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

+ **BAIL APPLN. 2172/2020**

RAJ KUMAR @ GOLE

..... Petitioner

Through Mr.Vijaya Tyagi, Adv. with Ms.Nisha
Sharma, Adv.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through Mr.D.K. Bhatia, SPP for State.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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07.09.2020

The hearing has been conducted through video conferencing.

1. Ms.Rohini Arora, Advocate has laughed indecently during serious discussion due to which the proceedings of the Court got disturbed. However, she seeks unconditional apology. Therefore, I hereby refrain from passing any adverse order and advised her not to repeat in future.
2. Present petition has been filed under section 439 Cr.P.C. has been filed for grant of bail in pursuance to FIR No.125/20 registered at Police Station Dayalpur for the offences punishable under section 147/148/149/427 /435/436/120B IPC & 25/54/59 Arms Act.
3. Learned SPP has opposed the present petition by stating that petitioner is a habitual offender and have five cases in his credit. Moreover, the photo retrieved from his mobile phone having sword in hand along with co-accused. In addition to above, at the time of arrest of the petitioner, two mobile phones were recovered (VIVO 1606 and Techno CD7) on his instance from bedroom

of his house i.e. B-361, Gali No.6, Mahalaxmi Enclave, Karawal Nagar, Delhi. In one of the phone, petitioner and accused persons were seen in photo in which petitioner was carrying a sword and knife. At the instance of the petitioner, one sword was recovered from the terrace of his house (hidden under the ply) which was carried by him during riots on 25.02.2020.

4. He further submits that petitioner has been using mobile number 8375954213 and as per CDR, he was present on the spot at the time of commission of crime.

5. Regarding FIRs in which the petitioner is convicted is FIR No.180/2005 registered for the offences punishable under section 341/302/307/34 IPC and rest of the cases are under trial.

6. Regarding photo annexed with the petition which is allegedly recovered from his mobile, this Court asks specifically to IO that how many accused are there? The IO who is present replied that two accused but in the photograph, Five persons are seen sitting at one place.

7. Learned SPP could not give reply as to when the photo was clicked and to whom it was sent on whatsapp. There is no CCTV footage of the scene. It seems that petitioner being involved in other cases has been falsely implicated in the present case. Moreover, there are 74 witnesses and in their statement recorded under section 161 Cr.P.C., no one has stated specific name of the petitioner.

8. Keeping in view the above discussion and the facts that neither any CCTV footage nor any eye-witness could establish presence of the petitioner on the spot and prosecution has not placed on record statement under section 164 Cr.P.C. of the complainant and the fact that petitioner is in Judicial Custody since 13.03.2020, I am inclined to grant bail to the petitioner.

9. Accordingly, he shall be released on bail on his furnishing a personal bond of Rs.25,000/- with one surety of the like amount to the satisfaction of Trial Court.
10. Petitioner shall not directly or indirectly influence any witness or tamper with the evidence.
11. The Trial Court shall not get influenced by the observation made by this Court while passing the order.
12. The petition is, accordingly, allowed and disposed of.
13. Copy of this order be transmitted to the Jail Superintendent concerned and Trial Court for information and necessary compliance.
14. The order be uploaded on the website forthwith.

SURESH KUMAR KAIT, J

SEPTEMBER7, 2020/ab