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

Reserved on: 22.04.2021

Pronounced on: 26.04.2021

+ **BAIL APPLN. 1002/2021**

TANVEER MALIK Petitioner

Through: Mr. Salim Malik, Advocate

Versus

STATE ... Respondent

Through: Mr. Manoj Chaudhary, Special Public
Prosecutor for State

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. Petitioner is accused in FIR No. 91/2020, registered at police station Dayalpur, Delhi for allegedly committing offences under Sections 147/148/149/153A/505/436/307/120B/34 IPC and Sections 27/30 Arms Act. He is in judicial custody since 12.03.2020 in this case and by this petition, he is seeking bail while claiming to be innocent and of having been falsely implicated in this case.

2. The FIR in question is fulcrum of riots which broke out in North East Delhi on 25.02.2020. Pertinently, two more FIRs i.e. FIR No. 88/2020 and FIR No. 92/2020, both registered at police station Dayalpur, Delhi

pertaining to the incident of riots on 25.02.2020 are also pending to the credit of petitioner. However, vide order dated 04.02.2021 petitioner has been granted bail in FIR No. 92/2020 [in Bail Appln. 3864/2021] by this Court, whereas in FIR No. 88/2020, he has been granted bail by the Court of Sessions vide order dated 30.05.2020.

3. In the present FIR, petitioner had earlier approached this Court for bail and the same was dismissed by passing a detailed order on 24.09.2020 [Bail Appln. 2664/2020]. Petitioner's second bail application [Bail Appln. 3570/2020] was also dismissed by this Court vide order dated 23.11.2020. Thereafter, his third bail application [Bail Appln. 652/2021] was not pressed by him while seeking liberty to approach the learned trial court for the relief claimed. However, his bail application has been dismissed by the learned trial court vide order dated 12.03.2021 [in SC No.70/2021] rejecting his claim of parity in FIR No. 92/2020, registered at police station Dayalpur, Delhi wherein he has been granted bail by this Court, while holding "*that there is no independent eye witness identification of applicant in case in FIR No. 92/2020, whereas in the present case, besides being identified by injured Ajay, he has also been categorically identified by public witnesses PW Harish Chander and PW Prashant Kumar.*" The learned trial court has

further held as under:-

“19. In view of the categorical dismissal of regular bail application(s) of applicant thrice, once by this Court vide order dated 24.08.2020 and thereafter twice by the Hon’ble High Court vide order(s) dated 24.09.2020 and 23.11.2020; I do not find any change in circumstance(s) since the dismissal of last bail application of applicant by Hon’ble High Court of Delhi. I further do not find any merit in the claim of applicant seeking bail on the ground of parity. As such, considering the facts and circumstances of the case in totality, I am of the considered opinion that the applicant is not entitled for bail in the matter at this stage. The bail application is accordingly dismissed.”

4. Hence, petitioner is before this Court to claim relief of bail.

5. During the course of arguments, learned counsel for petitioner submitted that the technical evidence relied upon by the prosecution i.e. the call detail record and CCTV footage does not in any way establish presence of petitioner at the spot, as on the day of incident petitioner was not in Delhi. Learned counsel submitted that out of 11 CCTV footage relied upon by the prosecution, he cannot be seen in any of them and the phone location chart also does not show petitioner’s presence at the spot. Further submitted that there are six accused persons in this FIR case, however, petitioner has no

concern with them and his phone location is different from that of other accused persons. Next submitted that Constable Sodan and Constable Pawan in their statements have stated that there was a mob of 1000 to 1200 people on the day of incident and so, their claim of having identified the petitioner amongst a huge crowd of mob cannot be accepted.

6. Learned counsel also submitted that as per the supplementary statement of injured recorded on 20.05.2020, he has identified the petitioner after seeing the photographs, whereas after seeing the black and white dozier of petitioner, he cannot be recognized. It was submitted that petitioner had surrendered himself on 12.03.2020 in FIR No. 88/2020, registered at police station Sunlight Colony, Delhi and in the police station many of his photographs were taken, and thereafter, he has been falsely implicated in the present FIR case. It was submitted that recording of injured's supplementary statement is nothing but an attempt to fill in the lacuna by the prosecution.

7. Further submitted that as per site plan, the distance between the place of incident and where petitioner was allegedly standing on the roof of Tahir Hussain, is more than 600 meters and it is unbelievable that Constable Sudan and Constable Pawan, who are eyewitnesses to the incident and have already known petitioner, had not given any intimation to the police

regarding him and other accused persons.

8. Lastly, it was submitted that petitioner is a young boy of 23 years of age and has no involvement in the alleged incident and deserve bail in this case.

9. On the other hand, the case put forth by the prosecution is that upon receipt of information from Sushant Trauma Center, Civil Lines, regarding gunshot injury having been received by a person, vide DD No. 163A dated 25.02.2020, Investigating Officer SI Hukam Singh reached there and collected the MLC No. 1970/2020 of injured -Ajay. However, injured Ajay did not give statement on the said day and hence, the FIR in question was registered on the basis of said DD entry. The statement of injured Ajay under Section 161 Cr.P.C. was recorded on 02.03.2020.

10. In his statement injured Ajay stated that on 25.02.2020 at around 4:00 PM, when he came out from his house to purchase few household articles and reached near Lakhat School, Chand Bagh, he realized that the riots broke out in the whole area and nearby areas. When he reached near Tahir Hussain's house, he saw angry mob on the terrace of the said house who were pelting stones, petrol bombs and firing on people crossing the main Karawal Nagar Road. Suddenly, he was fired from a pistol like object which

hit on his right shoulder and because he has been staying in the said area since his birth, he could identify the said boy as Gulfam @ VIP and also identified other individuals who were part of mob and petitioner is allegedly one of those persons.

11. Further submitted by learned Special Public Prosecutor for State that petitioner has been found promoting enmity and disharmony by rioting and charge sheet in this case has already been filed and trial is in progress and if released on bail, he may threaten or manipulate the witnesses or tamper with the evidence and hence, this petition be rejected.

12. Pertinently, the factual matrix of the alleged incident, the pleas urged by the petitioner to seek bail and the defence of prosecution as stated in the status report, is similar as have been narrated in the order dated 04.02.2021 passed by this Court in Bail. Appln. 3864/2020, wherein petitioner has been granted bail in FIR No. 92/2020, registered at police station Dayalpur, Delhi for similar offences. The distinction between the two FIR cases is that in the said case injured was one *Prince Bansal*, whereas in the present case injured is *Ajay*. In both the cases, the FIR was registered on the basis of respective DD entries and statements of both the injured persons were recorded on 02.03.2021. The eye witnesses in the present case, namely, Constable

Sudan, Constable Pawan, Harish Chander and Prashant Kumar, are also eye witnesses in the said case i.e. FIR No. 92/2020.

13. It is not in dispute that co-accused Kasim and Nazim have already been granted bail by this Court vide orders dated 13.10.2020 and 11.11.2020 respectively in the present FIR i.e. FIR No. 91/2020, registered at police station Dayalpur. Further, while granting bail to the present petitioner in FIR No.92/2020, this Court had observed as under:-

“11. In addition to above, Ct.Sodan and Ct.Pawan were also present on duty on 25.02.2020 and have identified the present applicant along with other co-accused persons. But the fact remains that the aforesaid Constables had not made any DD entry or any call to PCR by naming the petitioner or any other persons indulged in the crime at that point of time. It is also not in dispute that from 25.02.2020 to 02.03.2020, there is no proof on record that the police has taken any action or adopted any procedure to register FIR or to take down the statement of the injured except that on 29.02.2020 I.O visited the hospital however injured was not found.”

14. Coming to the case in hand, this Court is conscious of the fact that petitioner's earlier bail applications in the present FIR case [Bail Appln. 2664/2020 and Bail Appln. 3570/2020] have been rejected by this Court, but

the said orders were passed at the time when investigation was in progress and role of petitioner was yet to be established. Now, investigation is complete and charge sheet qua petitioner and other accused persons has already been filed and trial shall take substantial time. At the time of considering bail application, this Court is not required to dwell upon minute details on the merits of the case but has to form a *prima facie* opinion. Keeping in mind that the facts of the present case are similar to that of FIR No. 92/2020, registered at police station Dayalpur, Delhi and that the questions raised in the said case and the present case are more or less similar and shall be answered during trial, I have no hesitation to hold that petitioner now deserves concession of bail in the present case as well.

15. In view of the above, without commenting on the merits of the case, the petitioner is directed to be released on bail forthwith upon his furnishing personal bond in the sum of Rs.20,000/- with one surety in the like amount, to the satisfaction of the trial court.

16. The petitioner shall not directly or indirectly influence any witness or tamper with the evidence and shall appear before the court as and when directed.

17. With aforesaid directions, the present petition is allowed and

accordingly disposed of, while making it clear that any observation made herein shall not influence trial of the prosecution case.

18. A copy of this order be transmitted to the Trial Court and Jail Superintendent concerned for information and compliance.

(SURESH KUMAR KAIT)
JUDGE

APRIL 26, 2021

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