* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 2nd June, 2022**

\+ **W.P.(CRL) 937/2022**

SHEIKH ISHRAFIL ..... Petitioner
Through: Mr. Bhoopendra Singh and Ms.Sneh Lata Rana, Advocates

versus

STATE (NCT) OF DELHI & ORS. .....Respondents
Through: Mr. Rajesh Mahajan, ASC for Mr.R. S. Kundu, ASC for State with Inspector Pradeep

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") with the following prayers:-

> *"(a) issue an appropriate direction (s) and order in the nature of writ of mandamus in favour of petitioner and against the respondents no.1 to 7 and be directed them not to harass the petitioner and his entire family members in the name of interrogation.*
> *(b) pass an appropriate order or direction to respondents not to create any terror in the mind of petitioner and his family members and save the fundamental rights to live with*

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dignity and fearless life as enshrined under article 21 of constitution of India.

(c) pass such any other order(s), which this Hon'ble Court may deem fit and proper in favour of petitioner and against the respondents."

2. Mr. Bhoopendra Singh, learned counsel for the petitioner, submitted that the police, namely, the respondents No.1 to 7, were coming to his residence under the cover of investigations and were subjecting the petitioner and his family to harassment. It was submitted that an incident had taken place at Jahangir Puri on 16th April, 2022 and the police were seeking to allege that he and his family members had been somehow involved in the same. However, it is the case of the petitioner that his father had expired on 14th April, 2022 and according to Muslim rites and customs, *Teeja* of his late father was performed on 16th April, 2022, which started at around 12 noon to 11 p.m. near Eidgah C-Block, Jahangir Puri, Delhi. The petitioner's entire family, including his five sons, were involved in these rites. 500 persons were invited and at about 6:45 p.m., Roza Iftar was also arranged. Unfortunately, on the same day, at about 6 p.m., a commotion erupted in which, there was pelting of stones between two communities. On 17th April, 2022, at about 3 a.m., the police from Police Station Jahangir Puri came to the house of the petitioner's eldest son and picked him up and subsequently, he was sent to judicial custody, on allegations of being involved in the Jahangir Puri riots.

3. The learned counsel emphasized repeatedly that the petitioner, as a citizen of this country, had the Fundamental Right to live with dignity and fearlessly, as assured under Article 21 of the Constitution of India.

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Therefore, it was submitted that the police be restrained from harassing him and his family.

4. Mr. Rajesh Mahajan, learned Additional Standing Counsel for the State, relied on the Status Report filed and placed on the record under Index No.880331, to submit that the police was only investigating the Jahangir Puri Riots, which took place on 16th April, 2022. According to the learned ASC, on 16th April, 2022, Inspector Rajeev Ranjan, PS Jahangir Puri along with his staff was deployed for security arrangement in the area in connection with a procession on the eve of Hanuman Jayanti. The procession was proceeding peacefully till it reached Jama Masjid, C-Block, Jahangir Puri at around 6 p.m., when a person named Ansar came there and started arguing with the members of the procession. Several of his associates also came to the spot and joined Ansar and arguments culminated in stone pelting and stampede. Additional force was called to control the situation and senior police officers also reached the spot. The mob went out of control and 52 tear gas shells had to be fired. The rioters were armed with deadly weapons, including fire arms, swords, etc., and they caused injuries to as many as 8 police officers, including SI Meda Lal, who sustained a bullet injury on his left forearm, due to firing by the rioters. Another civilian, who was part of the procession, also sustained injuries. The rioters damaged vehicles and set a Scooty on fire.

5. As a result, FIR No.440/2022 was registered at P.S. Jahangir Puri on the basis of the statement of Inspector Rajeev Ranjan under Sections 147/148/149/186/353/332/307/323/427/436 IPC and Section 27 of the Arms Act and subsequently Sections 109, 120B and 34 IPC and Section 25

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of the Arms Act were also added. The investigations were transferred to the Crime Branch. The learned ASC submitted that during investigations, a large number of people have been identified indulging in rioting, wielding swords, waving and using firearms, pelting stones and glass bottles and as on 12th May, 2022, 34 persons and 3 CCLs have been apprehended. Others were absconding, including the petitioner and his son Ashnoor. NBWs have been issued against them.

6. It was further submitted that in the course of the investigations and questioning of people already apprehended, it has been revealed that the petitioner was one of the main conspirators and perpetrators of the entire incident and was evading the process of law. It was the petitioner who was actively involved in aggravating the situation and instigating his community in pelting stones, bottles, and attacking the Hanuman Jayanti procession with firearms, swords, bricks, bottles and other weapons. He spread the message amongst the local residents and his community to accumulate stones, brick-pieces, glass bottles, swords and other arms, to be used at an appropriate time. The petitioner had hatched deep conspiracy to disturb the communal harmony of the country. It was further submitted that the FSL team found bricks, glass, ceramic pieces, and seized them from the terrace of H.No.C-51, Jahangir Puri, belonging to the petitioner, apart from other places.

7. Learned ASC further submitted that in the garb of the present petition, the petitioner was actually seeking anticipatory bail, which was not permissible.

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8. I have heard the submissions and have perused the material on record. The petition has been filed under Article 226 of the Constitution of India and Section 482 Cr.P.C. probably to get over the hump of the limited scope under Section 482 Cr.P.C. to issue any orders especially on the lines prayed for in the petition. Be that as it may, this Court finds no reason to issue any directions in exercise of its powers under Article 226 of the Constitution of India, in view of the Status Report filed by the respondent/State disclosing that the police were only investigating into the offences committed for which FIR No.440/2022 has been registered. As has been observed by the Judicial Committee in ***King-Emporer v. Khwaja Nazir Ahmad***, AIR 1945 PC 18, and reiterated by the Supreme Court in State of ***West Bengal and Ors. v. Sampat Lal and Ors.,*** (1985) 1 SCC 317, the functions of the Judiciary and Police are complementary and each must be allowed to exercise its own function, with due observance of law and order and a concern for individual liberty.

9. Again, in ***State of Bihar v. J.A.C. Saldanha,*** (1980) 2 SCR 16, the Supreme Court reiterated that there was a clear-cut and well-demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the exclusive field of the police. The police have a duty to keep vigilance over the law-and-order situation and to prevent crimes. If an offence is alleged to have been committed, it is its bounden duty to investigate into the offences and bring the offender to book. It is also duty bound to collect evidence for the purposes of proving the offence. Adjudication would come only after a Final Report is submitted to the court. While these observations were made, no doubt, in

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regard to the question whether the court could guide investigations, these observations are apposite to the present matter.

10. The police have reported that offences had been committed on 16th April, 2022 near Jama Masjid, C-Block, Jahangir Puri. Weapons were used. Police are investigating the role of each person and they have found leads pointing out to the deep involvement of the petitioner. The petitioner admits that he had been present with 500 people at the Eidgah C-Block, Jahangir Puri, though for some other reason, namely, the *Teeja* rites for his late father. The FSL has found material at his terrace. The older son has already been arrested.

11. In these facts and circumstances, it is evident that the petitioner has moved this petition to thwart investigations. The court cannot allow itself to be used in such a fashion, which may lead to interference with the investigations, and which has been always frowned upon by the courts.

12. In the light of the facts and circumstances, as noted hereinabove, this does not appear to be a case in which the police have contacted the petitioner and his family only with ill-motives to harass them. The police have to find out who were the perpetrators of the various offences committed on 16th April, 2022 and as a citizen of this country, it is only to be expected that while the petitioner seeks enforcement of his Fundamental Rights, he would also do his duties and help the police resolve the crime and apprehend the perpetrators.

13. As rightly pointed out by the learned ASC for the State, this petition appears to be of a phishing kind, seeking anticipatory bail, in the garb of directions to the police not to harass the petitioner and his family.

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14. There is no merit whatsoever in the present petition, which is dismissed. For abundant measure, it is recorded that the observations made in this order are only for the purposes of disposal of the present petition.

15. The petition stands disposed of, along with the pending application.

16. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

JUNE 02, 2022
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