

Misc. CrI. No. 53/2024  
CNR No.DLCT12-000220-2024  
Mohammad Ilyas vs. State & Ors.  
U/s 175 of Bharatiya Nagarik Suraksha Sanhita (in short  
'BNSS'), 2023

01.04.2025

**ORDER**

1. Aggrieved over non-registration of FIR by the police officers, which was given in the form of complaint, by the complainant herein dated 15.03.2020, to the various office of Delhi police and in particular a written complaint was made on 17.03.2020 to S.H.O. PS Dayalpur, and in pursuant thereof, since no FIR was lodged by P.S. Dayalpur, complaint was also made to D.C.P. North East, but only in vain. No effective action on behalf of the police officials have compelled the complainant herein to take resort of this Court by filing an application under Section 156(3) Cr.P.C. (Section 175 (3) of BNSS) which was instituted on 07.11.2020 and therefore complainant herein seeks relief by placing his reliance in view of judgment of *Lalita Kumari vs. Govt. Of U.P. (2014) 2 SCC 1*.

2. The complainant Mohd. Ilyas (hereinafter referred as the complainant) has invoked the jurisdiction of this Court to seek registration of FIR against the ex-BJP MLA Kapil Mishra and other proposed accused for the offences under appropriate sections.

3. This is a special Court, constituted especially to deal with the matters concerning MPs and MLAs exclusively.

4. Report was called qua the present application, wherein two reports dated 24.09.2024 by DCP, North East and 21.10.2024 by ACP, Special Cell, NDR was filed. Certain documents were also filed by the State in order to justify their stand.

5. The bone of contention on the part of complainant herein have been that complainant herein being the responsible citizen of this country, have been the resident of Yamuna Vihar brought forth the series of incidents which constituted crime and in particular cognizable and despite being brought forth to the notice of the police officials, no effective criminal action has been initiated. The crux of the complaint relates to the five set of incidents which the complainant herein have outlined which runs as, *firstly*, that on 23.02.2020, proposed accused no. 2 and his associates have blocked the road at Kardampuri and have broken the carts of Muslim and Dalits, wherein the police officials were hand in glove in the criminal enterprise of proposed accused no. 2 with D.C.P. Ved Prakash Surya, who wandered the streets subsequent thereto and sought the ceasing of protest else untoward consequence would follow to the extent of life (hereinafter referred to as *first incident*), *secondly*, that on 24.02.2020, the rioters have set fire in the buses of Victoria School accompanied with the slogan of '*Jai Shri Ram*' (hereinafter referred to as *second incident*), *thirdly*, that the

proposed accused no. 3 along with his companions have set on fire the mosque situated in the tyre market in the evening of 24.02.2020 (hereinafter referred to as *third incident*), *fourthly*, that on 25.02.2020, in morning, while the women protesters were sitting at the protest site, at around 1 PM, the owner of Mohan Nursing Home along with some people got stones and bullets from the roof of Mohan Nursing Home and started pelting/firing on the protesters (hereinafter referred to as *fourth incident*), and *fifthly*, the proposed accused no. 4 along with proposed accused no. 3 had gathered in the evening and have attacked and killed various persons in the mosque, that on the next date, that is, 26.02.2020, at around 8:30 AM, proposed accused no. 6 had broken down the CCTV Camera installed in the Faruqia Mosque and further the *Madarasa* was set on fire with petrol and therefore, the rioters are guilty of opening fire, arson and looting and police officials were hand in glove with the proposed accused herein in their criminal enterprise (hereinafter referred to as *fifth incident*). The perusal of the two complaints made by the complainant, which have been produced before this Court do not disclose any other offence. No other offence was brought forth to the attention of this Court or agitated while the arguments were being submitted by the Ld. Counsel for the complainant.

6. Report was called in the present case which was the submitted by the D.C.P. North-East, stating that the applicant has raised allegations regarding incident that purportedly occurred at four different locations, each falling under the jurisdiction of different police stations. It was the version of D.C.P. North-East

that the complaint substantially reveals out 5 set of offences wherein five FIR have already been registered with respect to respective offences and therefore there is no substance in the complaint/application. The reply was also appended by the respective F.I.Rs., wherein the concerned D.C.P. seeks to affirm his submissions.

7. Another set of reply was filed by the ACP Special Cell/NDR with respect to case FIR 59/2020 dated 06.03.2020 under Section 147/148/149/120B IPC was registered as P.S. Crime Branch on secret information, that the riots that occurred in February 2020, in the North East Delhi, was result of conspiracy hatched by certain set of accused and the same are being tried before the concerned Ld. Trial Court. It is also the version of ACP Special Cell, that the riots in February 2020, executed by carefully identifying and selecting the protest sites in Muslim majority areas which were close to the mosque and main roads were closed to escalate the protest to road blockage, that it was anticipated to generate a critical mass which would eventually lead to violence against police and the common citizen, that under the garb of secular protest, communal protest was led, that during the course of investigation into larger conspiracy leading to Delhi riots, the role of the proposed accused no. 2 was investigated and it was revealed that he had no role to play in the initiation and orchestrating violence leading to riots, but it was only in response to the mass unrest among the local residents that proposed accused no. 2 reached at the spot and certain set of group has planned to drag his name. It was also

submitted that false propaganda was being created against proposed accused no. 2 that the violence was initiated by proposed accused no. 2.

8. Several bunch of documents were also submitted by the State revealing the chats and the messages as well as the sequence of events for conspiracy of North-East Delhi riots along with map revealing that, why the first phase of riots was failure, that it was not an organic protest, that what cover up action were being taken up, that the peaceful protest was only a facade and actual plan was mass scale violence and even on 05.03.2025, the Ld. Special Public Prosecutor have placed on record the bunch of documents revealing their version of North-East riots.

9. Arguments were heard in the present case on 12.11.2024, 06.02.2025 and 27.02.2025 and matter was reserved for orders.

10. Response was filed on behalf of the complainant to the action taken report which was filed on 24.09.2024. Arguments were heard on behalf of the complainant and very detailed arguments were made by Mr. Mehmood Pracha and Mr. Sanawar Choudhary, Ld. Counsels for the Complainant. It was specifically argued that as far as *first incident i.e.* (23.02.2020, proposed accused no. 2 and his associates have blocked the road at Kardampuri and have broken the carts of Muslim and Dalits, wherein the police officials were hand in glove in the criminal enterprise of proposed accused no. 2 with DCP Ved Prakash

Surya wandered the streets and sought the ceasing of protest else untoward consequence would follow) is concerned, proposed accused no. 2, against whom the complaint has been made in the present case, has not been made accused in the case, as stated in the ATR filed by the police on 21.10.2021. It was further submitted that the police has never recorded the statement of the complainant in the said case, while claiming that the names of the accused persons has not surfaced in the investigation of the conspiracy and all the statements of the witnesses or in the digital evidence, that it is apparent that the police have not even investigated the incident of the complaint filed by the complainant at all, and have sought to build false narrative by exonerating certain individuals and implicating others in arbitrary fashion, without requiring the statements of the relevant witnesses.

11. With respect to the *second* incident, it was argued that as per the online records, the accused persons appeared to have been discharged in this case (Copy of order dated 16.08.2023 of Ld. ASJ discharging the accused therein is appended with reply) on the ground that the police are unaware as to what is the date or the place to which the case relates. The police appears to be misleading this Honorable Court, as the Ld. Trial Court, while discharging the accused persons, had categorically stated in its order that the police are to investigate the complaint clubbed in the chargesheet properly with observation qua suspicion for IO having manipulated the

evidence in the case, without actually investigating the reported incidents properly.

12. With respect to the third incident, it was argued that the police have stated the case is pending investigation, but for nearly 5 years, the police have not called the complainant for recording of his statement, that it appears that the police are clubbing complaints in different FIR with the sole motive of burying complaints which are not consistent with the false narrative been propounded by the some biased police official in their biased and malicious investigation of the complaints in the riots.

13. With respect to the fourth and fifth incident, it was submitted on the same line as have been made with respect to the third incident.

14. Heard, perused and considered.

15. Honorable Supreme Court have well illustrated the guidelines for the compulsory registration of the FIR in the classical case of *Lalita Kumari and Ors v Government of UP and Ors AIR 2012 SC 1515*.

111. In view of the aforesaid discussion, we hold:

- (i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offences.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes.

(b) Commercial offences.

(c) Medical negligence cases.

(d) Corruption cases.

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to

conduct a preliminary inquiry must also be reflected, as mentioned above.

16. The Ld. Special Public Prosecutor also brought forth to the attention of this Court the judgment passed by Honorable Supreme Court recently in *Om Prakash Ambedkar vs The State Of Maharashtra 2025 SCC OnLine SC 238*. While traversing the judgment, this Court is constrained to quote paragraph 23, 24, 25 as well as 29, 30, 31, 32 and 33 wherein the relevant judgments and the law pronounced is relevant for the adjudication of the present order:-

23. This Court in a plethora of its decisions, more particularly in the case of **Ramdev Food Products (P) Ltd. v. State of Gujarat reported in (2015) 6 SCC 439**, has laid emphasis on the fact that the directions under Section 156(3) should be issued only after application of mind by the Magistrate.

Paragraph 22 of the said decision reads thus:-

“22. Thus, we answer the first question by holding that *the direction Under Section 156(3) is to be issued, only after application of mind by the Magistrate.* When the Magistrate does not take cognizance and does not find it necessary to postpone issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, *where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.* Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine *"existence of sufficient ground to proceed"*. Category of cases falling under Para 120.6 in Lalita Kumari (supra) may fall Under Section 202 Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.”

24. Thus, there are prerequisites to be followed by the complainant before approaching the Magistrate under Section 156(3) of the Cr.P.C. which is a discretionary remedy as the provision proceeds with the word 'may'. The Magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about the necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is, thus, not necessary that in every case where a complaint has been filed under Section 200 of the Cr.P.C. the Magistrate should direct the Police to investigate the crime merely because an application has also been filed under Section 156(3) of the Cr.P.C. even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, with the assistance of the Court or otherwise. The issue of jurisdiction also becomes important at that stage and cannot be ignored.

25. In fact, the Magistrate ought to direct investigation by the police only where the assistance of the Investigating Agency is necessary and the Court feels that the cause of justice is likely to suffer in the absence of investigation by the police. The Magistrate is not expected to mechanically direct investigation by the police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straightaway proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further in the matter, instead of passing the buck to the Police under Section 156(3) of the Cr.P.C. Ofcourse, if the allegations made in the complaint require complex and complicated investigation which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the police authorities. The Magistrate is, therefore, not supposed to act merely as a Post Office and needs to adopt a judicial approach while considering an application seeking investigation by the Police.

17. The Judgment further enlightens with respect to the old Cr.P.C. and new BNSS vis-a-vis Section 156(3) and Section 175(3) respectively. This same is being quoted for the reason that the present case is being decided as and when BNSS is in effect

and therefore if any procedure has been laid down which provides for better rights of the accused or complainant/victim, the same has to be enforced. Paragraph 29, 30 and 31 clearly speaks out so and which runs as:-

**29.** Section 175 of the BNSS corresponds to Section 156 of the Cr.P.C. Sub-section (1) of Section 175 of the BNSS is in pari materia with sub-section 156(1) of the Cr.P.C. except for the proviso which empowers the Superintendent of Police to direct the Deputy Superintendent of Police to investigate a case if the nature or gravity of the case so requires. Sub-section (2) of Section 175 the BNSS is identical to Section 156(2) of the Cr.P.C. Section 175(3) of the BNSS empowers any Magistrate who is empowered to take cognizance under Section 210 to order investigation in accordance with Section 175(1) and to this extent is in pari materia with Section 156(3) of Cr.P.C. However, unlike Section 156(3) of the Cr.P.C., any Magistrate, before ordering investigation under Section 175(3) of the BNSS, is required to:

**a.** Consider the application, supported by an affidavit, made by the complainant to the Superintendent of Police under Section 173(4) of the BNSS;

**b.** Conduct such inquiry as he thinks necessary; and **c.** Consider the submissions made by the police officer.

**30.** Sub-section (4) of Section 175 of the BNSS is a new addition to the scheme of investigation of cognizable cases when compared with the scheme previously existing in Section 156 of the Cr.P.C. It provides an additional safeguard to a public servant against whom an accusation of committing a cognizable offence arising in the course of discharge of his official duty is made. The provision stipulates that any Magistrate who is empowered to take cognizance under Section 210 of the BNSS may order investigation against a public servant upon receiving a complaint arising in course of the discharge of his official duty, only after complying with the following procedure:

**a.** Receiving a report containing facts and circumstances of the incident from the officer superior to the accused public servant; and

**b.** Considering the assertions made by the accused public servant as regards the situation that led to the occurrence of the alleged incident.

**31.** A comparison of Section 175(3) of the BNSS with Section 156(3) of the Cr.P.C. indicates three prominent changes that have been introduced by the enactment of BNSS as follows:

a. First, the requirement of making an application to the Superintendent of Police upon refusal by the officer in charge of a police station to lodge the FIR has been made mandatory, and the applicant making an application under Section 175(3) is required to furnish a copy of the application made to the Superintendent of Police under Section 173(4), supported by an affidavit, while making the application to the Magistrate under Section 175(3).

b. Secondly, the Magistrate has been empowered to conduct such enquiry as he deems necessary before making an order directing registration of FIR.

c. Thirdly, the Magistrate is required to consider the submissions of the officer in charge of the police station as regards the refusal to register an FIR before issuing any directions under Section 175(3).

32. ...

The reason given by the Court for introducing such a requirement was that applications under Section 156(3) of the Cr.P.C. were being made in a routine manner and in a number of cases only with a view to cause harassment to the accused by registration of FIR. It was further observed .....

“27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the Bank. We are absolutely conscious that the position does not matter, for nobody is above the law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out.

29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A Court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate.

That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal Court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). **That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. ....**

33. In a recent pronouncement of this Court in the case of Babu Venkatesh v. The State Of Karnataka reported in (2022) 5 SCC 639, the observations made in Priyanka Srivastava (supra) were referred to and it was held as follows:

.....  
**25. This Court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The Court has noted that, applications under Section 156(3)Cr.P.C. are filed in a routine manner without taking any responsibility only to harass certain persons.**  
.....

18. Coming to the disposal of this application, this Court shall discuss the incidents in descending order and the adjudication over it thereof.

### *The Fifth Incident*

19. The offence pertains to incident that took place on 26.02.2020 in the morning with respect to the arson and looting qua Farooqia Masjid. The response of the DCP North East has been that the place of occurrence have been Farooqia Masjid, near Brijpuri Pulia which falls within the jurisdiction of PS Dayalpur police station. The offence was well taken into regard and pursuant thereof FIR no. 64/2020 PS Dayalpur was already registered and the case is pending investigation.

20. Per contra, Ld. Counsel for the complainant have responded that the case is pending investigation for nearly 5 years and even complainant has not been called for recording the statement and the police officials are making every endeavor to club the complaints in different FIR with sole motive of burying the complaints. It is further submitted that the police officials are acting in biased and in malicious way.

21. In view of the rival submissions, this Court has no hesitation to hold that the complainant have alleged cognizable offence and the response of the DCP North-East reveals that on the same set of facts FIR was lodged wherein offence is alleged to have been committed on 25.02.2020 and information was received on 26.02.2020 at 23:52 hours wherein the complainant A.S.I. Sh. Surender Pal Singh had revealed the arson qua Brijpuri pulia masjid. This Court has perused the details of the FIR and is well satisfied that the allegations as made out in paragraph five, six and seven has been well covered by the said FIR. Special

emphasis is being supplied with respect to the contents of paragraph 5 wherein the complainant have alleged that several persons were attacked and killed in the mosque. The timing of the occurrence of the offence and the registration of a FIR is taken into account which clearly reveals that they form part of same transaction and at most the continuity of offence can be seen. The lodging of an FIR and the investigation not being carried out by the police official warranting grievances of the complainant does not hold water as far as the present application is concerned which is circumscribed for the further investigation. In the present case, this Court cannot be tasked with the duty of monitoring the investigation as the Ld. Trial Court of the particular police station would be the appropriate forum. Hence this Court does not find merits as far as grievance qua fifth incident is considered.

#### **The Fourth Incident**

22. The incident pertains to the allegation of offence that took place on 25.02.2020 at around 1 PM involving women protesters who were sitting at the protest site, and the owner of Mohan Nursing Home along with some people who got stones and bullets from the roof of Mohan Nursing Home and started pelting/firing on the protesters. The paragraph 4 of the complaint specifically mentioned the allegation of the incident.

23. The response of DCP North East was called for wherein it was submitted that the alleged incident was well registered in an FIR with FIR no. 198/2020 PS Bhajanpura,

wherein the place of occurrence was Mohan Nursing Home which falls within the jurisdiction of PS Bhajanpura. Ld. SPP had specifically taken this Court to the contents of the FIR and have further submitted that same offence stands registered.

24. Per Contra, Ld. Counsel for the complainant have argued on the same line as that of fifth incident wherein the lackadaisical approach of police official have been emphasized qua investigation.

25. This Court has perused the FIR no. 198/2020 PS Bhajanpura. With respect to the details of the FIR wherein the YouTube video qua prime-time with Ravish Kumar dated 20 March, 2020 was the source of information and it was clearly seen that the rioters were standing at the roof of Mohan Nursing Home and the firearms were used. Though there was delay in lodging the FIR however complaint mentions it to be on 25.02.2020 while FIR mentions it to be date of occurrence as 24.02.2020 at 00.00 hrs. Now the pictorial description of offence as alleged in complaint and that in the FIR are exactly same and it cannot be co-incidence i.e Mohan Nursing Home and use of Firearms at the roof. In response, there is no specific emphasis by Ld. Counsel for the complainant that no FIR has been lodged with respect to incident, rather only upon grievances qua investigation. At the cost of repetition, this Court is bound to observe again that “The lodging of an FIR and the investigation not being carried out by the police official warranting grievances of the complainant does not hold water as far as the present

application is concerned which is circumscribed for the further investigation. In the present case, this Court cannot be tasked with the duty of monitoring the investigation as the Ld. Trial Court of the particular police station would be the appropriate forum.” Since there was delay in lodging the FIR and incident took place in February 2020 while the FIR was lodged on 13.03.2020, under Section 147/148/149 IPC read with Section 27 of Arms Act, this Court is bound to give the benefit of doubt only qua the mismatch of the time of occurrence whereas the pictorial description of the offence is exactly the same and there is proximity of the timeline. Therefore I do not find merit qua the fourth incident and the argument of the State holds water as it is well covered in FIR no. 198/2020 PS Bhajanpura.

### **The Third Incident**

26. The incident pertains to setting up on fire the mosque situated in the tyre market by the proposed accused no. 3 along with his companion in the evening of 24.02.2020. The response of the state and the reply filed by the DCP North-East reveals that the same is well covered in the FIR no. 33/2020 PS Gokulpuri which is pending investigation.

27. Per Contra, Ld. Counsel for the complainant has based his argument wherein it is not denied that no registration of a FIR has been done but rather the slow-paced investigation coupled with biasness and maliciousness.

28. This Court has perused the FIR no. 33/2020 dated 26.02.2020 PS Gokulpuri which is registered for the offence under Section 147/148/149/436/427 IPC wherein the details mention in the FIR have been perused and this Court is well satisfied that the description of the complainant for this particular incident is well covered by FIR no. 33/2020 dated 26.02.2020 PS Gokulpuri. Therefore this Court does not find merit in the argument of the complainant.

### **The Second Incident**

29. The second incident pertains to that on 24.02.2020, the rioters have set fire in the buses of Victoria School accompanied with the slogan of 'Jai Shri Ram'.

30. Counsel for the State have drawn the attention of this Court that FIR no. 71/2020, PS Dayalpur already stands lodged wherein the place of occurrence was Wazirabad Road, PS Dayalpur.

31. Per Contra, Ld. Counsel for the complainant have argued that though FIR was lodged, it was argued that as per the online records, the accused person appear to have been discharged on the ground that the police were unaware as to what is the date or the place to which the case relates. The police appears to be misleading this Hon'ble Court, as the Ld. Trial Court, while discharging the accused persons, had categorically stated in its order that the police are to investigate the complaint clubbed in the chargesheet properly.

32. The Arguments of the Ld. Counsel for the complainant itself leaves no space to this Court for any kind of intervention as Ld. ASJ Court has already taken the cognizance of the case and specific directions have already been passed by the Ld. ASJ Court. It is reiterated that the present application has been filed only for the further investigation however when the investigation is being done and arguments on charge have already been concluded before Ld. ASJ Court and same has been adjudicated, this Court has no scope to even intervene or comment.

**The First Incident**

33. The first incident pertains qua that on 23.02.2020, proposed accused no. 2 and his associates have blocked the road at Kardampuri and have broken the carts of Muslim and Dalits wherein the police officials were hand in glove in the criminal enterprise of proposed accused no. 2 with DCP Ved Prakash Surya wandered the streets and sought the ceasing of protest else untoward consequence would flow.

34. Response of the State was sought wherein it was clearly submitted that there was conspiracy to lead this North East riots and to investigate so, a comprehensive FIR was lodged i.e. Case FIR no. 59/2020 at PS Crime Branch under Section 13,16,17,18 of UAPA, Section 302, 307, 341, 353, 186, 212, 395, 427, 435, 436, 452, 454, 109, 114, 124A, 153A, 420, 468, 471, 419, 201, 34 IPC and 3 & 4 PDPP Act, which is being investigated by Special Cell, Delhi Police. It was also submitted

that case is pending trial in Karkardooma Court. Since prosecution case therein is that larger conspiracy led to Delhi Riots of 2020, the proposed accused no. 2, after investigation, has no role to play in initiation and orchestrating violence.

**35.** Per Contra, Ld. Counsel for the complainant stated that proposed accused no. 2, against whom the complaint has been made in the present case, has not been made accused in the case, as stated in the ATR filed by the police on 21.10.2021. It was further submitted that the police has never recorded the statement of the complainant in the present case, while claiming that the names of the accused person has not surfaced in the investigation of the conspiracy and all the statements of the witnesses or in the digital evidence, that it is apparent that the police have not even investigated the incident and complaint of the complainant at all, and have sought to built false narrative by exonerating certain individuals and implicating others in arbitrary fashion, without requiring the statements of the relevant witnesses.

**36.** As far as, first incident is concerned, very specific complaint has been made by the complainant herein wherein Kapil Mishra along with his associates has broken the cart of Muslims and Dalits. The Court observation and conclusion with respect to first incident is as follows:-

- a) Outrightly, I am to observe that the credibility of the complainant in filing the complaint is very high for the reasons that unknowingly the complainant herein have

brought forth five incidents before this Court and not aware that the investigations are still pending against those incidents, the complainant have satisfied that all of these four incidents were found to be credible and that cannot be mere coincidence. At least, if one of the incident, as stated by complainant would have been found to be false, this Court would have observed otherwise with respect to the credibility of the complainant and complaint. This cannot be by way of deliberation wherein the complainant will credibly show the four incidents to be reliable and under the garb, the fifth incident to follow the same course and inference.

- b) The prosecution herein came up first with an explanation that the matter is well covered in Case FIR no. 59/2020 PS Crime Branch however on the very first instance, the prosecution has appended the wrong copy of the FIR and therefore the Court was compelled to invoke the Special Cell/NDR.
- c) Special cell came up with the case of larger conspiracy where they found Mr. Kapil Mishra had no role to play in initiation or orchestrating violence. The in-toto observation of any suspected accused so straightforward begs certain questions and I will come back to it for the reason under the clause of "immediate cause".

- d) To have the bearing upon the Court, bundle of documents were placed before this Court revealing personal messages, the chronology of events, the academic discussion of failure of first phase of riots, emphasis on not so organic protest, masking, secretive deflection and cover-up action with final conclusion that peaceful protest was only a facade and actual plan was massive scale violence. This Court has no disagreement with whatever conclusion the prosecution comes up with and further Delhi riots 2020 is not a theory but the fact and before one could check facts, the series of reasons enumerated by prosecution which propounds theory and definite conclusion, must be tested, however, there are numerous flaws in such theory building and many guesswork, assumptions and interpretation has undergone which are questionable. Once these flaws are outlined, therefore the theory goes off and so does the lens with which prosecution seeks to interpret the facts.
- e) One of the characteristic is opinions, with academic jargon has been presented under the garb of facts wherein the skill of differentiation has to come into play wherein the wheat can be separated from the chaff.
- f) Several interpretation has been done which can be interpreted otherwise. Though this Court is very reluctant to indulge in such academic exercise but one out of many submission reveals , for only illustration, that the women protestors were allowed to take the lead so that the

restraint would be practiced by the police officials and the secret motive of mass scale violence could be executed. Now that this Court takes up this interpretation and try to manufacture another interpretation. Assuming that the version of the prosecution to be correct, I am at odd to believe that any community, caste, sect, religion, (I have to take up as prosecution has outrightly mentioned the communal overtones) which is preparing for a mass level violence would be led by women of such community, caste, sect or religion wherein their most vulnerable gender would be at peril when violence breaks out. Now this Court is not espousing its opinion rather mooted guess work for wise reader. It is not important to be educated and intelligent to be wise and this Court can also throw an open question for the guesswork to the wise people as to other side of the interpretation. Which of the interpretation is facade, organic or otherwise is not the issue within scope of this Court and to delve into such issue. Such kind of theories propounded, particularly by prosecution, by use of intellect and with academic jargons, the undersigned specifically believe that it only taints the look at the fact. This Court would not align with any kind of production of knowledge rather would look at the facts untainted by the theories of the prosecution and this is being made outrightly clear.

- g)** Once unimpressed by the theories of the prosecution and the rival claims of the complainant, it is important to look

at what does the facts speak for themselves. This Court has outrightly denied to enter into any academic exercise to enumerate flaws and setting up a particular lens or a benchmark to look at and the filtering up of facts consequent thereof. Also the problem with opinion presented under the garb of fact is that anyone coming up with better explanation for particular phenomena can change opinion but it is not with the facts. Therefore facts and the interpretation of facts forming opinion has to be distinguished.

- h)** What does facts has to speak in this case and particularly the first incident. The Special Cell came up with a reply that investigation has already been conducted against the proposed accused no. 2 and no involvement has been found. For a moment, if Court fully subscribes to the stand of the prosecution cum Special Cell and assume each and everything presented as a gospel truth, there are reasons which are being outlined hereinbefore and hereinafter to order for further investigation.
- i)** This Court is not disbelieving any of the party, rather Court has already commented upon the credibility of the complaint by the complainant and the version of the prosecution. The complainant has alleged that the incident i.e. first incident as referred to by this Court took place on 23th February 2020 in afternoon wherein Mr. Kapil Mishra and his associates have broken the carts of the people and

committed violence. At inception, this Court was gracious to give benefit of doubt to Mr. Kapil Mishra as he may be alone, which will not amount to unlawful assembly( atleast 5 persons are required and context of riots has to be looked into), if complainant version is taken to be true that Mr. Kapil Mishra and his associates were committing Mischief, no number of person were revealed making it non-cognizable (otherwise it would qualify for unlawful assembly).

- j) However what perturbs this Court, as this Court is in the receipt of order of discharge by Ld. ASJ, which was passed in the case of State vs. Akhil Ahmad in FIR no. 71/20 P.S. Dayalpur, which covered the second incident and this Court will borrow what Ld. ASJ has taken judicial notice in the discharge order dated 16.08.2023 wherein paragraph 29 reveals **"It is the case of the prosecution itself and well-known fact that riots in North-East Delhi continued for time period with effect from 24.02.2020 till 26.02.2020"**.
- k) The chronology reveals that complainant has alleged that on 23.02.2020, prior to day of riots, Mr. Kapil Mishra and his associates have indulged into violence. This Court is also in receipt of Annexure B, as submitted by the prosecution, wherein Mr. Kapil Mishra has been interrogated pursuant to notice under Section 43F of UAPA. The interrogation commences with evasive reply

of Mr Kapil Mishra wherein he was asked " Did you visit North East District prior to riots occurred?". Rather than answering yes or no, Mr. Kapil Mishra jumps to what happened during riots where one of the petrol pump was burnt near his home and further in interrogation Mr. Kapil Mishra acknowledges that he was present in the North East District on 23.02.2020.

l) Mr. Kapil Mishra himself acknowledged in the interrogation that he was available in the area and people have gathered around him and he further knew them. Therefore the presence of the proposed accused no. 2 cannot be ruled out further fortifying the allegations of the complainant.

m) It is also admitted by proposed accused no. 2 in his interrogation that he went there to get vacated the protest site. Complaint by the complainant herein allege that carts were broken on 23.02.2020 within the same time-frame. This further fortifies the case of the complainant.

n) This Court was under impression that proposed accused no. 2 had gone alone but during interrogation, proposed accused no. 2 had uttered "*mere saamne uss samay karib 50-60 log the. DUSRI TARAF MUSLIM ki karib 500-700 logo ki bheed thi*". What is required to be taken note of is that prosecution has bifurcated between pro-CAA and Anti-CAA. It is also imperative to note that it is not denied

by the Special Cell in Case FIR no. 59/2020 PS Crime Branch NE which inquired into larger conspiracy that the some of the accused do not belongs to Muslim religion, but proposed accused no. 2 has not framed his statement under Pro-CAA or Anti CAA but rather DUSRI TARAF MUSLIM with the distinction of **us** and **them**, wherein **them** is DUSRI TARAF MUSLIM. This clearly establishes *sides* and required investigation to unearth the truth. Complainant's complaint also find credibility wherein he is referring to associates of proposed accused no. 2, while as would appear on ground, while reading the interrogation it turn out to be 50 to 60 people (more than 5 person and known to proposed accused no. 2 as per his admission in interrogation). This clearly qualifies for cognizable offence and is a matter of investigation.

- o) What is remarkable rather than coincidence, assuming that complainant never got the copy of this interrogation done qua notice u/r 43F of UAPA, that complainant has mentioned in his complaint of DCP Ved Prakash Surya was wandering in streets by saying "if you did not stop this protest, then consequence will happen here that you will be killed". It is important to remember that complainant is referring to such warning by Worthy DCP qua 23.02.2020. In contrast, Thrice has proposed accused no. 2 has referred to DCP Ved Prakash Surya in his interrogation and well acknowledged that he spoke to DCP Ved Prakash Surya. Now the undersigned has benefit of Hindi as his mother

tongue and the interrogation has been done in Hindi Language. What proposed accused no. 2 has told in his interrogation runs as "*Maine DCP Sahab se kaha tha ki **hum ab jaa rahe hai, aap road khulva de, nahi to hum bhi road khulvane ke liye dhaarne par baith jaaenge***". This Court has no hesitation to hold that it is not a request or assertion but ultimatum. Protest is right which proposed accused no. 2 can exercise as and when he chooses. Now looking to facts and circumstances, the presence of proposed accused no. 2 cannot be ruled out as per his own admission, ultimatum with respect to protest sites cannot be inferred but otherwise, conversation with DCP Ved Prakash Surya is admitted and complainant is alleging that DCP Ved Prakash Surya was wandering in streets by saying "if you did not stop this protest, then consequence will happen here that you will be killed". It is what can be modestly said is in case protest sites are not vacated, the life would be at stake. It is important to note that **this all has happened on 23rd of February, 2020, before the day of riots and within the span of 2-3 hour in the afternoon,** which aligns with the allegations of the complainant.

- p) This Court is compelled to rely upon the material supplied by the prosecution where they have exonerated proposed accused no. 2 of not being part of larger conspiracy and believing it to be true. I had gone through theory propounded by prosecution regarding the riots. If one goes through it in detail, one will fail to find what was the

**"immediate cause"** for rioting. Such organic, not so facade, academic exercise of cause of riots fails to explain the immediate cause. If one picks up any history book, one always gets the immediate cause or what sparked off the revolt or riot. Court is compelled to observe that in 1857 it was the cause of cartridges greased with "cow and pig fat". Whereas the immediate cause for riots is missing rather the prosecution was enough enthusiastic to propound theory to provide spectacles through benchmark of which the messages were to interpreted. It is not denied by the prosecution that protest were peaceful and escalated only on 24th February, 2020. A day before riot, proposed accused no. 2 is in North East District, which he himself admits, and had a conversation with DCP Ved Prakash Surya who was exposed to ultimatum then "what transpired between proposed accused no. 2 and DCP Ved Prakash Surya on the day i.e 23.02.2020", that, believing complainant to be true, that DCP Ved Prakash Surya was warning that price of protest may be life. This can only be revealed if DCP Ved Prakash Surya be interrogated and it will be within his personal knowledge only. He is the best person to explain as what transpired on the day between him and proposed accused no. 2 coupled with ultimatum and warning by DCP Ved Prakash Surya subsequent thereof as alleged by the complainant and this requires serious investigation. This is being based by only relying upon the material supplied by the Prosecution itself.

q) This Court does not believe the version of the prosecution that investigation in FIR no 59/2020 PS Crime Branch NE has been done qua proposed accused no. 2. Interrogation itself reveals it and speaks for itself as it is important to look at the benchmark of the interrogation. The interrogator has asked proposed accused no. 2 whether he has delivered any speech in North East District on 23.02.2020, to which proposed accused no. 2 denies in toto that he has ever given any speech on 23.02.2020, however unconsciously, in order to explain himself with respect to the speech utters "*mere dwara kahi gae line bhi Youtube par check kar sakte hai*". Whether personal conversation, not in nature of public speech or address are uploaded on YouTube by proposed accused no. 2 when he himself admits "*vaha maujud DCP Sahab to kaha tha*". Even interrogator has not cared to put question that earlier you said that you have not given any speech and how come you have changed your version and that too in serious offence qua allegations of UAPA wherein proposed accused no. 2 liberty would be at high-stake. Relying upon the submissions of the prosecution that investigation have already been carried out, the interrogation compels this Court to hold otherwise and submissions of the prosecution misplaced in the eyes of this Court.

r) Bereft of lens and theory of the prosecution qua riots, the personal messages that was placed by the prosecution leading the version that the name of the proposed accused

no. 2 was deliberately conspired to be dragged is unfounded. Though the prosecution has forwarded that under the garb of secular, the communal agendas were undertaken, it might surprise that none of the messages placed before me reveals single anti-hindu rhetoric even in their personal conversation. While the proposed accused no. 2 addresses the opposite group as DUSRI TARAF MUSLIM, the personal conversation allegedly on the part of ANTI CAA are in terms of Pro CAA and Anti CAA. The Court is reluctant to borrow the theory that a religious person is not capable of taking secular issues and maligning it with certain kind of production of knowledge is not appreciated.

- s) Despite submitting organic view of riots with not so facade theory, this Court finds the credibility and information of the complainant of the complainant with respect to the *first incident* which is further fortified by the material supplied by the prosecution pursuant to interrogation of proposed accused no. 2 qua notice under Section 43F of UAPA regarding the admissions of proposed accused of. 2 which prosecution has provided while vehemently opposing the involvement of proposed accused no. 2. **This Court directs further investigation in the present case with respect to the first incident against proposed accused no. 2 and his associates only, with following mandatory directions to investigative agency.** Such directions are being passed in view of judgment of Hon'ble Supreme Court in **Sakiri**

Vasu v State of UP and Ors. AIR 2008 SC 907 with following mandates as well:

- i) Complainant be examined
  - ii) DCP Ved Prakash Surya be examined, as complainant is bound with duty to disclose as to who all have heard DCP Ved Prakash Surya wandering in streets saying "that if you don't stop the protest, then the consequence will happen here that you all will be killed" with the aid of Investigative Officer. Once it is established prima facie, DCP Ved Prakash Surya is to be interrogated as to the presence of proposed accused no. 2 and what transpired between them.
- t) On 23.02.2020, coupled with ultimatum and subsequent alleged wandering of DCP Ved Prakash Surya with "ceasing of protest, else will be killed", it is the version of Worthy DCP Ved Prakash Surya which will further anchor the investigation. His personal interrogation is necessary. The series of events reveals that perhaps, if allegations of complainant are found to be true, then DCP Ved Prakash Surya knows something which this Judiciary does not.
- u) If information is found out to be false, then Delhi Police will be at liberty to proceed against a complainant under Section 182 IPC (Section 217 of BNSS).

37. Let the further investigation be initiated with respect to proposed accused no. 2 and his associates with respect to first incident only and cognizable offence has been disclosed by the complainant.

38. While queries were made from the Prosecution Branch, with respect to territorial jurisdiction of Kardampuri Road, it was mooted that it falls within the jurisdiction of P.S. Jyoti Nagar. However, since it is not exactly known and it has been statutorily provided that Higher Officials of the Delhi Police have all the powers that their sub-ordinates have therefore, D.C.P. North-East is directed to sent the copy of order for further investigation to appropriate Police Station falling within its jurisdiction. Failure to do so will bound the D.C.P. concerned as per law on the date of compliance.

39. Two copies of this order be sent to DCP North-East. An extra copy be also sent to the DCP North-East, so that the same can be sent to the *then* DCP, Ved Prakash Surya.

40. Put up for the compliance of the order from DCP North-East on or before 16.04.2025.

**(Vaibhav Chaurasia)**  
**ACJM-04, RADC, New Delhi**  
**01.04.2025**