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

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Delivered on: 06<sup>th</sup> July, 2020

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**BAIL APPLN. 922/2020**

RAIEES KHAN

..... Petitioner

Through : Mr.Kaushal Yadav and Mr.Ram  
Kishore Singh, Advocates

versus

STATE OF NCT DELHI

..... Respondent

Through : Mr.Amit Prasad, SPP for the State.

**CORAM:**

**HON'BLE MR. JUSTICE YOGESH KHANNA**

**YOGESH KHANNA, J.** (*Through Video Conferencing*)

1. This petition is filed under Section 439 of the Criminal Procedure Code, 1973 (hereinafter referred as the 'Cr P C) for regular bail in FIR No.84/2020 registered at police station Dayalpur, Delhi for the offences punishable under Section 147,148,149,153A,505/34 Indian Penal Code, 1860 (hereinafter referred as the 'IPC) to the petitioner/applicant.

2. The learned counsel for the applicant says if one peruse this FIR dated 01.03.2020 it refers to GD No.1A dated 25.02.2020 at 00.22.29 hours wherein the information recorded is *deceased Shahid received a gunshot injury near Chand Bagh, Peer Baba Mazar, Bhajanpura, Delhi* was brought at GTB Hospital by his brother and was declared dead. He further refers to the MLC of even date which record the alleged *history* of gunshot injury near Chand Bagh, Peer Baba Mazar, Bhajanpura at around 04.00PM on 24.02.2020 as stated by the person accompanying the

patient. The patient was declared brought dead in Main Causality of the Hospital at 08.53PM on 24.02.2020. It is alleged in FIR, the gunshot injury was stated to be suffered by the deceased near Chand Bagh, Peer Baba Mazar, Bhajanpura, Delhi on 24.02.2020. The FIR was registered on 01.03.2020 i.e. after a delay of seven days.

3. It is argued though the FIR show the place of incident near Chand Bagh, Peer Baba Mazar, Bhajanpura, Delhi, but the status report filed by the State show the incident had occurred at the roof of a building belonging to M/s.Saptrishi Ispat and Alloy Private Limited, 10A, Khasra No.242, Main Wazirabad Road, Delhi and there being a distance of about 900 meters in both the spots.

4. The learned counsel for petitioner then referred to an order dated 12.03.2020 passed by the learned Chief Metropolitan Magistrate, North East District, Karkardooma Courts, Delhi, it *inter alia* records:-

*“SI Vineet submits that accused persons produced today are arrested for committing offence U/S 147,148,149,153A, 505, 34 IPC. He further submits that till date no evidence has come against these accused persons of their involvement for the offence U/s 302,201,436 IPC in the present case.*

5. The order also record on the basis of the disclosure statement of accused person, including the present applicant, Section 153A/505 IPC are added, though not mentioned in the FIR.

6. Further, it was argued bail application was moved by the applicant before the learned Session’s Court wherein a reply was filed by the Investigating Officer stating inter alia on 11.03.2020 acting on a secret information, accused Raiees Khan along with two other person were apprehended and have confessed of shouting religious slogans and they

got on top of roof of Saptrishi Building as the back gate / shutter was broken open by them and they hurled stones at other group. It was alleged accused Raiees Khan is having his Printing Press in adjoining building where he had kept stones in bags. He went to his printing press and opened water in the street and after wetting jute bags with water, threw it towards the crowd. The accused was arrested on the basis of his disclosure statement. It is alleged now in the status report filed in this Court, the Investigating Officer had alleged the witnesses have stated Raiees Khan took active part in the riot and he was identified to be a person present at the roof top of the said building.

7. It is further argued the statements of public witnesses Mukesh and Arvind Kumar, though recorded on 08.03.2020, never stated about his presence at the roof top of said Building or that anybody allegedly having received gunshot injury at rooftop, but their statements were again recorded on 12.03.2020 wherein they alleged they had seen applicant, who was than sitting in the police station and had duly identified him as an active member of the group which went to the roof top of Saptrishi Building, who fired and pelted stones from the roof at police and public by breaking the boundary wall of roof by use of kicks and sticks etc.

8. The learned counsel for applicant further submits that in the status report the role assigned to the applicant is only of hurling stones and raising slogans and the order of the learned Chief Metropolitan Magistrate shows that there was no incriminating evidence against the applicant, except his disclosure statement and hence the supplementary statements of two public witnesses, recorded on 12.03.2020, only show

they have been tutored to allege against this applicant to falsely implicate him in this case.

9. The learned SPP for the State, on the other hand, submitted the incident was of rooftop of Saptrishi Building and not of Chand Bagh, Peer Baba Mazar, Bhajanpura, Delhi as is evident from the footage of NDTV as also the photographs showing the dead body of Shaheed was brought down with the help of a ladder from the roof of Saptrishi Building. It is argued witnesses Mukesh and Arvind were residing in Saptrishi Building itself, which was taken over by the rioters, including this applicant and his associates and they went to the roof; they kept on throwing bricks and other material on the police officials and general public and some of its members even fired.

10. It is also submitted when the applicant was at the police station he was advised to keep his face muffled, but he deliberately unmuffled himself when the witnesses arrived to frustrate the TIP and it was only for this reason, the TIP was not conducted. It is argued even otherwise the prime objective of the TIP is to find out if the investigation is moving in right direction. It is stated besides these two public witnesses, ASI Rajender Singh and HC Davender have also given statements under Section 161 Cr.P.C. against the applicant and have identified him.

11. No doubt there was a delay in registration of the FIR, but it was only because of the circumstances prevalent at that time. On the day of incident, I am told about 18689 PCR calls were received on a single day; 3450 calls were from the Dayalpur area itself and then it took time to

register the FIRs; the last FIR being registered on 28.03.2020. Pandemic Covid-19 further delayed the investigation.

12. Saptrishi Building is opposite to the place where HC Rattanlal of the police team was shot at. Immediately thereafter, this incident happened. Shahid was allegedly one of the rioters and probably, during firing upon the police party and general public, a gunshot misfired and probably hit Shahid from short range as the injury is a short range injury, as verified. Now since delay and non-conducting of TIP being sufficiently explained, coupled with the fact the identity of the applicant stood established by at least four witnesses in this matter, it would not be appropriate for this Court to appreciate the evidence.

13. All these pleas the accused relies upon, can be taken while arguing on charge, but considering the gravity of offence; the statements implicating him; I am not inclined to admit the applicant to bail at this stage.

14. In view of above, the petition stands dismissed.

15. Before parting with this order, it is noted the learned Trial Court shall not be influenced from any opinion or observation above.

16. Copy of this order be sent electronically to the learned Trial Court and the petitioner through the Jail Superintendent for information.

**YOGESH KHANNA, J.**

**JULY 07, 2020/M**