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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 28.04.2021

Pronounced on: 03.05.2021

(i) + BAIL APPLN. 1344/2021

SAMEER KHAN Petitioner
Through: Mr. Dinesh Tiwari, Advocate

Versus

THE STATE OF DELHI Respondent
Through: Mr. Amit Mahajan & Mr. Rajat Nair,
Special Public Prosecutors for State
with Mr. Shantnu Sharma &
Mr. Dhruv Pande, Advocates

(ii) + BAIL APPLN. 1166/2021

KASIM Petitioner
Through: Mr. Salim Malik, Advocate

Versus

STATE Respondent
Through: Mr. Amit Mahajan & Mr. Rajat Nair,
Special Public Prosecutors for State
with Mr. Shantnu Sharma &
Mr. Dhruv Pande, Advocates

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. On 25.02.2020 riots took place in various areas of North East Delhi,

in which a mob of rioters not only destructed public properties but also caused injuries upon hundreds of persons of other community and around forty-two people lost their lives. On that unfortunate day, one Ankit Sharma, a young Officer of Intelligence Bureau, also lost his life.

2. On 26.02.2020, complainant Ravinder Kumar, father of Ankit Sharma, registered a complaint with police station Dayalpur, Delhi that on the previous day i.e. 25.02.2020 his son had returned from office and at about 05:00 PM had gone out of the house to buy some household goods but he did not return home and so, a search was made at nearby places, hospitals etc. and after waiting overnight, had made the complaint regarding missing of his son. Then, he came to know from the local boys that a boy had been thrown into the Khajuri Khas nala from the Masjid of Chand Bagh Pulia after he was killed. Dead body of his son, Ankit Sharma, was recovered and he was found without clothes and with only underwear on his body. The deceased had sharp injuries on his head, face, chest, back and his waist. His face and other body parts were burnt with acid to conceal his identity. In the complaint, father of Ankit Sharma had specifically stated that he had a strong suspicion that his son was killed by Tahir Hussain and his goons, who had gathered in his office and after killing him, his body was thrown

into the nala from Masjid.

3. On the basis of aforesaid complaint, crime spot was inspected, bloodstained samples were drawn and sent to FSL, site plan was prepared and statements of eye witnesses were recorded. During the course of investigation, one video footage of the incident showing three persons throwing body of a person in Khajuri nala near Chand Bagh pulia was received and its source was traced and was sent to FSL for verifying its authenticity. Based on the aforesaid complaint, FIR No. 65/2020 was registered at police Station Dayalpur, Delhi on 26.03.2020.

4. Since a large mob was involved in the riots, many of them were arrested and their photographs were thereafter shown to the eye witnesses and in the identification process, witnesses Pradeep Verma and Shamshad Pradhan specifically identified five accused persons, namely, Anas, Firoj, Gulfam and Shoaib Alam of having been actively involved in the riots at the instigation of accused Tahir Hussain. Another witness Vikalp Kochar on seeing the photographs identified Anas being involved in riots and also identified Haseen @ Mullaji @ Salman, who had stabbed Ankit Sharma with knife. Eye witnesses, Pradeep Verma, Bharat @ Kalu and Girish Yaduvanshi identified Nazim and Kasim and stated that they were involved

in the killing of Ankit Sharma.

5. During further investigation, accused Haseen @ Mullaji @ Salman was arrested on 12.03.2020 on the basis of interception of his mobile phone linking him with the murder of Ankit Sharma, who during police remand disclosed names of Sameer, Nazim, Kasim and Sabir of having accomplice him in the killing of Ankit Sharma.

6. Further investigation was carried out and accused Sameer Khan was apprehended on 09.04.2020 and during interrogation he admitted his involvement in the murder of Ankit Sharma. He was rightly identified by witness Akash as the same person who killed Ankit Sharma amongst the mob.

7. Accused Kasim was apprehended from Sambal, Uttar Pradesh on 30.03.2020 and during interrogation he admitted his involvement in the murder of Ankit Sharma. He was rightly identified by witnesses namely, Pradeep Verma, Bharat @ Kalu and Girish Yaduvanshi.

8. Petitioner-Sameer Khan [in BAIL APPLN. 1344/2021] preferred an application for bail before the learned trial court and the same was dismissed vide order of 22.10.2020 by passing a detailed order. Petitioner-Kasim [in BAIL APPLN. 1166/2021] also preferred an application for bail, which was

also dismissed by the court below vide order dated 26.02.2021. This is how these petitioners are before this Court seeking bail in FIR in question.

9. Since the subject matter of these two petitions pertain to similar FIR, therefore, with the consent of learned counsel representing both the sides, these petitions were heard together and are being disposed of by this common judgment.

10. At the hearing, Mr. Dinesh Tiwari, learned counsel for petitioner-Sameer Khan, submitted that petitioner has been falsely implicated in this case and there is no evidence on record to connect petitioner in the present case. Further submitted that there is no electronic evidence like CCTV footage and video clip of the incident in question and merely on the basis of disclosure of Salman, petitioner has been roped in this case. He also submitted that witness Bharat @ Kalu, who claim to be an eye witness, did not make any PCR call nor did he name petitioner in his first disclosure statement and that the due procedure of Test Identification Parade (TIP) has not been followed in this case. Next submitted that nothing incriminating has been recovered from the possession of petitioner-Sameer Khan and despite being innocent, he has been languishing in jail and therefore, his application deserves to be allowed.

11. On behalf of petitioner-Kasim, Mr. Salim Malik, learned counsel submitted that eye witnesses Girish Yaduvanshi and Bharat @ Kalu in their statements recorded under Section 164 Cr.P.C. have not stated even a single word about the alleged incident or the petitioner. Further submitted that another eye witness, Pradeep Verma also in his statement recorded under Section 164 Cr.P.C., did not give any description of the present petitioner and he was in regular touch with local police. However, only when he was brought near SOC, he identified the petitioner being present in the mob. Learned counsel next submitted that there is no electronic evidence to connect the petitioner with the offence in question and based upon concocted stories, petitioner has falsely been implicated in this case by the prosecution.

12. Lastly, learned counsel submitted that besides the present FIR, petitioner has been made accused in three other FIRs wherein he has been granted relief of bail. In the present case petitioner was arrested on 30.03.2020 and since then he is behind bars and deserves to be released on bail.

13. On the other hand, Mr. Amit Mahajan, learned Special Public Prosecutor for respondent/State vehemently opposed these petitions and

submitted that the petitioners were not only part of the large mob of the alleged incident, which led to destruction of public property but also took life of deceased Ankit Sharma, a young officer of Intelligence Bureau.

14. Learned Special Public Prosecutor submitted that post mortem report of deceased Ankit Sharma revealed that the cause of his death was due to shock and haemorrhage due to injury to lung & brain and all these injuries were sufficient to cause death in ordinary course of nature both independently and collectively. Further revealed that injuries upon the deceased were 52 in number and were inflicted by sharp edged weapon, heavy cutting weapon and rest were by blunt force and all injuries were fresh before death. He further submitted that eye witness Akash has identified accused Sameer Khan and three eye witnesses, namely, Pradeep Verma, Bharat @ Kalu and Girish Yaduvanshi, who have categorically identified petitioner-Kasim in the killing of deceased Ankit Sharma. Further submitted that besides the statement of eye witnesses, statements of public witnesses of nearby shops and residences have also been recorded and if corroborated with the statements of the eye witnesses, clear case is made out against these petitioners. It was also submitted that both these petitioners are bad characters (BC) of their area. Three FIRs pertaining to incident of riots

in the year 2020 are pending to the credit of accused Kasim and besides, he has been involved in various criminal activities as far back from the year 2005. With regard to accused Sameer Khan, learned Special Public Prosecutor submitted that three FIRs pertaining to the incident of riots are pending against him as well.

15. With regard to specific role assigned to these petitioners in the alleged incident, learned Special Public Prosecutor submitted that prime accused Haseen @ Salman, had disclosed their names and when accused Kasim and his brother Nazim, who is also an accused in the incident pertaining to riots, heard that Haseen @ Salman had been arrested, fled to Sambal, U.P. from where they were apprehended. Similarly, Sameer Khan was also absconding and could be arrested only on 09.04.2021.

16. Learned Special Public Prosecutor next submitted that one of the co-accused Muntajim @ Musa is absconding and has been declared proclaimed offender and if these petitioners are released on bail, there is every likelihood they may also abscond from judicial process of law.

17. Lastly, learned Special Public Prosecutor submitted that charge sheet in this case has already been filed and trial is in progress and therefore, these petitions deserve dismissal.

18. The rival contentions raised by counsel appearing from both the sides were heard in detail. I have also perused the impugned orders and material placed on record.

19. This Court is conscious that while dealing with bail applications of Liyakat Ali, Arshad Qyauum @ Monu, Gulfam @ VIP and Irshad Ahmad pertaining to FIR No. 116/2020, registered at police station Dayalpur, Delhi, with regard to eye witness Pradeep Verma, this Court had made an observation as to why he had not made any PCR call regarding the incident, but in the facts and circumstances of the present case, his failure to having made a call to the PCR cannot be made fatal to the case of the prosecution wherein life of a young Intelligence Officer has been lost. Moreover, every case has to be seen in the peculiar facts and circumstances of each case and observation in one case may not be binding in another case.

20. With regard to petitioner Sameer Khan, trial court in the impugned order has noted that he is a resident of Nand Nagri and his presence at the place of occurrence was not natural and therefore, it cannot be said that he did not have a common object of unlawful assembly. Regarding petitioner Kasim, learned trial court has observed that he was absconding and could be apprehended from Sambal, UP and eye witnesses have rightly identified

him. Trial court has further observed that these petitioners were a part of riotous mob and were involved in looting and vandalizing public and private property and in the said riots, several persons were injured and Ankit Sharma had lost his life. This Court finds force in the observations made by the court below.

21. It is a matter of fact, in such like cases where large mob is involved in riots and illegal activities causing harm to public property, peace and life, statement of eye witnesses and corroborative evidence plays a vital role and at the time of considering the bail application of accused, it would be too soon to analyse the testimony of eye witnesses and public witnesses to arrive at a conclusion as to whether any case is made out against the accused or not. Non availability of technical evidence such like CCTV footage etc. cannot be accepted as a ground for non-availability of direct evidence, as it is a matter of record that CCTV cameras installed in the areas in question were either broken or hidden by the mob. At the time of grant of bail only a *prima facie* opinion has to be formed and the facts and circumstances of this case do not persuade this Court to keep a lenient view towards the petitioners. Petitioners have been playing hide and seek with the prosecution. Charge sheet in the FIR in question has already been framed

and trial is in progress. Petitioners will have an opportunity to make their case at the appropriate stage during the course of trial.

22. With aforesaid observations, these petitions are dismissed, while making it clear that any observation made herein shall not influence trial of the prosecution case.

(SURESH KUMAR KAIT)
JUDGE

MAY 03, 2021

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