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

Reserved on: 27.05.2021

Pronounced on: 02.06.2021

+ **BAIL APPLN. 1357/2021**

ZAHID

..... Petitioner

Through Mr. Salim Malik, Advocate

Versus

STATE

..... Respondent

Through Mr. Anuj Handa, Special Public
Prosecutor for State

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. Petitioner is seeking bail in FIR No. 138/2020, under Sections 147/148/149/ 186/188/353/435/302/201/120-B IPC & Section 27 of Arms Act, registered at police station Welcome, Delhi.

2. In the FIR it is recorded that a GD entry 053/2020 dated 25.02.2020 was received from GTB Hospital that a person, namely, *Mohd. Mudhasir*, aged around 30 years, has been admitted in unconscious state and declared brought dead by the doctor. Upon receipt of above information, SI Amit Bansal reached hospital and obtained MLC No. 549/09/2020 of deceased

Mudhasir, on which the doctor had opined that “*patient brought dead in main casualty and unconscious, unresponsive state*”. Post mortem of the deceased was conducted on 27.02.2020 and in the post mortem report it is recorded that the deceased was brought to the hospital on 25.02.2020, at around 02:00 PM. All clothes except underwear and socks were blood stained. The cause of death was opined “*shock as a result of ante mortem injury to head produced by projectile of firearm. Injury No.1 was ante mortem in nature and was sufficient to cause death in ordinary course of nature. Injury No.2 was caused by blunt force impact.*” After obtaining copy of MLC, post mortem report and completion of necessary formalities, the FIR in question was registered on 21.03.2020 at the behest of SI Amit Bansal.

3. During investigation, it transpired that on 25.02.2020, deceased *Mudashir* was brought to the GTB Hospital by his wife *Ashiya*, who stated that he was found in unconscious condition in Gali No.1, at Kabir Nagar.

4. On 28.03.2020, statement of wife of deceased- *Ashiya*, brother of deceased- *Yusuf Khan* and father of deceased- *Yasin Khan* was recorded. In her statement, *Ashiya*, wife of deceased stated that on 25.02.2020 some unknown persons had brought her husband to her *gali* and told her that he

had sustained bullet injury near *Shamshan Ghat* and thereafter, she took her husband to the hospital, where the doctor declared him brought dead. In their statements, brother of deceased- Yusuf Khan and father of deceased- Yasin Khan, stated that on 25.02.2020 they had received information from *Muzammil*, brother of deceased, that *Mudhasir* had been admitted to hospital by his wife.

5. Thereafter on 28.03.2020, FSL team inspected the scene of crime but no live or empty cartridge were recovered from the spot. During further investigation, though no CCTV footage from the *Shamshan Ghat*, nearby shops and houses could be obtained. However, various images, videos and recordings were obtained by Cyber Cell through social media and other sources and upon their scrutiny one video was found which clearly showed how the deceased had sustained bullet injury.

6. On the basis of afore-mentioned video, on 06.04.2020 the secret informer identified *Zahid*, the present petitioner, who was a part of mob and can be clearly seen in the video standing with the deceased. On the same day, i.e. on 06.04.2020, petitioner was apprehended from his house. During interrogation, he disclosed that some of the local leaders asked the people to gather in front of *Shamshan Ghat* on 25.02.2020 and he was a part of the

mob and since the police was asking from the other side not to make unlawful assembly, as they were pelting stones on the police personnel.

7. On 07.04.2020, the investigating team took petitioner to the crime spot for the purpose of pointing out memo and on the same day, his statement under Section 161 Cr.P.C. was also recorded.

8. On enquiry, it revealed that the said video was recorded by ASI Satish and Constable Pushkar and Constable Sunder, Beat Officers, identified petitioner as being part of mob on the day of riots on 25.02.2020. Statement of ASI Satish and Constable Pushkar under Section 161 Cr.P.C. was recorded on 07.04.2020, whereas that of Constable Sunder was recorded on 12.06.2020.

9. All the exhibits i.e. clothes, mobile phone of deceased, petitioner and other accused in this FIR case, were seized and sent to FSL for analysis. As per call detail record of petitioner, his location is at the spot of alleged incident on the said day. However, the FSL report is still awaited.

10. In aforesaid facts and circumstances of this case, the petitioner is in judicial custody since the day of his arrest on 06.04.2020.

11. At the hearing, learned counsel for petitioner submitted that the role attributed to the petitioner in the present case is far less than that of co-

accused Bilal, who has already been granted bail by the trial court on 14.10.2020 and, therefore, petitioner also deserves bail on parity.

12. Learned counsel also submitted that there is an exorbitant delay of approximately one month in registration of the FIR in question and the entire prosecution case is based upon testimony of official witnesses Constable Sunder and Constable Pushkar who in their statements under Section 161 Cr.P.C. have identified the petitioner but did not make any PCR call regarding the alleged incident, and thus, their credibility is doubtful.

13. It was next submitted that as per call detail record, petitioner's presence is shown in the area of riots but the fact remains that his minor children were missing and he had gone out of the house in their search.

14. Learned counsel further submitted that petitioner and deceased both were part of mob and were standing on the same side and it is highly unlikely that he would have an intention to kill the person standing by his side only and so, invocation of Section 302 IPC is bad in law.

15. Lastly, learned counsel submitted that petitioner is innocent and the only role played by him is that he was part of mob on the fateful day and trial will take time and so, he deserves concession of bail.

16. On the contrary, learned Special Public Prosecutor for State opposed

the present petition and submitted that Constable Pushkar and Constable Sunder who were deployed as Beat Constable in the area, have identified the petitioner having participated in the riots with the mob.

17. Learned Special Public Prosecutor further submitted that the incident occurred near *Shamshan Ghat* and the CCTV camera installed at the gate was not working for last many days and so, efforts were made to collect the CCTV footage from cameras installed in nearby shops and local persons, but either the cameras had been turned around or destroyed by rioters under pre-planned modus. But thereafter, various images, video and recordings were collected from Cyber Cell Crime Branch through social media and other sources and this is how one video came across wherein it is clearly pictured how the deceased had sustained bullet injury. After analysis of the video and post mortem report, it became clear that the deceased was shot by a person standing in his right side, as the deceased had sustained injury in the right side on his head right above the ear. Since the petitioner can be seen standing right next to him, therefore, he along with other accused has been implicated in this case.

18. Learned Special Public Prosecutor further submitted that during interrogation, petitioner has disclosed that he had thrown his clothes which

he wore on the day of riots, as he was apprehending his arrest. He also disclosed names of other persons as Imran @ Cheera and Asif as part of rioting mob. He further disclosed that at the relevant time, Imran @ Cheera was having *desi katta* in his hands.

19. It was next submitted that the call detail record of petitioner shows his presence at the place of incident and in the alleged video petitioner can be clearly seen pelting stones on the police personnel on duty. Learned Special Public Prosecutor submitted that petitioner-Zahid is a Bad Character (BC) of Welcome area and he is previously involved in 15 cases of murder, attempt to murder, robbery, Arms Act etc. and, therefore, this petition deserves to be dismissed.

20. In rebuttal, learned counsel for petitioner submitted that out of the 15 cases pending against the petitioner, he has already been discharged in 10 cases and the remaining pending against him are regarding Delhi riots only and petitioner will prove his innocence during trial in those cases.

21. The submissions advanced by learned counsel appearing from both the sides were heard at length and the material placed on record has been carefully perused.

22. The FIR in question pertains to unfortunate killing of *Mohd.*

Mudhasir during riots on 25.02.2020. Allegedly, petitioner was participant of unlawful assembly, where a fire arm shot had hit the deceased on the right side of his head just above his ear and proved fatal for him.

23. While seeking bail, petitioner is seeking parity with co-accused Bilal who is said to have been granted bail by the court below on 14.10.2020. But a perusal of the order dated 14.10.2020 reveals that the trial court has granted interim bail of 45 days to Bilal on medical grounds of his wife. So, this plea does not come to the rescue to petitioner in this petition.

24. However, in the video footage played before this Court, petitioner can be seen standing just ahead the wall with a large mob, agitating, shouting slogans and pelting stones on the other side and the deceased is standing right next to him. So, as per the video, petitioner's exact position of standing is to the left of the deceased, without any weapon in his hand and pelting stones upon other side of the group, whereas the deceased was hit by a bullet shot in the right side of his head just above his ear. However, the source of fire arm cannot be seen.

25. Pertinently, petitioner and deceased, both were part of same group and were agitating against the group standing on the opposite side. Though, it is difficult to believe that when one group is agitating against other group,

a person from the same group will shot a person of his own group but at the same time, possibility of an open fire shot from the same group also cannot be ruled out at this stage, which is subject matter of trial. Moreover, in the MLC or post mortem report, it is not mentioned whether fire shot was from close range, short range or distance.

26. *Prima facie*, at best the role attributed to the petitioner appears to be that he was standing with the mob and participating in agitation and of pelting stones. He is not seen carrying any weapon etc. in his hands and in fact, no recovery has been made at his instance. Moreover, the source of fire shot is yet unknown and will be established by the prosecution during trial. The plea of petitioner whether or not offence under Section 302 IPC is made out against him or not, is also subject to trial.

27. Admittedly, petitioner did not abscond and was arrested from his residence, which *prima facie* shows his innocence in the present case despite he being BC of area. Moreover, it is not disputed that petitioner has already been discharged in 10 cases out of 15 cases in his credit. The remaining cases pending against him pertain to communal riots, which took place in North-East part of Delhi in February, 2020.

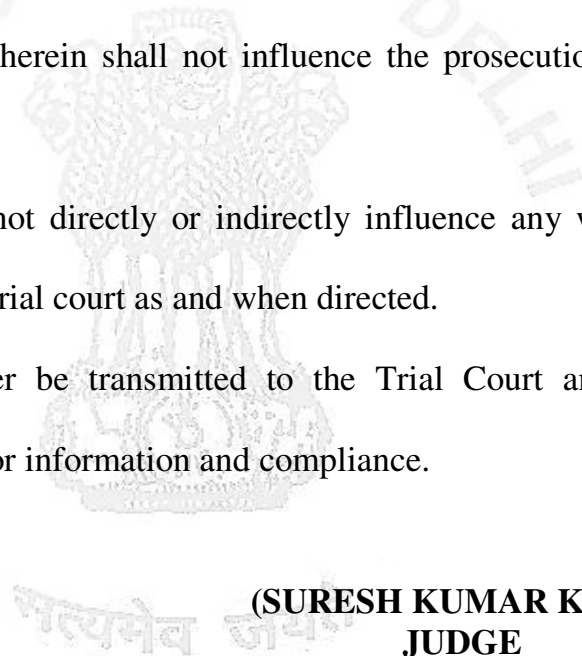
28. In view of the facts and circumstances of this case and the fact that

charge sheet in this case has been filed, but charge has not yet been framed and trial will take substantial time, this Court is of the considered opinion that petitioner deserves bail.

29. 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/ Duty Magistrate, while making it clear that any observation made herein shall not influence the prosecution case during trial.

30. The petitioner shall not directly or indirectly influence any witness and shall appear before the trial court as and when directed.

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

**(SURESH KUMAR KAIT)**
JUDGE

JUNE 02, 2021

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