

FIR No. 59/2020  
U/s 13/16/17/18 UAPA & 120B/124A/302/307/353/186/212/395/427/435/  
487/435/436/452/109/114/147/148/124A/153A/34 IPC & 25/27 Arms Act  
P.S. Crime Branch  
State v. Devangana Kalita and Natasha Narwal.  
14.07.2020

Vide order nos.5837-5927/D&SJ/NDD/2020 dt. 30.05.2020 & 5931-6021/D&SJ/NDD/2020 dated 01.06.2020 of Ld. District & Sessions Judge, Patiala House Court, New Delhi District, New Delhi, the undersigned has been deputed for duty today in pursuance to the directions of Hon'ble High Court of Delhi vide order no.R-1347/DHC/2020 dated 29.05.2020 and in continuation of the previous office order nos.4243-4333/D&SJ/NDD/2020 dated 01.04.2020, 4407-4426/D&SJ/NDD/2020 dated 10.04.2020, 4518-4608/D&SJ/NDD/2020 dated 15.04.2020, 5111-5200/D&SJ/NDD/2020 dated 03.05.2020, 6364-6454/D&SJ/NDD/2020 dated 16.05.2020 and 6326-6415/D&SJ/NDD/2020 dated 15.06.2020 to combat the pandemic of COVID 19.

Present: Sh. Irfan Ahmed, Ld. Addl. PP for the State.  
Sh. Adit S. Pujari and Ms. Tusharika Mattoo, Ld. Counsel for  
the applicants/accused persons.  
Insp. Bhushan Azad.

Proceedings done through video conferencing.

1. Present is second application u/s 156(3) CrPC moved on behalf of applicants/accused persons, namely Devangana Kalita and Natasha Narwal seeking monitoring of the investigation in the instant case.
2. During arguments, it is informed by Sh. Adit S. Pujari, Ld. counsel for applicants/accused persons that first application of similar nature was disposed off vide order dated 25.04.2020 by the Ld. Duty Magistrate. It is submitted that at the time of filing the first application u/s 156(3) CrPC before the Ld. CMM, the applicants were not arraigned as accused and the said application was dismissed solely on the ground of impossibility of monitoring proceedings due to the Covid-19 associated directions on court-functioning and as such, the liberty to move present application cannot be scuttled simply on account of the arrest of

applicants/accused persons. It is submitted that the investigation into the alleged conspiracy behind the Delhi riots is not in accordance with any legally accepted tenets of a fair investigation, since it is likely that the perpetrators of the offences and the ensuing riots are hand-in-glove with the investigating agency. It is submitted that multiple contemporaneous videos of the Jaffrabad protest site were taken by the investigating agency and by reporters present at the area, the said videos would present the true state of affairs before the court however, police is deliberately withholding such an important piece of evidence. It is further submitted that there appears to be a deliberate and willful failure to investigate the existence of Pro-CAA rallies and hateful statements made between 22.02.2020 to 26.02.2020 made by Pro-CAA persons and Pro CAA leaders of the area. It is submitted that there are contemporaneous videos of members of the police force either waiting on the sidelines or actively assisting persons bringing stones into the area. It is submitted that no investigation has been done by the investigating agency in relation to Whatsapp groups of which the local pro-CAA leaders were part of. It is submitted that contemporaneous Daily Diary entries and PCR calls would show that the local police was refusing to interfere/ assist persons facing such violence. It is submitted that no investigation has been done to inquire into where such trucks laden with stones came from. It is submitted that the local police is animus against protestors is evident from contemporaneous videos of police using excessive force and as such, Delhi Police is not an impartial investigator in the present case. It is further submitted that Section 302 IPC has been invoked and 53 persons having allegedly lost their lives and investigation is continuing since 06.03.2020, it is unclear as to whose death is being investigated in the present case. It is submitted that it is settled law that two FIRs cannot be invoked for the same incident or event. It is submitted that without prejudice to the fact that the UA(P)A is not applicable to the case of applicants, it appears that

the time period was granted to the Delhi Police to file its charge-sheet in the present case while ensuring that co-accused are not entitled to bail under Section 167(2) CrPC, and investigation was permitted to be extended till 29.08.2020.

3. It is submitted by Ld. counsel for applicants/accused persons that it is settled law that an accused may approach the Ld. Magistrate exercising jurisdiction in an FIR if it appears that a fair investigation is not taking place. Additionally, it is also settled law that a Ld. Magistrate has the powers to monitor an investigation, in order to ensure that the correct factual position emerges at the end of an investigation. The power of a Ld. Magistrate to monitor investigations and to actually take part in such investigations, may also be derived from Section 159 of the CrPC. Separately, powers under Section 91 CrPC are also always available with this Court.

4. Ld. counsel for applicants/accused persons submitted that in the wake of an unholy nexus between police and the real culprits, the witnesses and locals from the area are too scared to come forward and reveal truth and thus Court must exercise its power under Section 91 CrPC for obtaining: CDRs of accused and local Pro-CAA leaders; videos indicating movement of trucks; whatsapp chats by forthwith seizing mobile phones of pro-CAA leaders and sending the same to FSL; video-footage of all journalists, and videos taken by professionals engaged by the Delhi Police; cellphone tower data of each mobile tower of each service provider in the relevant parts of North-East Delhi and to check call detail records of the concerned police officers and officials posted in PS Jafrabad, Gokulpuri, Dayalpur, BHajanpura and other police officials, as detailed in the application. It is submitted that the said evidence is of such a nature that the same may be dissipated/lost/ rendered inoperable, if the same is not collected. It is submitted that if such CDRs and videos are analysed and presented before this Hon'ble Court, it is likely that further details will

emerge in respect of the nature of police intervention into the events that transpired in North East Delhi in February 2020. It is further submitted that CDRs are known to have been maintained for a maximum period of one year by mobile service providers. It is submitted that it is imperative that this court call for the aforesaid electronic documents by exercising powers under Section 91 and 156(3) CrPC, for analysis and for safe custody/preservation of the same.

5. It is thus prayed by Ld. counsel for applicants that instant application be allowed and the disconcerting response of the prosecuting agency to the instant application be struck off the record who instead of acknowledging the role of certain members of the police force and preserving evidence is opposing the application by attempting to cite non-maintainable technical arguments in law, without placing on record the correct law in regard to two versions of the same incident.

6. In support of his submissions, Ld. counsel has placed reliance upon the judgments reported in case titled *Kari Choudhary v. Mst. Sita Devi* (2002) 1 SCC 714, *Upkar Singh v. Ved Prakash* (2004) 13 SCC 292, *Babubhai v. State of Gujarat* (2010) SCC 254, *Vinubhai Haribhai Malaviya v. State of Gujarat* AIR 2019 SC 5233, *Nithya Dharmanand @ K. Lenin & Anr v. Sri Gopal Sheelum Reddy Cr. Appeal no. 2114 and 2115 of 2017* (Date of Decision 07.12.2017), *State v Sajjan Kumar & Ors Cr. Appeal No. 1099/2013* (Date of Decision 17.12.2018) and *Shambir v. State & Ors, Cr. Appeal No. 152/1996* (Date of Decision 28.11.2018).

7. The Counsel for the applicants has prayed this court for the following reliefs:-

- (A) Exercise its powers of monitoring of the investigation in the instant FIR, by calling for in the very least bi-weekly, if not, daily status reports;
- (B) Exercise powers under Section 91 CrPC and call for obtaining CDRs of accused and local Pro-CAA leaders; videos indicating

movement of trucks; whatsapp chats by forthwith seizing mobile phones of pro-CAA leaders and sending the same to FSL; video-footage of all journalists, and videos taken by professionals engaged by the Delhi Police; cellphone tower data of each mobile tower of each service provider in the relevant parts of North-East Delhi and to check call detail records of the concerned police officers and officials posted in PS Jafrabad, Gokulpuri, Dayalpur, BHajanpura and other police officials as mentioned hereinabove;

(C) Exercise powers under Section 159 CrPC in respect of complaints moved by affected persons, upon which police has failed to initiate any action, record the statements of such complainants under Section 164 CrPC.

8. Ld. Addl. PP has vehemently opposed the present application arguing that at the time of hearing of the bail application of co-accused Safoora Zarger, this court has signed all the Case Diaries pertaining to the present case prepared by the investigating agency. It is submitted that the claim of the applicants/accused persons that there are certain witnesses or evidence, who belie the version of the complainant and the witnesses in the instant case, those witnesses or evidence can be produced by the accused in their defence. It is argued that this is not the stage of producing these witnesses/CDR/videos or any other evidence before the court. **It is submitted that the investigating agency is in the process of seizing all the the CCTV footage of different places/spots where riots took place.**

9. It is further submitted that both the applicants are accused in the present FIR, hence, the present application is not maintainable as the law does not permit the accused persons to guide, control and supervise the investigation. Hence, the application deserves to be dismissed.

In support of his contention, he placed reliance upon the

judgment of Hon'ble Apex Court in *Amab Ranjan Goswami v. Union of India & Ors W.P (Crl) No. 130/2020 dated 19.05.2020*, *Romila Thapar & Ors v. Union of India & Ors W.P (Crl) No. 260/2018 dated 28.09.2018* and *E. Sivakumar v. Union of India & Ors (2018) 7 SCC 365*.

10. I have given my thoughtful consideration to the arguments addressed at bar and carefully perused the record.

11. In my considered opinion, accused have an undeniable fundamental right of fair trial which is essentially founded upon the bedrock of fair investigation. However, the apprehension of the accused in the instant case seems to be based more on anxiety generated because of incarceration and less on any substantial basis or sound logic.

12. The applicant accused have failed to point out any material irregularity in the investigation carried out by the police to substantiate their doubts. Ld Counsel has placed heavy reliance upon the Judgment in the case of *State v Sajjan Kumar & Ors Crl. Appeal No. 1099/2013 (Date of Decision 17.12.2018)* and *Shambir v. State & Ors, Crl. Appeal No. 152/1996 (Date of Decision 28.11.2018)* to highlight that in Riot cases Police and Prosecution are influenced by extraneous considerations and cause of justice suffers an irreparable loss. In my considered opinion, the entire institution can not be denigrated simply because some of its members went amiss. Moreso, this Court, vide order dated 27/05/2020, has already directed the worthy DCP to ensure fair investigation in the case. Therefore, I find no valid grounds to saddle the already overburdened investigating agency with any additional responsibility in the name of monitoring the investigation. The prayer for calling bi weekly reports accordingly stands rejected.

13. The prayer regarding calling for data, video footages etc under Section 91 CrPC also deserves to be rejected on account of vagueness and lack of specificity. In order to grant the relief claimed the Court has to

first presume that there are some Pro CAA Leaders then the court has to presume their names, their phone numbers etc and then acting upon the presumption ask the concerned agencies to preserve their record and analyse voluminous data. During the course of arguments, the IO has informed the court that he has collected a number of video footages and is in the process of collecting the remaining footages including the video footages from Journalists, Metro Stations and the professional photographers engaged by delhi police to cover the protests. Investigation, in itself, is a very intricate and strenuous exercise. It is like taking a dip everytime in a deep sea to dig out the oyster carrying the pearl. Considering the intricacies involved the Legislature in its wisdom has left the investigation within the exclusive domain of the Investigating agency. In my considered opinion, neither the Court nor the accused can dictate the mode and manner in which the investigation is to be conducted by the Investigating Officer. Reliance is placed upon *Romila Thapar & Ors v. Union of India & Ors W.P (Crl) No. 260/2018 dated 28.09.2018*.

14. The power vested in the court under Section 91 CrPC can not be exercised at the behest of the accused for fishing and roving purposes. Reliance is placed upon the State of Orissa vs Debendra Nath Padhi (2005) 1 SCC 568. Even the judgment of *Nithya Dharmanand @ K. Lenin & Anr v. Sri Gopal Sheelum Reddy* (supra) would not come to the rescue of the applicants as they have failed to highlight any material to satisfy this court requiring interference under Section 91 CrPC. Moreso, mechanically ordering the wholesale seizure of call data of the police officials, so called witnesses or so called real culprits, police station diaries or cellphone tower data of each mobile tower of each service provider etc. is not only going to raise privacy concerns and lead to unnecessary interference in other pending investigations but is also not going to serve any practical purpose in the present case. Reliance is placed upon *District Registrar and Collector vs Canara Bank* (2005) 1 SCC 496. The case would have

been different had the applicant sought the preservation of specific data which they feel is ephemeral nature. Thus the second relief prayer is also denied.

15. I am afraid the third prayer is also based upon mere surmises and conjectures. The Court is required to presume that a report under Section 157 CrPC has been filed before the concerned Court. Then Court has to presume that the concerned Court has refused to act upon the complaints relied upon by the applicant accused. The Court has then to presume that the said complainants are not satisfied with the action of the authorities upon their complaint and they want this court to act altogether ignoring the procedure established by law in this regard. Mere surmises and conjectures can not constitute a valid reason for exercise of power under Section 159 CrPC.

16. As a cumulative effect of the aforesaid discussion, I am of the concerned opinion that the application is bereft of merits and the same deserves to be dismissed.

**( Dharmender Rana)**  
**Roster Judge**  
**ASJ-02/NDD/PHC/ND**  
**14.07.2020**