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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 17.05.2021

Pronounced on: 21.05.2021

+ BAIL APPLN.1264/2021

PANKAJ SHARMA

..... Petitioner

Through: Mr.Sanjiv Dagar, Mr.Yogesh
Verma, Mr.Gaurav Arora, Mr.Sumit
Sehrawat, Advocates

Versus

THE STATE (NCT) OF DELHI

..... Respondent

Through: Mr.Amit Mahajan & Mr.Rajat Nair,
Special Public Prosecutors,
Mr.Shantanu Sharma & Mr.Dhruv
Pande, Advocates with Inspector
Vinod Ahlawat

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. Petitioner is accused in FIR No. 35/2020, under Sections 302/147/148/149/427/432/435/120B/34 IPC, registered at police station Gokulpuri, Delhi and is in judicial custody since 10.03.2020.

2. Petitioner's bail application was dismissed by the learned trial court vide order dated 15.09.2020, which has been challenged in this petition on the ground that while passing the impugned order, the learned trial court

has ignored the material facts and evidence available on record.

3. At the hearing, learned counsel for petitioner submitted that the charge sheet filed before the trial court does not reflect 'grave suspicion' qua involvement of petitioner in the offence in question and he has been arrested on an unfounded presumption that he was a part of unlawful assembly.

4. The case of prosecution is that on 27.02.2020 at 09:40 PM, Duty Officer vide DD No. 24-B, received a call from SHO, Gokulpuri that a dead body was found in Bhagirathi Vihar Nala near Pulia. The said call was assigned to ASI Ram Pass, who along with ASI Manvir reached the spot and found three dead bodies lying in the *nala* on both sides of the Jal Board Pulia. A burnt motorcycle was also lying there and 20 steps away, a plastic visor of a motorcycle bearing No. DL-5SBA-7168 was also lying there, which were taken into custody. The dead body pertaining to the FIR in question was found adjacent to the Jal Board Pulia, Bhagirathi Vihar and marked as "A". The dead body was sent to G.T.B. Hospital where the doctor vide MLC (B) No. BD/758/03/2020 declared the person brought dead.

5. During the course of investigation, the dead body was identified as

Hashim Ali, son of Babu Khan. The Post mortem of the dead body was conducted at the hospital and as per Post Mortem Report No. 358/2020 dated 29/02/2020 the cause of death is *shock as a result of ante mortem injuries to head and abdomen produced by blunt force impact*. Further opined that the *injuries sustained are sufficient to independently cause death in ordinary course of nature*.

6. During further investigation, clothes and other samples were seized from the hospital by the Investigating Officer, crime scene was inspected, surveillance was kept on the suspects and different PCR calls were collected and scrutinized. After scrutinization of PCR calls, it was found that total five calls were made by the eyewitnesses and amongst those, two calls on 26.02.2020 were identified. Out of these two calls, one call was made by eye witness Narottam Singh and another was made by eye witness Amit Kumar and their statements were recorded on 06.03.2020 and 12.03.2020 respectively. Upon further investigation, another eye witness was identified as Shalu Gaur, whose statement was also recorded on 12.03.2022.

7. It is further the case of prosecution; at the time of investigation, it transpired that three persons were continuously observing the course of

investigation and were therefore questioned. They disclosed their names as Mohit Sharma, Shivam Bhardwaj and Dimple Rai and their mobile phones were checked. Mohit Sharma and Shubam Bhardwaj were found to be members of whatsapp group namely “*Kattar Hindu Ekta*”, which was found to be created on 25.02.2020. This group had various incriminating messages from the members of the group, especially one Lokesh Solanki, who was apprehended and after consistent interrogation, he disclosed the names of persons who were actively involved in the riots and petitioner is one of those persons. He further disclosed that he along with his other associates, including petitioner, had killed nine persons of other community, including Hashim Ali and his elder brother Aamir Khan and threw their bodies in *ganda nala* and burnt their vehicles to hide their identities.

8. In furtherance to disclosure of Lokesh Solanki, petitioner was arrested and in his disclosure statement petitioner admitted having been involved in the present case and also in the killing of nine persons of other community. He also disclosed of throwing the weapon of offence i.e. *danda* in the *ganda nala*, but the same could not be recovered.

9. Learned counsel for petitioner submitted that statement of Mohit,

Shivam and Dimple recorded in this case is either hearsay or they themselves are trying to avoid prosecution, as they were seen roaming around the interrogative team when crime team investigated the crime spot on 07.03.2020. Further submitted that statement of eyewitnesses, namely, Narottam Singh, Amit Kumar and Shalu Guar, is incredible and with contradictions.

10. Learned counsel emphatically submitted that eye witness Narottam Singh is also a witness in seven other FIRs and he is a planted /stock witness and therefore, his statement is not credible. Learned counsel next submitted that in all other FIR cases, this witness has not made any PCR call which shows that he himself was part of the mob, otherwise he had no reason to roam in the tensed area despite restrictions under Section 144 Cr.P.C. It was also stated that as per GD Entry 717A dated 26.02.2020, one *muslim* had jumped into *nala* to save his life from the mob, whereas as per MLC the death is not because of drowning.

11. Learned counsel next submitted that another eye witness Amit Kumar is a planted witness, as he is also witness in four other cases. Further submitted that official witness, Head Constable Vipin, had also surprisingly heard names of nine accused out of mob of 200-250 persons,

though he could not see their faces, as they were covered with masks.

12. Learned counsel for petitioner submitted that statement of witness Shalu Gaur's also cannot be relied upon, who is said to be running a private parking, as at the relevant time due to Section 144 Cr.P.C., his presence in the area cannot be believed.

13. Next submitted that Call Detail Record of the petitioner also does not match with that of deceased and at the relevant time, petitioner was at his home and that petitioner is innocent and the material available in the charge sheet does not in any way implicate petitioner and so, he deserves to be released on bail.

14. In support of petitioner's case, learned counsel relied upon decision of this Court in ***Uttam Tyagi Vs. State*** dated 18.12.2020 and ***Pawan Kumar Vs. State*** dated 11.01.2021 vide which accused have been granted bail due to missing of direct evidence such like CCTV footage, to submit that case of petitioner is in identical situation. Further submitted that the two accused Lalit and Pawan Kumar involved in the murder of Aamir Khan, brother of petitioner, have been granted bail by this Court in ***Lalit Vs. The State (NCT of Delhi)*** vide order dated 24.09.2020 and ***Pawan Kumar @ Pawan Vs. State & Ors.*** dated 20.10.2020 and allegations

against them was of being part of the mob and so, petitioner also deserves bail in this FIR case.

15. On the contrary, the submissions advanced on behalf of the petitioner were vehemently opposed by learned Special Public Prosecutor, who submitted that out of total 27 PCR calls, caller of two PCR calls were traced. The PCR caller - Narottam Singh was traced and examined and in his statement recorded under Section 161 Cr.P.C., he has categorically identified the petitioner as one of the assailants of deceased.

16. Learned Special Public Prosecutor further submitted that other eye witnesses Amit Kumar and Shalu Gaur have also identified the petitioner and described the entire incident in their statements.

17. Learned Special Public Prosecutor next submitted that role assigned to the petitioner in the present FIR case is not confined to participating in the mob of rioters but he is amongst the conspirators who designed the killing of persons belonging to other community.

18. Next submitted that as per call detail record of petitioner, he is found to be present at the crime spot at the time of incident. Learned Special Public Prosecutor also pointed out that petitioner's role in the whatsapp group "*Kattar Hindu Ekta*" is still under scrutiny and the allegations

levelled against him are grave in nature and if released on bail, petitioner may threaten the eye witness who are living in the same area or will flee from the judicial process and therefore, the present petition deserves to be dismissed.

19. The rival contentions raised by both the sides were heard at length and the material placed on record has been carefully considered.

20. Pertinently, charge sheet in this case has already been filed. A perusal of copy of charge sheet placed on record shows that co-accused Lokesh Solanki, Prince, Ankit Chaudhary, Sumit Chaudhary @ Badshah, Jatin Shanua, Rishabh Chaudhary, Vivek Panchal @ Nandu, Himanshu Thakur, Tinku Arora, Sahil @ Babu and Sandeep @ Mogli have disclosed name of petitioner having been involved in the mob and in brutal killing of nine persons of other community, including deceased. Besides there are statements of eye witnesses Narottam Singh, Amit Kumar and Shalu Gaur.

21. The plea put-forth by the petitioner that eye witness Narottam Singh is a witness in seven other FIR cases and eye witness Amit Kumar is also a witness in four other FIR cases and they are therefore planted /stock witnesses. However, it is not required to be gone into at this stage for the purpose of grant or refusal of bail. This Court has to only form a *prima*

facie opinion and is not required to in depth analyse the statements of witnesses. Whether or not these witnesses are credible, is a matter of trial.

22. The Hon'ble Supreme Court in ***Mahipal Vs. Rajesh Kumar, (2020)***

2 SCC 118 has held as under:-

“12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.”

23. Further, this Court in BAIL APPLN. 3896/2020, titled as ***Uttam Tyagi Vs. (NCT) of Delhi***, decided on 18.12.2020, had granted bail to the accused in FIR No. 52/2020, registered at police station Jafrabad, Delhi because there was no CCTV footage and from the DVR of two cameras sent to FSL, no data could be retrieved. Again, in the said FIR i.e. 52/2020, vide BAIL APPLN. 4195/2020, titled as ***Pawan Kumar Vs. State***, this court had granted bail to co-accused giving parity with Uttam Tyagi.

24. The plea of petitioner that similar to those cases, there is no CCTV footage in the present case and so, petitioner's involvement in the offence is not proved, cannot be accepted, as there may not be technical evidence in the form of CCTV footage but the call detail record of petitioner shows his presence at the spot of crime on the day of incident and his participation in "Kattar Hindu Ekta" whatsapp group, is still under scrutiny. Besides, PCR call record, statement of eye witnesses and other witnesses, dissuades this Court to keep a lenient view for petitioner. Moreover, each case has to be seen in the peculiar facts of the said case and observations made in one case are not binding on another.

25. So far as another plea of petitioner that the two accused Lalit and Pawan Kumar involved in the murder of Aamir Khan, brother of deceased,

who are accused in FIR No. 37/2020, registered at police station Gokalpuri, Delhi, have been granted bail by this Court [in BAIL APPLN.2573/2000, titled as *Lalit Vs. The State (NCT of Delhi)* vide order dated 24.09.2020 and in BAIL APPLN. 2935/2020, titled as *Pawan Kumar @ Pawan Vs. State & Ors.*, vide order dated 20.10.2020] is concerned, this Court finds that accused *Lalit* was granted bail because the allegations against him pertained to Section 412 IPC for having recovered phone of deceased from his possession and there was no evidence to show his participation in riots, murder or any mischief. Similarly, accused *Pawan Kumar @ Pawan* has been granted bail on parity with co-accused *Lalit*, as the role assigned to him by the prosecution was similar to that of *Lalit*.

26. However, in the present case, the allegations levelled against the petitioner are grave in nature. In the alleged incident a young boy of 19 years has lost his life. As per post mortem report, 42 grievous injuries were found on the person of the deceased which proved fatal for him. The case is pending at the stage of framing of charge. Besides present case, petitioner is implicated in eight other FIR cases and the apprehension expressed by prosecution that if released on bail, petitioner may threaten or influence the witnesses, is not misplaced. In the aforesaid view of the matter, this Court

is not inclined to grant bail to petitioner at this stage.

27. This petition is accordingly dismissed while making it clear that any observation made herein shall not influence the case of either side on merits during trial.

28. A copy of this judgment be transmitted to the Trial Court and Jail Superintendent concerned for information.

MAY 21, 2021

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(SURESH KUMAR KAIT)
JUDGE



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