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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 24th May, 2021

Decided on: 1st June, 2021

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BAIL APPLN. 791/2021

SONU SAIFI

..... Petitioner

Represented by: Mr. Mehmood Pracha, Advocate.

versus

STATE

..... Respondent

Represented by: Mr. Rajat Nair, Special PP for the State with Insp. V.N.Jha, Crime Branch.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition, the petitioner seeks regular bail in case FIR No. 75/2020 under Sections 144/147/148/149/153A/295A/427/436/380/302/120-B/34 IPC and Section 25/27 Arms Act registered at PS Dayalpur.
2. Learned counsel for the petitioner contends that the petitioner is not seen in the CCTV footage relied upon by the prosecution. Rohit Solanki, the brother of the deceased Rahul Solanki, is admittedly not an eye witness even as per his version. The other eye witness Anil Kumar has neither named the petitioner nor identified him. Despite the fact that eye witnesses were available, FIR was registered belatedly on the statement of the Police Officer on 28th February, 2020 for an alleged incident of 24th February, 2020. Version of Rohit and Anil clearly shows that they were not present at the spot. The present case could be a case of mistaken identity as Rohit was speaking about a Sonu living in Gali No. 5/6 and doing the work of welding whereas from the documents filed with the charge-sheet including the

customer details of the petitioner's mobile number as also the Adhaar Card of the petitioner's wife filed alongwith this petition, it is evident that the petitioner is a resident of Gali No. 4/5 and in the area where the petitioner is residing, lot of people are doing the work of welding and Sonu is a very common name. No TIP of the petitioner has been got conducted from the alleged eye-witnesses. Further, Rohit has identified the petitioner on the pointing out of the Police Officer which identification is meaningless. Claim of Rohit that he took his brother to the hospital is belied by the history noted in the MLC given by Const. Avneet which states that the deceased was found at 9.00 PM. This history totally belies the version of the prosecution that the alleged incident took place between 5.50 to 6.00 PM on 24th February, 2020 and soon after the incident Rohit took his brother Rahul to the various hospitals. The alleged weapon of offence recovered from the petitioner is not connected with the offence. The role attributed to the petitioner is based on confessional statements recorded in the Police custody which are inadmissible in evidence. Even as per Rohit Solanki, he identified the petitioner on 14th May, 2020 at the instance of the Police Officer, however he was arrested on 13th May, 2020 even without there being any identification. The petitioner had no past criminal record except that now the petitioner has been falsely implicated in a number of cases. In view of the vague and unreliable evidence against the petitioner, he be released on bail and he will be available for trial.

3. Learned Special PP for the CBI contends that from the evidence of the eye-witness Rohit Solanki, the brother of the deceased, it is evident that the accused Mustakeen fired upon the deceased Rahul Solanki, however the petitioner was part of the mob and actively taking part in the murder of his

brother. Statement of Rohit Solanki about the incident was recorded on 26th February, 2020, however FIR was registered on the 28th February, 2020 on the statement of Police Officer followed by the statement of Rohit dated 8th March, 2020 in which he gave a complete narration as to having seen the incident from a distance and that his cousin brother Anil was with the deceased. After the incident Rohit took Rahul to various hospitals where he could not be provided treatment and was referred to higher centres and finally at G.B. Pant Hospital where he was declared dead. In his statement dated 8th March, 2020 Rohit gave the complete details of Sonu, the place where he was residing and his work, however the investigating agency still did not proceed ahead to arrest the petitioner. Only after co-accused Salman was arrested on 13th May, 2020 and in his disclosure dated 13th May, 2020 the name of Sonu Saifi, the present petitioner emerged with the role of providing pistol, that the petitioner was arrested. Statement of Rohit identifying the present petitioner was recorded and hence there was no need of any test identification parade. Contention of learned counsel for the petitioner that the witnesses are manipulated or that it was a case of mistaken identity is incorrect. In his statement on 8th March, 2020 itself Rohit disclosed the entire sequence of events including taking Rahul to a clinic at Loni where also MLC was prepared and from where with the help of the Police Officer they came to GTB Hospital where it is recorded that the deceased was brought by Constable Avneet. Hence, it cannot be said that this clinic has been introduced in the supplementary charge-sheet after filing of the charge-sheet to cover up the discrepancies raised by learned counsel for the petitioner in the charge-sheet. The time of incident is 5.50 PM to 6.00 PM on 24th February, 2020 and the CCTV installed at the spot

were destroyed by Arif at 4.25 PM who has been duly captured in the CCTV. Considering the fact that the nature of offence is very serious, the eye-witnesses reside in close vicinity, the petitioner is also involved in four other cases and the material witnesses are yet to be examined, bail be not granted to the petitioner.

4. DD No. 40-B dated 24th February, 2020 by which an information received from GTB Hospital that Rahul Solanki S/o of Shri H.S. Solanki, aged about 26 years was got admitted in GTB Hospital by Constable Avneet, PS Loni due to shot fire at Shiv Mandir, T-Point and has been declared dead by the doctors was recorded at P.S.Dayalpur. Based on the statement of ASI Hemraj Singh, the above noted FIR was registered and subsequently statements of Anil Kumar and Rohit Solanki were recorded on 8th March, 2020.

5. Anil Kumar stated that he was studying and residing with his maternal uncle and was a resident of village Chandose, Aligarh, Uttar Pradesh. Deceased Rahul Solanki was his maternal brother. On 24th February, 2020 at about 5.30 PM he and Rahul went to Pal Dairy to get household items. When they reached the corner of the gali, they saw that many people had collected there and from Gali No.1, Pal Dairy Wali Gali, 40-50 persons armed with lathis, dandas, pistols and petrol bombs were indulging in stone pelting towards this side, throwing petrol bombs and shouting slogans. On the main road also number of people were indulging in destruction of property. Seeing the condition, he and Rahul stopped near the house of Narender along with other people. The rioters were repeatedly coming to their side and pelting stone. In the meantime a heavy built boy who had a black helmet in his left hand and a pistol in his right hand and was wearing

blue T shirt came from the side of main Mustafabad road and fired at us. After him his other accomplices also came. The gunshot hit Rahul, who immediately fell down. He immediately rushed home to inform and at some distance he found Rohit whom he told about the entire incident. Rohit and he came back. Then Rohit and Narender took Rahul on Narender's motorcycle to Shanti Hospital. He also went after them on another motorcycle. Due to riots, main gate of Shanti Hospital was closed. Then they went to Luv-kush Nursing Home where Doctors on checking asked them to take Rahul to GTB Hospital. Since the road to GTB Hospital was closed, after roaming here and there, they took him to the Community Clinic at Loni, where also the Doctors asked them to take Rahul to a bigger hospital. In the meantime his maternal uncle also reached. Then with the help of Police of Loni, in the ambulance they took Rahul to GTB Hospital where the Doctor informed that Rahul had died. He was shown the video of the mob and on seeing the video, he identified them to be same people who had killed Rahul in the gali.

6. Statement of Rohit Solanki was also recorded on the same date which was in line with what was stated by Anil Kumar.

7. As per the case of the prosecution, statement of Rohit Solanki was recorded on 8th March, 2020 wherein he named Irshad residing at Chaman Park, Mustafabad and running a taxi; Salman residing at Chaman Park, Gokalpuri and running a mobile shop; Arif residing in Gali No. 6/6, Babu Nagar and doing the work of building material; Furkan resident of Gali No.8, Hussaini Masjid and working as a tailor; Sirajuddin residing near Hussaini Masjid and doing the work of scrap; Anish Qureshi residing in Gali No. 2/3, Mustafabad and dealing in buffaloes; Arif Chabiwala residing

in Gali No.4/5 Babu Nagar and Sonu residing in Gali No. 5/6 Babu Nagar doing the work of welding who was not present in the video. On further investigation on 13th May, 2020 Salman was arrested who disclosed that Sonu had purchased the pistol with the ammunition a few days ago which Sonu gave him on that date which was used for committing the offence.

8. As regards contention of learned counsel for the petitioner in relation to the history recorded in the MLC of Rahul Solanki which notes “*patient found lying at C-Vihar at around 9.00 PM on 24th February, 2020 with history of gunshot as stated by brought by*”, the deceased was brought to the hospital by Const. Avneet from PS Loni. In his statement dated 8th March, 2020 both Anil and Rohit claimed that the deceased was taken to various nursing homes, however they were referred to GTB Hospital and route to GTB Hospital was closed, so they took him to the clinic at Loni where MLC of Rahul was prepared which notes brought by Rohit Solanki, which MLC has been filed with the supplementary charge-sheet. The fact that Const. Avneet got admitted Rahul at the GTB Hospital and was working with PS Loni also fortifies the claim of Rohit Solanki that they took Rahul to Government Clinic at Loni from where he was brought to GTB Hospital in an ambulance with the help of Police. This fact having been stated on 8th March, 2020 itself, this Court finds no force in the contention of learned counsel for the petitioner that after the petitioner filed the regular bail petition, a false case has been foisted on the petitioner, as is evident from the history mentioned in the MLC of the deceased by introducing MLC of the Clinic at Loni.

9. CCTV installed at the place of incident was broken at about 4.25 PM by Arif which fact has also been captured in the CCTV. Pursuant to the

arrest of Salman, on his disclosure the present petitioner was arrested and from his possession one pistol and some ammunitions were recovered. Though, from the statement of Anil it is apparent that Rohit was not present with Anil and Rahul when the incident took place, however the presence of Rohit in the vicinity is evident from the fact that he immediately took the deceased along with Narender to the hospital. As regards identification of the petitioner is concerned, undoubtedly no test identification was got conducted, however the petitioner have been named in the statement of the witness Rohit Solanki on 8th March, 2020 itself. As regards the discrepancy of the Gali number of the petitioner mentioned in the statement of the witness is concerned, the same being a minor one, effect thereof will be seen during the trial on appreciation of evidence.

10. Considering the seriousness of the offence and that material witnesses are yet to be examined, this Court finds no ground to grant bail to the petitioner at this stage.

11. Petition is accordingly dismissed.

12. Copy of the order be uploaded on the website of this Court.

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(MUKTA GUPTA)
JUDGE

JUNE 01, 2021

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