side of Pradeep Parking, which was adjacent building. They destroyed everything arranged for wedding ceremony as well as nearby private and government properties. A complaint vide DD No.75-A was also received in the PS from Sh. Tejvir Singh, regarding damaging of wedding articles by pelting stones and setting them on fire by mob. After registration of the case, investigation of the present case was marked to SI Naveen Kumar.

3. During investigation, on inspection of house of accused Tahir Hussain at E-7, Khajuri Khas, Main Karawal Nagar Road as well as adjoining area; lot of debris, stones, bricks, broken bottles, some glass bottles with liquid, bullets and burnt articles etc. were found there. On the third floor and the roof top of house of accused Tahir Hussain, stones, bricks, glass bottles containing petrol with neck stuffed with clothes and other materials including catapults were found, which were taken into police possession. There was no CCTV footage covering the alleged incident. During further investigation, site plan without scale was prepared and statement of HC Virender, HC Vikram and Ct. Sangram Singh were recorded u/s. 161 Cr.P.C. Thereafter, further investigation of the case was transferred to SIT of crime branch.

4. During further investigation, IO examined several other witnesses and arrested accused Mohd. Tahir Hussain on 05.03.2020; Liyakat Ali, Riyasat Ali and Tariq Moin Rizvi on 07.03.2020; Shah Alam, Jagar Khan, Haazi Ishaq Malik @ Mohd. Ishaq and Mohd. Illiyas on 09.03.2020; Mohd. Shadab, Mohd. Abid and Rashid Saifi on 10.03.2020; Gulfam @ VIP on 12.03.2020, Arshad Qayyum @ Monu and Irshad Ahmad on 18.03.2020 and Mohammad Rihan @ Arshad Pradhan on 24.03.2020.
5. After completion of investigation, on 02.06.2020, a chargesheet was prepared by IO/Insp. Sunil Kumar in respect of incident in Pradeep's parking against fifteen accused persons before Duty MM (North East), Delhi. Out of them, accused Mohd. Tahir Hussain, Liyakat Ali, Riyasat Ali, Shah Alam, Mohd. Shadab, Mohd. Abid, Rashid Saifi, Gulfam @ VIP, Arshad Qayyum, Irshad Ahmad and Mohammad Rihan @ Arshad Pradhan were chargesheeted for offences punishable u/s. 109/114/147/148/149/153A/186/212/353/395/427/435/436/452/454/505/120B/34 IPC & 3/4 PDPP Act & 25/27 Arms Act. In the aforesaid chargesheet, police also chargesheeted accused Tariq Moin Rizvi, Jagar Khan, Haazi Ishaq Malik @ Mohd. and Mohd. Illiyas for offence u/s. 212 IPC.
6. On 12.10.2020, Id. CMM (North East), Delhi, took cognizance of offences punishable u/s. 109/114/147/148/149/186/353/395/427/435/436/452/454/120B/34 IPC & 3/4 PDPP Act and u/s. 212 IPC against accused Mohd. Illiyas, Tarik Moin Rizwi and Jagar Khan.

Vide this order, Id. CMM (N/E) declined to take cognizance of offences under Arms Act and u/s. 505/153-A IPC for want of sanction u/s. 39 Arms Act and 196 Cr.P.C., respectively. Thereafter, a supplementary chargesheet was filed adding name of accused Khalid Saifi, before CMM (North East), Delhi, on 03.09.2020. Thereafter, another supplementary chargesheet was filed adding name of accused Umar Khalid before Duty MM (North East), Delhi, on 26.12.2020. Thereafter, this case was committed to the sessions court vide order dated 24.03.2021.

7. Thereafter, third supplementary chargesheet along with FSL report, Sanctions u/s. 39 Arms Act and 196 Cr.P.C., was filed by Insp. Harbir Singh before CMM, North East, Delhi, on 10.05.2022, against accused Mohd. Tahir Hussain, Liyakat Ali, Riyasat Ali, Shah Alam, Mohd. Shadab, Mohd. Abid, Rashid Saifi, Gulfam @ VIP, Arshad Qayyum, Irshad Ahmad and Mohammad Rihan @ Arshad Pradhan. Vide order dated 08.06.2022, Id. CMM (N/E) took cognizance of offences punishable u/s. 25 and 27 Arms Act as well as u/s. 505 and 153A IPC, against aforesaid eleven accused persons. This third supplementary chargesheet was committed to the sessions court vide order dated 03.08.2022.
8. Thereafter, on 29.10.2022, fourth supplementary chargesheet along with copy of prohibitory order u/s. 144 Cr.P.C., complaint u/s. 195 Cr.P.C., other documents and statement u/s. 161 Cr.P.C. was filed before this court.

9. As per chargesheet, role of accused persons and evidence against each accused, are as follows: -

S. No.	Name of accused	Role played by accused	Evidence against accused
01	Mohd. Tahir Hussain	He is main accused, who hatched conspiracy of communal riots and led/instigated the mob from his house. The rioters led by him, robbed persons and burnt down movable/ immovable properties.	<ol style="list-style-type: none">1. Statement of PWs Pradeep Kumar Verma, Surender Singh, Manoj Kumar, Pintu, Girish Pal, Rahul Kasana, Rajbir Singh Yadav, Nitin Kumar, CT Sangram Singh, HC Vikram and HC Virender mentions name of this accused.2. Recovery of bricks, stones, inflammable liquid, catapults from house of this accused.3. Release of his licensed pistol just before the riots and recovery of 22 empty cartridges.4. No damage to his house/office, while his adjacent house/shops were burnt down by rioters present in this house.5. No CCTV recording of the incident to avoid any evidence despite having CCTV cameras in his house and four DVRs (No recording from 23 Feb to 28 Feb 2020 as per FSL report) recovered from his house.6. Mobile location near the scene of crime and connectivity with other rioters/ conspirators/ Anti CAA protesters.7. Suspicious money transactions from his company accounts before the riots.

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S. No.	Name of accused	Role played by accused	Evidence against accused
			8. Video footages of social media showing him at his roof top at the time of incident.
02	Liyakat Ali	Actively participated in communal riots and threw stones/ burning glass bottles towards other community.	1. Statement of PWs Pradeep Kumar Verma, Ct. Sangram Singh, Surender Singh, Rajbir Singh Yadav and Dinesh Kumar. 2. Mobile location near the scene of crime.
03	Riyasat Ali	Actively participated in communal riots and looted persons, burnt movable and immovable properties.	1. Statement of PWs Pradeep Kumar Verma, Ct. Sangram Singh, Surender Singh, Rajbir Singh Yadav, Dinesh Kumar, Nitin, HC Vikram and HC Virender. 2. Mobile location near the scene of crime.
04	Shah Alam	Actively participated in communal riots and looted persons, burnt movable and immovable properties.	1. Statement of PWs Pradeep Kumar Verma, Ct. Sangram Singh, Surender Singh, Girish Pal, Rahul Kasana, Rajbir Singh Yadav, Nitin, HC Vikram and HC Virender. 2. Mobile location near the scene of crime. 3. Video footages of social media showing him at his rooftop at the time of incident.
05	Mohd. Shadab	Actively participated in communal riots and threw stones/ burning glass	1. Statement of PWs Pradeep Kumar Verma, Ct. Sangram Singh, Girish Pal and Rahul Kasana.

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S. No.	Name of accused	Role played by accused	Evidence against accused
		bottles towards other community.	2. Refusal of TIP and later identified by PWs. 3. Mobile location near the scene of crime. 4. Video footages of social media showing him at his rooftop at the time of incident.
06	Mohd. Abid	Actively participated in communal riots and threw stones/ burning glass bottles towards other community.	1. Statement of PWs Pradeep Kumar Verma, Ct. Sangram Singh, Girish Pal and Rahul Kasana. 2. Refusal of TIP and later identified by PWs. 3. Mobile location near the scene of crime. 4. Video footages of social media showing him at his rooftop at the time of incident.
07	Rashid Saifi	Actively participated in communal riots and looted persons, burnt movable and immovable properties.	1. Statement of PWs Pradeep Kumar Verma, Ct. Sangram Singh, Girish Pal, Rahul Kasana, HC Vikram and HC Virender. 2. Mobile location near the scene of crime. 3. Refusal of TIP and later identified by PWs. 4. Video footages of social media showing him at his rooftop at the time of incident.
08	Gulfam @ VIP	Actively participated in	1. Statement of PWs Pradeep Kumar Verma, Ct. Sangram

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S. No.	Name of accused	Role played by accused	Evidence against accused
		communal riots and looted persons, burnt movable and immovable properties.	Singh, Surender Singh, Dinesh Kumar, HC Vikram and HC Virender. 2. Mobile location near the scene of crime. 3. Recovery of licensed pistol and 7 live cartridges.
09	Arshad Qayyum @ Monu	Actively participated in communal riots and looted persons, burnt movable and immovable properties.	1. Statement of PWs Pradeep Kumar Verma, Ct. Sangram Singh, HC Vikram and HC Virender. 2. Mobile location near the scene of crime. 3. Refusal of TIP and later identified by PWs.
10	Irshad Ahmed	Actively participated in communal riots and threw stones/ burning glass bottles towards other community.	1. Statement of PWs Pradeep Kumar Verma, Ct. Sangram Singh, Girish Pal and Rahul Kasana. 2. Mobile location near the scene of crime. 3. Refusal of TIP and later identified by PWs. 4. Video footages of social media showing him at his rooftop at the time of incident.
11	Mohd. Rihaan @ Arshad Pradhan	Actively participated in communal riots and threw stones/ burning glass bottles towards other community.	1. Statement of PWs Pradeep Kumar Verma, Ct. Sangram Singh, Girish Pal and Rahul Kasana. 2. Mobile location near the scene of crime.

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S. No.	Name of accused	Role played by accused	Evidence against accused
			<p>3. Refusal of TIP and later identified by PWs.</p> <p>4. Video footages of social media showing him at his rooftop at the time of incident.</p>
12	Tariq Moin Rizvi	Harbored accused Tahir Hussain	<p>1. Disclosure of accused Tahir Hussain.</p> <p>2. Connectivity with Tahir Hussain during his absconding period and phone location at his house when harboring him.</p>
13	Jagar Khan	Harbored accused Tahir Hussain	<p>1. Disclosure of accused Tahir Hussain.</p> <p>2. Connectivity with Tahir Hussain during his absconding period and phone location at his house when harboring him.</p>
14	Mohd. Illiyas	Harbored accused Tahir Hussain	<p>1. Disclosure of accused Tahir Hussain.</p> <p>2. Connectivity with Tahir Hussain during his absconding period and phone location at his house when harboring him.</p>
15	Khalid Saifi	He arranged a meeting between Tahir Hussain and Umar Khalid at Saheen Bagh on 08.01.2020, where they planned about holding CAA protests by blocking roads and to start rioting.	<p>1. Disclosure statement of Tahir Hussain.</p> <p>2. Account statement of different banks showing money transactions.</p> <p>2. Statement of Pankaj Goswami, Jitender Kumar, Roshan Thakur, Manoj Thakur, Amit Gupta, Pankaj Bansal, Rajender Kumar @ Monty,</p>

S. No.	Name of accused	Role played by accused	Evidence against accused
		<p>He was involved in financial transactions by accused Tahir Hussain in the month of January 2020 for preparation of Anti CAA protests and riots.</p> <p>He was in touch of Tahir Hussain and Umar Khalid</p>	<p>Vijeder, Shanky Aggarwal and Yogesh Bansal, regarding money transactions.</p> <p>3. Statement of PW Rahul Kasana.</p> <p>4. CDR analysis of Tahir Hussain, Khalid Saifi and Umar Khalid.</p>
16	Umar Khalid	<p>Conspiracy and meeting of minds with Tahir Hussain and Umar Khalid, to organize riots in North-East District.</p> <p>He was in touch with Tahir Hussain and Umar Khalid, during evening of 08.01.2020 at Shaheen Bagh.</p>	<p>1. Disclosure of accused Tahir Hussain.</p> <p>2. CDR analysis of Tahir Hussain, Khalid Saifi and Umar Khalid.</p> <p>3. Statement of PW Rahul Kasana</p>

10. I have heard ld. Special PP and ld. defence counsels on the point of charge. I have perused the entire material on the record, including written submissions.

Written Arguments of Defence

11. In her written submissions, **Ms. Tara Narula**, ld. counsel for accused Tahir Hussain, submitted that prosecution has failed to supply any material evidence to suggest that accused Tahir

Hussain was in fact involved in pelting stones and using petrol bombs as well as aiding and instigating the rioters. She further submitted that there were several persons inside Pradeep's parking lot at the time of incident, however, complaint in respect of the incident had been filed by Ct. Sangram Singh and not by the owner or caretaker or supervisor of the said parking lot. She further submitted that there is substantial delay in recording statements of key witnesses namely Nitin Kumar, Girish Pal, Rahul Kasana, Manoj Kumar, Pintu, Nitish Kumar Gupta, Rashid Ali, Yogesh Bansal, Pankaj Goswami, Roshan Thakur, Amit Gupta, Jitender Kumar, Manoj Thakur, Rajender Kumar, Roshan Pathak, Shanky Aggarwal, as their statements have been recorded as late as December 2020, without mentioning any reason justifying such delay, which indicates that the witnesses were planted. Ld. counsel further submitted that there are material discrepancies in the statements of witnesses namely Pradeep Kumar Verma, Surender Singh and Manoj Kumar, in respect of ownership of parking, which clearly indicates that they were planted witnesses. She further submitted that no PCR calls were made by either of the persons, who were allegedly beaten and looted by the mob, either before or after the incident. Assuming that such PCR calls were made by the witnesses or other persons, the investigating agency failed to provide any information in this regard. She further submitted that CDRs of the witnesses and disclosing information regarding the whereabouts of these witnesses, have also not been filed by the investigating agency. On the contrary, it was accused Tahir Hussain, who not only

made six PCR calls on 24.02.2020, but had been also rescued by Delhi Police Officials on 24.02.2020. Ld. counsel further submitted that alleged pistol released by accused Tahir Hussain a day prior to the riots, was neither used during riots, nor was any round fired with it ever. She further submitted that investigating agency failed to show that the said pistol was in fact fired during the riots or that it was used to hurt any person. Ld. counsel further submitted that four CCTV cameras were recovered from the house of Tahir Hussain, however, no footage/video recordings were available for the period extending from 23.02.2020 to 28.02.2020. She further submitted that investigating agency has deliberately concealed the fact that the CCTV cameras had not been working for a long time even before the riots broke out and used it to accuse the accused for intentionally turning off the cameras during the riots to avoid recording of his movement. She further submitted that substantial delay of a month from the date of incident, in preparing seizure memos in respect of videos from the date of incident, obtained from social media, media and police, remains unexplained. She further submitted that there is no evidence whether in the form of statement of witness or electronic, to show that accused Tahir Hussain had committed offences of robbery and dacoity in the present case. She further submitted that neither statements given by witnesses in respect of communal slogans or speech or words uttered by accused Tahir Hussain to promote enmity amongst the communities, nor any electronic evidence has been shown against accused Tahir Hussain making any hateful comments. She further submitted

that the seizure memo, videos and photos recorded in the captioned case, have also been relied upon by the prosecution in most of the cases. She further submitted that there exists no material witness to show that accused was involved in any of the criminal acts and statement of witnesses cannot be relied upon. Ld. counsel prayed for discharge of accused Tahir Hussain.

12. In addition to her written submissions, **Ms. Tara Narula**, ld. counsel for accused Tahir Hussain argued that as per chargesheet a separate case of conspiracy was registered. She further argued that no PCR call was made by anyone from parking. She further argued that video shows that Tahir Hussain was throwing water to extinguish the fire. She further argued that rioters did not occupy house of accused Tahir Hussain at his instance, rather he was protecting his house from rioters and he made PCR calls to police. She further argued that there is no allegation that accused fired any round or anyone was hit by his bullets. She further argued that front portion of building was construction site. She further argued that FSL report shows that examination was done only for the period from 23.02.2020 to 28.02.2020, while cameras were not working and no video prior to 23.02.2020 was found by police. There is no allegation that accused Tahir Hussain had invited rioters to come inside his house. She further argued that witness Pradeep made general allegation against accused Tahir Hussain regarding exhorting and he could not have seen Tahir Hussain from the place, where he was hiding as terrace of Tahir Hussain was beyond view from that inner part of

other building. She further argued that as per chargesheet PCR calls were made by accused Tahir Hussain and he was not part of unlawful assembly, rather he was a victim. She further argued that neither accused was member of unlawful assembly, nor was he leading the mob. She further argued that there was no instance to make any speech to incite enmity. She further argued that if the charges of conspiracy fail, then other charges shall also not stand against him. She further argued that there was no overt act on the part of accused in the alleged robbery, dacoity etc.

13. In her written submissions on the point of Section 188 IPC, **Ms. Tara Narula**, ld. counsel for accused Tahir Hussain submitted that complaint u/s. 195 Cr.P.C. dated 30.09.2022, was made with egregious and unexplained delay and was made at the behest of prosecution in 4th supplementary chargesheet dated 21.10.2022. It was further submitted that complaint u/s. 195 Cr.P.C. cannot be treated as genuine complaint of the public official. It was further submitted that neither there was indication of time at which same was issued nor was there any indication that accused was made aware of it, in prohibitory order u/s. 144 Cr.P.C. It was further submitted that Section 188 IPC is hit by the bar as provided u/s. 468 Cr.P.C.
14. In addition to written submissions on the point of 188 IPC, **Ms. Shivangi**, ld. counsel for accused Tahir Hussain relied upon **Sarah Mathews v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62.**

15. In support of her contentions, **Ms. Tara Narula**, ld. counsel for accused Tahir Hussain, relied upon certain case laws, which are as follows: -

- **Musa Khan v. State of Maharashtra, (1977) 1 SCC 733.**
- **Muthu Naicker & Ors. v. State of Tamil Nadu, (1978) 4 SCC 385.**
- **State of Bihar v. Ramesh Singh, (1977) 4 SCC 39.**
- **Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135.**
- **Sanjay Kumar Rai v. State of U.P. & Anr. 2021 SCC OnLine SC 367.**
- **Masalti & Ors. v. State of U.P. (1964) 8 SCR 133.**
- **Kishori Lal v. State of M.P. (2007) 10 SCC 797.**
- **Lakshman Singh v. State of Bihar, (2021) 9 SCC 191.**
- **Mahadev Sharma v. State of Bihar, (1966) 1 SCR 18.**
- **Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1.**
- **Durgacharan Naik v. State of Orrisa, (1966) 3 SCR 636.**
- **Sujith v. State of Kerala, (2007) SCC OnLine Ker 467.**
- **Keshub Mahindra v. State of M.P. (1996) 6 SCC 129.**
- **Venu v. Karnataka, (2008) 3 SCC 94.**
- **Dharmenderbhai Nandubhai Patel v. State of Gujarat, 2011 (3) GLH 379.**
- **Pakkiya Konar v. Kunjammal, 1998 SCC OnLine Mad 394.**
- **Krishna Gopal Singh v. State of U.P. 2000 SCC (Cri.) 93.**
- **Rajaram v. State, Crl.O.P. No.20933 of 2010, decided by High Court of Madras.**
- **Palanisamy v. State, 2014 SCC OnLine Mad 7434.**
- **Sunil Sharma v. Sonu Sharma & Anr. 2015 SCC OnLine Del 9935.**
- **Steel Authority of India Limited, Bhilai v. Aeltemesh Rein, 1984 MPLJ 408.**
- **Bilal Ahmed Kaloo v. State of A.P. (1997) 7 SCC 431.**

- **Firozuddin Basheeruddin v. State of Kerala, (2001) 7 SCC 596.**
 - **Abdul Sayeed v. State of M.P. (2010) 10 SCC 259.**
 - **Mohan Singh v. State of Punjab, AIR 1963 SC 174.**
 - **Sarah Mathews v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62.**
16. **Ms. Tara Narula**, ld. counsel for accused Tahir Hussain referred to case of **Kishori Lal** (supra) to point out ingredients of Section 109 IPC. Case of **Lakshman Singh** (supra) has been referred to point out ingredients for rioting. Case of **Mahadev Sharma** (supra) has been referred to define Section 149 IPC. Case of **Manzar Sayeed Khan** (supra) has been referred to define Section 153A IPC. Case of **Durgacharan Naik** (supra) has been referred to define Section 186 IPC and to point out ingredients of Section 353 IPC. Case of **Sujith** (supra) has been referred to show ingredients of Section 212 IPC. Case of **Keshub Mahindra** (supra) has been referred to point out applicability of Section 323 IPC. Case of **Venu** (supra) has been referred to point out ingredients of Section 392 IPC. Case of **Dharmendrabhai** (supra) has been referred to point out ingredients of Section 395 IPC. Case of **Pakkiya Konar** (supra) and **Krishna Gopal Singh** (supra) have been referred to point out ingredients of Section 425 IPC, stating that where allegations against accused did not cover the ingredients of Section 425 IPC, the accused cannot be convicted u/s. 427 IPC. Case of **Rajaram** (supra) has been referred to point out ingredients of Section 435 IPC. Case of **Palanisamy** (supra) has been referred to point out ingredients of Section 436 IPC. Case of **Sunil Sharma** (supra) has been

referred to point out ingredients of Section 452 IPC. Case of **Aeltemesh Rein** (supra) has been referred to point out ingredients of Section 454 IPC. Case of **Bilal Ahmed** (supra) has been referred to point out ingredients of Section 153-A IPC and 505 IPC. Case of **Firozuddin Basheeruddin** (supra) has been referred to define Section 120-B IPC. Case of **Abdul Sayeed** (supra) and **Mohan Singh** (supra) have been referred to point out ingredients of Section 34 IPC. Case of **Musa Khan** (supra) has been referred to point out ingredients of Section 149 IPC. Case of **Ramesh Singh** (supra), **Dilawar Balu** (supra) and **Sanjay Kumar** (supra) have been referred to the show point of consideration on charge. Case of **Masalti** (supra) has been referred to point out appreciation of evidence in cases involving mob.

17. In his written submissions, **Sh. Z. Babar Chauhan**, ld. counsel for accused persons namely Riyasat Ali, Rashid Saifi, Liyakat Ali, Arshad Qayum, Mohd. Shadab, Mohd. Abid, Mohd. Riyan @ Arshad Pradhan, Jagar Khan, Moin Tariq Rizvi and Irshad Ahmad, submitted that witnesses cited by the prosecution against aforesaid accused persons, are stock witnesses of the police and they have been planted. He further submitted that statement of these witnesses had been recorded after a long time without any explanation. Ld. counsel further submitted that there is no credible/reliable/admissible evidence regarding allegation of harboring Tahir Hussain, against accused Jagar Khan. He further submitted that ingredients for harboring are not attracted in the

present matter. Ld. counsel prayed for discharge of aforesaid accused persons, in the present case.

18. In his written submissions, **Sh. Dinesh Kumar Tiwari**, ld. counsel for accused Shah Alam submitted that present FIR was registered on the statement of Ct. Sangram Singh, who was well known to accused Shah Alam, but FIR was registered without name of accused Shah Alam. He further submitted that accused Shah Alam was falsely implicated in the present case on the basis of statement of eyewitnesses namely HC Virender and HC Vikram, but neither these police officials made a call at 100 number, nor they reported to their officers prior to recording of their statement u/s. 161 Cr.P.C. in the present FIR. Ld. counsel further submitted that public witness namely Pradeep Verma is the witness in total 9 cases of riots, which pertained to different dates, time and spot, but he never made any PCR call reporting any single incident. He further submitted that another witness namely Surender Singh was care taker of Pradeep Verma's parking, who also never made any PCR call reporting the incident. Ld. counsel further submitted that one other public witness namely Nitin is also an eyewitness in this case, but he had also not made any PCR call prior to recording of his statement u/s. 161 Cr.P.C. Ld. counsel further submitted that public witnesses namely Rahul Kasana and Girish Pal also well known to accused Shah Alam, but they also never made any PCR call prior to recording their statement u/s. 161 Cr.P.C. Ld. counsel further submitted that neither there is any CCTV footage, nor is

there any video against accused Shah Alam. Ld. counsel further submitted that nothing incriminating has been recovered from the possession of accused Shah Alam. Ld. counsel further submitted that CDR location is natural due to residence of accused being in the same area/location. Ld. counsel prayed for discharge of accused Shah Alam.

19. On the point of Section 188 IPC, **Sh. Dinesh Kumar Tiwari**, ld. counsel for accused Shah Alam argued that FIR in this case as well as FIR No.116/20 relate to same place and same time, therefore, Section 188 IPC can be invoked only in one case.
20. In their written submissions, **Sh. Salim Malik** and **Ms. Shavana**, ld. counsels for accused Gulfam @ VIP, submitted that Gulfam @ VIP was having the license of the said licensee pistol, which was seized in the present case. They further submitted that said pistol along with live cartridge as well as empty cartridge, were sent to FSL, but as per report of FSL this was not the same pistol. Ld. counsels further submitted that neither there is any cell ID location to show location of accused at the time of alleged incident, nor CDR reflects connectivity of accused with other accused persons in the present case or any other riot cases. They further submitted that identification of a few select persons in a large mob by a witness, in the absence of TIP, cannot inspire the confidence of court. Ld. counsels further submitted that there must be strong suspicion, which may lead the court to think that there is ground for presuming that the accused has committed an offence. Ld. counsels further submitted that neither accused had

been specifically named in the FIR, nor was assigned any specific role. They further submitted that no recovery has been shown from this accused. They further submitted that there is no CCTV footage/video-clip of the incident(s) in question available on the record, to confirm the presence of accused persons at the spot/ SOC at the relevant time. It was also argued that as far as CDR is concerned, accused Gulfam @ VIP is resident of the same area/ locality and it is quite natural, if his CDR location is found in the said area. Ld. counsels further submitted that though at the stage of charge, scrutiny of material is not permissible, but if two views are possible and the court is satisfied that the evidence gives rise to some suspicion, but not grave suspicion against the accused, the court will be within its right to discharge the accused. Suspicion has to be strong grave suspicion leading the court to presume that the accused has committed an offence. Thus, ld. counsel prayed for discharge of accused Gulfam @ VIP.

21. On the point of Section 188 IPC, **Sh. Salim Malik**, ld. counsel for accused Gulfam @ VIP also argued that FIR in this case as well as FIR No.116/20 relate to same place and same time, therefore, Section 188 IPC can be invoked only in one case.
22. In support of their contentions, **Sh. Salim Malik** and **Ms. Shavana**, ld. counsel for accused Gulfam @ VIP, relied upon certain case laws, which are as follows: -
 - ***Usmangani @ Bhura Abdul Gaffar & Anr. v. State of Gujarat, Crl. Appeal No. 1041/2061, decided on 09.08.2018, by Supreme Court.***
 - **Kallu Mal Gupta v. State, 2000 IAD Delhi 107 .**

- **Umar Abdula Sakoor Sorathia v. Intelligence Officer Narcotic Control Bureau”, JT 1999 (5) SC 394.**
 - **Sapna Ahuja v. State, 1999 VAD Delhi 407.**
 - **Dilawar Balu Kurane v. State of Maharashtra, 2002 (2) SCC 135.**
 - **State of Bihar v. Ramesh Singh, 1977 (4) SCC 39.**
 - **Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4.**
 - **Niranjan Singh K.S. Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76.**
 - **Soma Chakravarty v. State through CBI, (2007) 5 SCC403.**
 - **P. Vijayan v. State of Kerala and Anr, (2010) 2 SCC 398.**
 - **State of Maharashtra v. Priya Sharan Maharaj & Ors. AIR 1997 SC 2041.**
23. In his written submissions, **Sh. Gaurav Dalal**, ld. counsel for accused Mohd. Illiyas, submitted that there is no evidence against accused Mohd. Illiyas, except the disclosure statement of co-accused Mohd. Tahir Hussain. He further submitted that first requirement of section is not met, because accused Mohd. Illiyas was not known to accused Tahir Hussain and therefore, the averments made in the chargesheet are groundless and without any substance. Ld. counsel further submitted that an element of secrecy on the part of accused is completely absent in the present case. He further submitted that intention being the state of mind coupled with an act knowing its consequences, is absent in the present case, because it is nowhere mentioned in the chargesheet that accused Mohd. Illiyas was aware of the fact that co-accused Tahir Hussain had committed any criminal act and that he had knowingly in order to conceal him from punishment, had given

him shelter in his house, even if given any. Ld. counsel prayed for discharge of accused Mohd. Illiyas in the present case.

24. On the point of Section 188 IPC, **Sh. Gaurav Dalal**, ld. counsel for accused Mohd. Illiyas argued that there is only allegation of harboring the accused persons, therefore, Section 188 IPC is not made out against accused Mohd. Illiyas.

25. In support of his contentions, Sh. Gaurav Dalal, ld. counsel for accused Mohd. Illiyas, relied upon certain case laws, which are as follows: -

- **Rashid Gafoor Parkar v. State of Maharashtra, (1983) 85 BomLR 35.**
- **Kamal Kishore v. State, 1997 CriLJ 2106.**
- **Hari Charan Karmi v. State of Bihar, (1964) 2 Cr.L.J. 344 (SC).**

26. In support of their contentions, **Sh. Rajat Kumar** and **Sh. Tushar Yadav**, ld. counsels for accused Khalid Saifi, submitted that no case is made out against accused Khalid Saifi for the purpose of framing of charge and on a conjoint reading of the chargesheets, ocular and documentary evidence, the prosecution has not crossed the threshold of even 'suspicion' let alone "grave suspicion" to justify framing of charges in the present case against accused Khalid Saifi. They further submitted that the alleged meeting dated 08.01.2020, taken place between Khalid Saifi, Tahir Hussain and Umar Khalid, is wholly based on supplementary statement of Rahul Kasana, who was driver of Tahir Hussain, and this was recorded on 27.09.2020, wherein Rahul Kasana did not disclose the nature of alleged conversations

between aforesaid three accused persons. They further submitted that this statement does not give rise to “grave suspicion”. They further submitted that where additional facts are sought to be introduced in supplementary or additional statements, the court must be wary of placing reliance on the same. Ld. counsels further submitted that prosecution has not relied upon a single witness or a single video or CCTV footage that would place Khalid Saifi at the scene of crime, in respect to the incident of arson at Pradeep Parking. It is admitted case of prosecution that accused Khalid Saifi was not present at the scene of crime. They further submitted that on mere suspicion or surmises or inferences, which are not supported by cogent or acceptable evidence, offence of criminal conspiracy cannot be established in the present case against accused Khalid Saifi. They further submitted that where two views are equally possible and the court is satisfied that the evidence before it gives rise to some suspicion, but not grave suspicion, the court would be fully within its rights to discharge the accused. They prayed for discharged of accused Khalid Saifi.

27. In respect of Section 188 IPC, ld. counsel for accused Khalid Saifi argued that Section 468 Cr.P.C bars cognizance of offences after the lapse of period of limitation. He further argued that Section 188 IPC was not invoked in first instance and it was invoked on 07.10.2022, whereas the date of commission of offence is 24.02.2020. He further argued that main chargesheet was filed on 13.05.2020, therefore, Section 188 IPC is barred out

of limitation.

28. In support of his contentions, **Sh. Rajat Kumar** and **Sh. Tushar Yadav**, ld. counsels for accused Khalid Saifi, relied upon certain case laws, which are as follows: -

- **Srichand P. Hinduja & Ors. v. State through CBI, 2005 (82) DRJ 494.**
- **Kapil Kumar v. State, 1996 (1) AD (Delhi) 86.**
- **Dipakbhai Jagdishchandra Patel v. State of Gujarat & Anr., (2019) 16 SCC 547.**
- **Dipak Kanubhai @ Kanaiyala Darji v. State of Gujarat, 2016 SCC OnLine Guj 3669.**
- **Kamal Kishore v. State, 1997 SCC OnLine Del 966.**
- **Amit Pratap & Anr. v. State, 2011 SCC OnLine Del 5062.**
- **CBI v. K. Narayana Rao, (2012) 9 SCC 512.**
- **Leo Roy Frey v. Superintendent, District Jail, Amritsar & Anr., AIR 1958 SC 119.**
- **Kehar Singh & Ors. v. State, (1988) 3 SCC 609.**
- **Brij Lal & Anr. v. State, ILR (1985) I Delhi.**
- **Smt. Ganga Devi & Ors. v. State, Crl. Rev. 216 & 224 of 1983, decided on 28.02.1985 by High Court of Delhi.**
- **Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135.**
- **Union of India v. Prafulla Kumar Samal & Anr., (1979) 3 SCC 4.**
- **Deepa Bajwa v. State & Ors., 2004 (77) DRJ 725.**
- **Juwarsingh & Ors. v. State of M.P., 1980 (Supp) SCC 417.**

29. In the case of **Deepa Bajwa** (supra), High Court of Delhi observed that: -

“6. a complaint, on the basis of which the complainant seeks registration of an F.I.R., must disclose essential ingredients of the offence and in case a complaint lacks or is wanting in any of the essential ingredients, the lacuna or deficiency cannot be filled up by

obtaining additional complaint or supplementary statement and thereafter proceed to register the F.I.R. If such a course is permitted, it would give undue latitude as well as opportunity to unscrupulous complainants to nail others by hook or by crook in spite of the fact that their initial complaint does not make out the offence complained of. Such a course would be utter abuse of the process of law..... ”

30. In the case of **Sattatiya @ Satish Rajanna** (supra), Supreme Court observed that: -

“26..... It has not been explained as to why the appellant gave information in piecemeal on three dates i.e. 3-10-1994, 5-10-1994 and 6-10-1994. Room No. 45 of “Ganesh Bhuvan” from which the clothes are said to have been recovered was found to be unlocked premises which could be accessed by anyone.”

31. **Sh. Rajat Kumar**, ld. counsel for accused Khalid Saifi referred to case of **Srichand** (supra), **Kapil** (supra), **Dipakbhai** (supra) and **Kamal Kishore** (supra) to show law on the point of charge. Case of **K. Narayana** (supra) and **Leo Roy** (supra) have been referred to point out ingredients of conspiracy.
32. In his written submissions, **Sh. Sanya Kumar, Sh. Sahil Ghai & Ms. Rakshanda Deka**, ld. counsels for accused Umar Khalid submitted that prosecution has failed to place on record any tenable evidence to establish the occurrence of any meeting on 08.01.2020 or the role of accused Umar Khalid in hatching the purported conspiracy for riots in Delhi. It was further submitted that neither accused Umar Khalid is named in the FIR, nor has been attributed any role. It is admitted case of the prosecution that accused was not present at the scene of alleged incident on 24.02.2020. They further submitted that neither accused is visible in any CCTV or video footage nor has any public or police witness made any statement to establish presence of this accused

at the scene of alleged incident. They further submitted that no recoveries had been effected either from his possession or at his instance. They further submitted that statement of witness Rahul Kasana dated 27.09.2020 is highly insufficient to establish that any alleged offence or a conspiracy to commit any offence was hatched at the said purported meeting dated 08.01.2020. It was further submitted that statement dated 27.09.2020 of this witness is wholly vague as it does not give any detail about the purported office, or where alleged meeting took place, or any window of time when the purported meeting took place, or any explanation as to how this witness was able to identify Khalid Saifi or Umar Khalid. It was further submitted that accused Umar Khalid had never met co-accused Tahir Hussain or witness Rahul Kasana. Ld. counsels further submitted that there is no material to suggest any incriminating interaction between accused Umar Khalid, Tahir Hussain and Khalid Saifi. It was further stated that statement dated 27.09.2020 made by Rahul Kasana is an unreliable statement, which was clearly procured just prior to the arrest of Umar Khalid. It was further submitted that CDRs do not indicate the duration or contents of the alleged meeting and merely presence in the zone of the same cell tower is not proof of the commission of an offence by person present at the said zone. It was further submitted that there had been no calls or correspondence between Tahir Hussain and Umar Khalid and mere assertion that Khalid Saifi was in touch with both Tahir Hussain and Umar Khalid, lends no credence to the allegations of criminal conspiracy. Ld. counsels further submitted that

prosecution attributed no direct or overt act to accused Umar Khalid and miserably failed to place any reliance upon evidence on the record to even prima facie establish a case against him. It was further submitted that, to deal with the non-existence of any evidence for a direct or overt act by Umar Khalid, the prosecution has resorted to a concocted case of conspiracy between co-accused persons on the strength of nothing more than a solitary fabricated statement of the procured witness Rahul Kasana. It was further submitted that CDR analysis reflects that accused Umar Khalid, Khalid Saifi and Tahir Hussain were not present in Shaheen Bagh, at the same time at any point on 08.01.2020.

33. On the point of Section 188 IPC, **Ms. Sanya Kumar**, ld. counsel for accused Umar Khalid argued that as per prosecution, accused Umar Khalid was not in Delhi and at the scene of crime at the time of commission of crime.
34. In support of their contentions, ld. counsels for accused Umar Khalid, relied upon certain case laws, which are as follows: -
- **Deepa Bajwa v. State & Ors. 2004 (77) DRJ 725.**
 - **Sattatiya @ Satish Rajanna Kartalla v. State of Maharashtra, (2008) 3 SCC 210.**

Arguments of Prosecution

35. A written synopsis-cum-calender of evidence was filed on behalf of prosecution to mention the role of each accused and the evidence in support of the allegations made against each accused. In his written arguments, **Sh. Madhukar Pandey**, ld. Special PP for State submitted that accused Umar Khalid and Khalid Saifi,

shall also be liable and punished for offence of criminal conspiracy despite their absence from the spot of the incident. He further submitted that the offences committed by accused Tahir Hussain, who was an agent of co-accused Umar Khalid and Khalid Saifi and conspired with them in pursuance of their meetings dated 08.01.2022 held at Shaheen Bagh, are admissible against his co-conspirators namely Umar Khalid and Khalid Saifi. He further submitted that Umar Khalid and Khalid Saifi must be prosecuted with the aid of Section 120-B IPC r/w. Section 10 of I.E. Act, for various offences committed by accused Tahir Hussain and other co-accused persons. However, at the same time ld. Special PP submitted that he is not pressing for charges u/s. 153-A and 505 IPC in the present case. He further submitted that he also not pressing charges under PDPP Act and Arms Act, in the present case as this case will be prosecuted in respect of incident at Pradeep's parking only.

36. On the point of Section 188 IPC, **Sh. Madhukar Pandey**, ld. Special PP argued that in the present case Section 188 IPC is made out against all accused persons, except accused Iliyas, Umar Khalid, Jagar Khan, Tariq Moin Rizvi and Khalid Saifi. He submitted that he is not pressing this charge against these five accused persons. Ld. Special PP further argued that Section 188 IPC is made out in both FIRs i.e. 101/20 and 116/20, because the violation took place in both the cases. Accused continued to violate the order u/s. 144 Cr.P.C., one after another incidents. He further argued that Section 468(3) Cr.P.C. provides for limitation

as per offence having maximum punishment for any of the alleged offences and therefore, there is no question of bar of limitation for offence u/s. 188 IPC.

37. In support of his contentions, **Sh. Madhukar Pandey**, ld. Special PP for State relied upon certain case laws, which are as follows: -

- **Firozuddin Basheeruddin and Others v. State of Kerela, (2001) 7 SCC 596.**
- **Badri Rai & Another v. State of Bihar, AIR 1958 SC 953.**
- **Latesh @ Dadu Baburao Karlekar v. State of Maharashtra, (2018) 3 SCC 66.**

38. In the case of **Firozuddin** (supra) Supreme Court observed that: -

“The conspirators invariably deliberately, plan and act in secret over a period of time. It is not necessary that each one of them must have actively participated in the commission of the offence or was involved in it from start to finish. What is important is that they were involved in the conspiracy or in other words, there is a combination by agreement, which may be expression or implied or in part implied.....”

39. Ld. Special PP also relied upon case of **Badri Rai** (supra) to submit that once conspiracy to commit an offence is proved, the act of one conspirator becomes the act of another.

Appreciation of arguments, facts and law: -

40. First of all, I shall refer to the provisions dealing with the alleged offences and other relevant offences.

- Section 141 IPC defines unlawful assembly as assembly of five or more persons with common object to overawe by criminal force or show of criminal force, any public servant in the exercise of the lawful power of such public servant; or to commit any mischief or other offence etc.
- Section 142 IPC provides that whoever being aware of facts rendering any assembly as an unlawful assembly, initially joins

that assembly or continues in it, is said to be a member of unlawful assembly.

- Section 146 IPC defines rioting providing that whenever force or violence is used by unlawful assembly or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.
- Section 148 IPC provides punishment for rioting being armed with a deadly weapon or with any-thing which being used as a weapon, is likely to cause death.
- Section 149 IPC provides liability of each member of unlawful assembly for any offence committed by any member of that assembly in prosecution of the common object of that assembly or within knowledge of members of that assembly to be likely committed in prosecution of that object.
- Section 109 IPC provides punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.
- Section 114 IPC provides that whenever any person, who is absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.
- Section 153-A IPC provides punishment for promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.
- Section 186 IPC provides punishment for obstructing a public servant from discharge of his official duty.
- Section 323 IPC provides punishment for voluntarily causing hurt.
- Section 392 IPC provides punishment for robbery.
- Section 395 IPC provides punishment for dacoity.
- Section 427 IPC provides punishment for committing mischief and thereby causing loss or damage to the amount of fifty rupees or upwards.

- Section 454 IPC provides punishment for lurking house trespass or house breaking in order to commit offence.
 - Section 436 IPC provides for punishment for committing mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property.
41. The ingredients of offence defined under Section 120-B IPC were explained by Supreme Court in ***Lennart Schussler v. Director of Enforcement, (1970) 1 SCC 152*** in following manner: -

“9. It now remains to be seen whether the alleged agreement which A-1 and A-2 arrived at in Stockholm in 1963 and again in Madras in 1965, would, if established, amount to a criminal conspiracy. The first of the offence defined in Section 120-A of the Penal Code which is itself punishable as a substantive offence is the very agreement between two or more persons to do or cause to be done an illegal act or a legal act by illegal means subject however to the proviso that where the agreement is not an agreement to commit an offence the agreement does not amount to a conspiracy unless it is followed up by an overt act done by one or more persons in pursuance of such an agreement. There must be a meeting of minds in the doing of the illegal act or the doing of a legal act by illegal means. If in the furtherance of the conspiracy certain persons are induced to do an unlawful act without the knowledge of the conspiracy or the plot they cannot be held to be conspirators, though they may be guilty of an offence pertaining to the specific unlawful act. The offence of conspiracy is complete when two or more conspirators have agreed to do or cause to be done an act which is itself an offence, in which case no overt act need be established. It is also clear that an agreement to do an illegal act which amounts to a conspiracy will continue as long as the members of the conspiracy remain in agreement and as long as they are acting in accord and in furtherance of the object for which they entered into the agreement.”

42. I shall first deal with the arguments related to credibility of eye witnesses in the case. My attention was taken to an observation made by hon'ble High Court of Delhi, passed in Bail Application 3202/20 dt. 03.02.2021. Vide this order accused Liyakat Ali was granted bail in FIR 88/20 P.S. Dayalpur. While granting bail, the court made following observations: -

“It is an admitted fact that Pradeep Verma did not make any PCR call or complaint to any authority regarding petition's involvement prior to 28.03.2020 i.e. the day his first statement was recorded. Statements of Ct.Saudan and Ct.Pawan were recorded on 06.06.202 and 24.03.2020 respectively. They had also not made any complaint or DD entry with regard to incident in question even though they were posted in the area and witnessed the alleged incident. Charge sheet in this case has already been filed and investigation is complete and so, no purpose would be served in keeping the petitioner behind bars.”

43. The defence used same analogy to discredit the statements of eye witnesses of this case, submitting that their statements were recorded much later in time from incident and they are planted as witnesses.

44. However, in the same order hon'ble High Court also observed that the trial court should not get influenced by the observations made by the court while passing that order. This principle is well settled that any observation made in an order on bail, is not treated as a concrete and final finding on the facts of the case. Legal principles if explained, can only act as precedent. First of all, just because statements of the eye witnesses were recorded in the case at belated stage, without affording an opportunity to the prosecution and the witnesses to explain the reasons, court cannot declare them to be unreliable. Secondly, one must not

forget that at the relevant time riots continued in Delhi for some days. Delhi Police and other security forces were pressed into service to stop the riots. Hence, focus of police was more on the aspect of controlling the riots and rehabilitation rather than start investigating each incident of the riots. There had been a number of incidents and gradually there was flood of complaints. At a time of panic, everything cannot be expected to happen in very streamlined manner. Even all the victims and witnesses did not have courage to make instant complaints against anyone. They were more concerned about their safety. Thereafter, people fought against the pandemic of Covid and there was complete lockdown. Delay in registration of FIR or recording of witnesses in a case, thus, may be due to any such reasons and requires scrutiny during the trial. At this stage, therefore, this court cannot raise any presumption against veracity of the statement of the cited witnesses on account of delay.

45. Defence has recognised the settled principles of law for framing of the charge, which have been mentioned herein above while discussing their arguments. The test is to look into evidence of prosecution without conducting mini trial to appreciate credibility of the same, and check if strong suspicion arises against the accused persons named in the case for their involvement in the crime alleged by the prosecution.
46. Arguments were made to say that same set of witnesses have been made eye witnesses in several cases, including this case. This argument was particularly made in respect of Pradeep

Verma. According to defence, this scenario casts serious doubt over the credibility of the prosecution case. However, there cannot be a fixed criteria for witnessing a particular number of the incidents. Therefore, if a witness is common to several cases, that reason in itself cannot be sufficient to cast aspersions over his credibility. If in the course of indulging into riotous acts, different incidents of injury to different persons or damage to different properties, were caused by same mob comprising of more than five persons in pursuance to the common object of the mob, then Section 149 IPC comes into play, to make every member of this mob liable for such incidents. Therefore, if some witnesses identified the accused persons in this mob and gave account of actions of the accused persons in more than one case, no exception can be taken for the same. As already observed, their credibility cannot be looked into at this stage, and same shall be subject matter of test during the trial. The commonality of witnesses in several cases, is natural when several incidents took place at and around same place and at close interval of time.

47. Another argument based on locations of mobile phones allegedly being used by the accused persons at the relevant time, does not have much scope at this stage. I say so because, this piece of evidence in itself is not sufficient to either frame the charges or to discharge any accused. Such evidence is for the purpose of corroboration or contradiction. The stage of corroboration or contradiction would be after trial, when on the basis of evidence on the record, the respective party will use this evidence for such

purposes. Description of locations of mobile phones will require to be explained by the person having knowledge of the working of this software. Prosecution and defence will also have to prove use and non-use of the given mobile numbers. Therefore, at this stage I am not much inclined to discuss this evidence.

48. As far as allegation of conspiracy is concerned, it is undisputed fact that a different case was lodged bearing FIR 59/20 Crime branch, wherein the conspiracy behind start of riots in Delhi, was the subject matter of investigation. There is concept of an Umbrella Conspiracy being the larger conspiracy and several smaller conspiracies hatched under the larger conspiracy. The objective of Umbrella Conspiracy may be wider than the objective of smaller conspiracy. Planning to ignite a communal riot at a large level and taking steps for prosecution of such plan, could be Umbrella Conspiracy and participants to this conspiracy may or may not be part of each smaller conspiracies and vice versa. In pursuance to the objective of the larger conspiracy, when smaller plans are made and executed to cause incident of riot at a particular place or area, involving some other persons (perhaps including local persons), this becomes a case of smaller conspiracy under Umbrella Conspiracy. Therefore, FIR 59/20 as referred herein above is to be treated to cover the aspect of Umbrella Conspiracy. However, the allegations and evidence in this case, have to be assessed to find out existence of smaller conspiracy peculiar to incident covered in this case, if any.

49. The statement given by HC Virender, HC Vikram and the complaint made by Ct. Sangram mentioned the fact that they were on official duty near Pradeep's parking, E-Block, Chand Bagh puliya. Their statement also reveal that at about 2 PM from the side of Chand Bagh one mob had come, which started pelting stones and rioting. They became aggressive and started pelting stones on police party as well, due to which these three police officials had to move away in order to save themselves. HC Virender and HC Vikram went away into other gali, while Ct. Sangram took shelter in the parking of Pradeep. Ct. Sangram had parked his motorcycle in this parking itself. Adjacent to this building, there was house of accused Tahir Hussain and from the terrace of house of Tahir Hussain a number of rioters were pelting stones as well as inflammable substances. A group of rioters from this mob broke open the shutter of Pradeep's parking and forcefully entered into the same. Ct. Sangram mentioned that this group set all the vehicles on the fire in the parking and thereafter went ahead to the upper floor, where food was being cooked for a marriage.
50. The statement of Sh. Pradeep Kumar Verma, Sh. Surender Singh, Sh. Rajbir Singh Yadav, Sh. Nitin Kumar, Sh. Pintu, mentioned that on 24.02.2020, between 2-2:30 PM, a number of persons had assembled on the terrace of the house of accused Tahir Hussain, who were raising noise and pelting stones as well as petrol bombs on the road as well as in the parking. On account of such noise and stone pelting, Pradeep was closing the shutter of the

parking, when Ct. Sangram reached there. The shutter was closed and locked from inside. However, after some time, a group of rioters broke the shutter of the parking and entered inside. Accused Shah Alam, Gulfam and Riyasat were part of this mob. This mob set the vehicles on fire, which were parked in the covered area. They also attacked upon these persons, due to which Pradeep sustained injuries. These persons fled to the first floor of the building, where Anil Halwai was cooking for the purpose of marriage. It is also mentioned in these statements that from the terrace of Tahir Hussain, accused Tahir Hussain and Liyakat Ali along with their companions were throwing stones and petrol bomb towards this parking and they were also shouting slogan of "maro salon ko". When the intensity of the flames became severe, these rioters went back while breaking the cash box of the parking and taking away amount of Rs.20-22,000/- from the same. Thereafter, these rioters went inside the house of Tahir Hussain. In this incident, many vehicles parked inside that building were burnt. Other vehicles were damaged.

51. Other witness namely Dinesh stated that two mobs were present on 24.02.2020 between 2-3 PM near Lakhpat School and Chand Bagh puliya. One mob was raising slogan of "Allah hoo Akbar" and other mob was raising slogan of "Jai Shree Ram". During this period, Liyakat went to the mob of muslim persons, lifted a stone and threw the same towards opposite mob. Son of Liyakat namely Riyasat was also present there with a pistol in his hand. Riyasat while firing went inside the house of Tahir Hussain. The

same mob had looted his shop also, situated in E-6, Khajuri Khas Main Road.

52. According to HC Devender, he had announced order u/s. 144 Cr.P.C. on 24.02.2020 through loud speaker in the area of PS Khajuri Khas. According to SI Shiv Charan Meena, on 24.02.2020 he had reached back the police station at about 11 PM, when he was handed over three DDs related to calls made during the day time. The other staff informed that due to blockade of road by the rioters, they could not reach and attend the PCR calls. On that night at about 12 AM, SI Shiv Charan reached house of Tahir Hussain and found him present there. Other police officers were also present there. The nearby shops and houses were in burnt condition, but the house of Tahir Hussain was completely safe. His family members were also safe.
53. According to statement of Rahul Kasana and Girish Pal, both of them were working for accused Tahir Hussain. On 24.02.2020, both had come to the office of Tahir Hussain. His office was situated in the same building i.e. house of Tahir Hussain bearing no.E-7, Main Karawal Nagar Road, Khajuri Khas. On that day, from 1-1:30 PM, both these persons were present in the office, when they saw that persons from the local area had assembled in the ground floor and they were talking to Tahir Hussain. Tahir Hussain was whispering to them and was talking through signals/ gestures. In this gathering along with Tahir Hussain, his brother Shah Alam, friend Irshad, Abid, Arshad Pradhan, Rashid, Shadab

and many others were present. Both of them left this office, when commotion started outside the house.

54. HC Virender, HC Vikram, Sh. Pradeep Verma and Ct. Sangram were shown photographs and dossier of several persons and from the same they identified accused Riyasat, Shah Alam, Gulfam, Arshad Qayyum, Rashid Saifi, Irshad Ahmed, Mohd. Rihan @ Arshad Pradhan, Shadab as the persons who were members of aforesaid mob. Pradeep Verma further explained that Arshad Qayyum and Rashid Saifi had accompanied the mob along with Gulfam, Riyasat and Shah Alam in the parking.
55. From the statements of above-mentioned witnesses, presence of all named accused in the mob is well reflected. It is also well apparent that this mob had assembled, out of a deliberation in the house of accused Tahir Hussain. The video clips collected by IO from social media do show that accused Tahir Hussain was quite active during his movement on the terrace of his house. The video does not show any adversity between Tahir Hussain and other persons present on his terrace. Rather, it is well reflected that Tahir Hussain was actively talking to these persons and then talking on mobile phone etc. During whole such period, the other persons, some of whom had covered their faces with helmet and otherwise, were pelting stones on adjoining properties and on the road. One can also see in the video the dense smoke out of fire rising up to the sky from the side of house of Tahir Hussain. Such video, which is stated to be pertaining to the same date and of around same time, belies the contention made on behalf of

accused Tahir Hussain that Tahir Hussain himself was a victim. The conduct of accused Tahir Hussain as appearing in these video clips, is not consistent with such plea of being victim.

56. The contentions of accused Tahir Hussain regarding making of PCR calls and being victim, are even otherwise based on personal knowledge of this accused, which would require to be proved on the record, before same are believed upon. At present from the evidence presented by the prosecution, aforesaid plea of accused are not established. Therefore, I also find that many of the arguments made on behalf of accused Tahir Hussain are based on his defence, which cannot be entertained at this stage.
57. This is not a case, wherein the facts and evidence show mere presence of any named accused near the riotous mob. The facts and evidence of this case show the accused persons being active members of the riotous mob, which vandalized Pradeep's parking and Bharat Vatika. It is not necessary that each of the accused persons had to physically go to this parking for achieving common object of this mob. Different member of the mob may act in different manner. What is important to see, is that such actions of the members of the mob was in pursuance to the common object of this mob. Therefore, it is not required that accused Tahir Hussain should also have physically visited this parking along with the mob. It is sufficient to show that he was member of that mob and the role imputed to him is to instigate the mob to attack, to guide and to facilitate such attack, in order to accomplish the common object of this unlawful assembly.

Hence, the judgments referred by defence do not help them.

58. It is sufficient to note that this mob comprising of accused persons and other unknown persons, continuously indulged into pelting of stones and petrol bombs towards other properties including property no. E-98/2, Khajuri Khas, Delhi, wherein this parking lot was situated. This property was under use of persons from Hindu community. The members of this mob broke open the lock of parking in this property, entered into this property, assaulted the persons, vandalized and set on fire the property and vehicles parked there. These acts of the mob make it clear that their objective was to harm Hindus in their body and property to the possible extent. It cannot be said that accused persons were oblivious of such objective of this mob. Apparently, this was an unlawful assembly, acting in pursuance to aforesaid object. Accused Tahir Hussain or for that matter, any other accused are not supposed to be static at one place. Though specific role of some accused persons has been mentioned by some witnesses, as seen by them, but in such cases, by virtue of Section 149 IPC description of specific role of every accused is not required. Participation and being member of this mob during alleged act, is sufficient to make all named accused persons liable for the deeds of this mob.
59. There was no need of TIP of all accused as the witnesses named some of the accused persons in their statements. TIP is required only when accused is unknown to the witness. TIP of other accused were declined by those accused. Moreover, purpose of

TIP is to ascertain the identity of the culprit. When the eye witnesses confirmed the identity of the accused persons, on seeing their photographs, then additional TIP was unnecessary surplusage.

60. Absence of direct video of the incident in question or absence of name of accused in the FIR or absence of recovery of actual weapon of the offence or looted materials/cash, do not make the case of prosecution unbelievable. Significance of such omissions, depends upon facts of each case and that too at the final stage of the case. Similarly, absence of investigation into ownership of this building/property or alleged contradiction in the statement of different witnesses in this regard, is immaterial in this case. This case relates to a crime taken place in that property, which has nothing to do with ownership of the property.
61. The facts and evidence of this case show that a number of persons assembled at the house of Tahir Hussain. Some of them were equipped with firing weapons. Petrol bombs were also arranged, by accumulating the required materials in the house of Tahir Hussain. Stones were stored in this house in sacks etc. All these things were used to target Hindus. Every member of the mob assembled there, participated in achieving this object i.e. to target Hindus. Such preparations made and this house being used as a base, seen along with the conduct of the members of this mob, show that they were acting out of prior meeting of their mind and with a clear-cut objective in mind, to harm Hindus in every possible manner. It is well recognized by the courts that

there remain least chances of getting direct evidence of conspiracy. Therefore, the court raises inferences on the basis of conduct of the accused persons and probable reason behind such conduct. The observations made in paras no. 23 to 26 in the judgment of **Firozuddin Basheeruddin V. State of Kerala (2001) 7 SCC 596**, lend support to such approach. This case law was referred by both the parties. On the basis of same criteria, it can be said that this mob acted out of a criminal conspiracy to attack on the property no. E-98/2, Khajuri Khas. Hence, all accused are liable to be tried for hatching criminal conspiracy to indulge into riot and to harm properties of Hindus and consequent to such conspiracy attacking property no. E-98/2, Khajuri Khas, Delhi, assaulting the persons from Hindu community, who were present in that building and vandalizing as well as setting on fire the parked vehicles, the covered parking place and upper floor with the food items.

62. As regards accused Tariq Moin Rizvi, Jagar Khan and Mohd. Illiyas, I find that allegations of harboring accused Tahir Hussain are based on either disclosure statement of accused persons or locations of their mobile phones or telephonic contact. Disclosure statement of accused Tahir Hussain or these accused persons, cannot be admissible in evidence to say that these accused persons harbored accused Tahir Hussain. The telephonic contact among these accused and Tahir Hussain or location of mobile of Tahir Hussain in the same locality of addresses of these accused persons, also cannot be sufficient to assume that Tahir Hussain

was in fact harbored by these accused persons. Therefore, required degree of suspicion for offence punishable u/s 212 IPC is not made out against accused Tariq Moin Rizvi, Jagar Khan and Mohd. Illiyas.

63. As far as accused Khalid Saifi and Umar Khalid are concerned, I find that allegations made against them relate to Umbrella Conspiracy, rather than conspiracy peculiar to incident investigated in this case i.e. the incident at Pradeep's parking. I have already discussed the scope of two different conspiracies herein above. Since, Umbrella Conspiracy i.e. larger conspiracy to incite riots in Delhi, is already subject matter of consideration in FIR 59/2020, PS Crime branch, therefore, these two accused are entitled for discharge in the present case.
64. As far as offence u/s. 188 IPC is concerned, there is no challenge to the fulfillments of ingredients of this offence. The challenge raised by defence is that order u/s. 144 Cr.P.C. does not mention time, though it was issued on same day. This challenge cannot become a ground of discharge at this stage, as it shall be matter of trial to find out time of such proclamation. The alleged incident had even otherwise taken place at and around 2-3 PM.
65. The next challenge is in the form of bar created by Section 468 Cr.P.C. It is true that Section 468 Cr.P.C. provides for limitation to take cognizance. The cognizance of offence u/s. 188 IPC was not taken initially for want of complaint u/s. 195 Cr.P.C. This complaint was filed after lapse of more than six months from the date of offence i.e. the period of maximum punishment provided

for this offence. However, Section 468(3) Cr.P.C. provides that the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence, which is punishable with the more severe punishment or, as the case may be, the most severe punishment. The most severe punishment in this case is life imprisonment as provided for offence u/s. 395 IPC and 436 IPC. The cognizance of these offence was already taken by Id. CMM (NE) vide order dated 12.10.2020. Section 468(3) Cr.P.C. is unambiguous in its language to provide that if more than one offence are charged in a case, which are tried together, there is no relevance of limitation provided for offence having minor punishment. This is not a case wherein complaint u/s. 195 Cr.P.C. was filed as a separate case. It was filed as part of this case and therefore, there is no occasion to count limitation afresh for the purpose of Section 188 IPC. Hence, I do not find such objection of defence to be sustainable.

66. The complaint u/s. 195 Cr.P.C. read along with statement of Ct. Sangram, HC Virender and HC Vikram further make it apparent that due to pelting of stones on police team by aforesaid mob on the street outside the house of accused Tahir Hussain, these police officials had to take back steps in order to save their own lives. This situation does reflect a case of obstruction in the discharge of duties of these public servants. Therefore, case for offence u/s. 186 IPC is also made out against all the accused persons with aid of Section 149 IPC.

67. The evidence on the record show that this mob break open the shutter of Pradeep's parking, thereafter, they set the vehicles parked there on fire, thereby causing damage to these cars and in the same manner causing fire in this property. This mob also caused simple injury to Pradeep Verma. They also looted cash amount from the cash box of the parking and Pradeep Verma could certainly not do anything to stop them out of fear of instant death or of instant hurt. Thus, it was a case of dacoity. All such acts were done in defiance to proclamation/order made u/s. 144 Cr.P.C.
68. Section 153A(1)(b) IPC, shows that if any person does such act, which is prejudicial to the maintenance of harmony between different religious groups or communities and which disturbs or is likely to disturb the public tranquillity, he becomes liable to be punished under this provision. In this case, all accused indulged into targeting Hindus and their such acts were apparently prejudicial to the harmony between communities of Muslims and Hindus. They did disturb the public tranquillity through their actions. Therefore, all named accused are also liable under this provision.
69. Thus, on the basis of above-mentioned description of evidence and discussion, I find that accused persons namely Tahir Hussain, Liyakat Ali, Riyasat Ali, Shah Alam, Mohd. Shadab, Mohd. Abid, Rashid Saifi, Gulfam @ VIP, Arshad Qayyum, Irshad Ahmad and Mohd. Rihan @ Arshad Pradhan are liable to be tried for offence punishable u/s 120B IPC r/with Sections 147, 148,

188, 153A, 323, 395, 435, 436, 454 IPC. They are also liable to be tried for offences punishable u/s 147, 148, 186, 188, 153A, 323, 395, 435, 436, 454 IPC r/with 120B and 149 IPC.

Ordered accordingly.

PULASTYA
PRAMACHALA

Digitally signed
by PULASTYA
PRAMACHALA
Date:
2022.12.03
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Announced in the open court (PULASTYA PRAMACHALA)
today on 03.12.2022 ASJ-03(North East)
(This order contains 50 pages) Karkardooma Courts/Delhi