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

Reserved on: 06.05.2021

Pronounced on: 13.05.2021

+ **BAIL APPLN. 1410/2021**

MOHD. BILAL

.....Petitioner

Through: Mr. Mohd. Wasiq Khan, Advocate

Versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Anuj Handa, Special Public
Prosecutor for State

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. The present petition has been preferred by the petitioner seeking bail in FIR No.138/2020, under Sections 147/148/149/435/186/ 353/188//302/201/120B IPC and Section 27 of Arms Act, 1959, registered at police station Welcome, Delhi.

2. The FIR in question pertains to the incident of riots in North-East Delhi on 25.02.2020 in which one person, namely, Mohd. Mudhasir, aged around 30 years, had lost his life. Upon a telephonic information received from GTB Hospital, Delhi that a person in injured and unconscious state has been brought to the hospital by his wife and was declared brought dead.

Accordingly, pursuant to DD No. 53 A, the investigating team came into motion and reached the hospital and collected the MLC by the Investigating Officer. In the MLC it was mentioned that the patient was brought dead in main casualty in unconscious and unresponsive state with A/H/O lying unconscious due to a bullet shot. During investigation, post mortem of the deceased was conducted at GTB Hospital on 27.02.2020 and seizure memo of exhibits was prepared. In the post mortem report the doctor opined the cause of death as “*shock as a result of ante mortem injury to head produced by projectile of fire arm*”.

3. During the course of further investigation, on 28.03.2020 statements of Yasin Khan, father of deceased; Yusuf Khan, brother of deceased and Ashiya malik, wife of deceased was recorded.

4. Ashiya Malik, wife of deceased, who had taken her husband to GTB Hospital, in her statement stated that on 25.02.2020 at about 01:45 PM some unknown persons brought her husband in her *gali* and left him there in unconscious state and told her that her husband had sustained bullet injury near Shamshan Ghat, Kabir Nagar, Delhi and so, she took him to the hospital where the doctor declared him brought dead.

5. Further investigation in this case was carried out and various video,

images and recordings were collected from Cyber Cell, Crime Branch and in one such video, the deceased was seen sustaining injury. In the said video, petitioner-accused can be seen as the person who had fired the shot on the deceased, who was standing right next to him. In the said fire, the deceased had sustained bullet injury on the right side of his head, above the ear, which took his life.

6. One accused, namely, Zahid who had allegedly participated in the riots, was apprehended by the investigating team, who during his police remand in his disclosure statement admitted of having participated in riots at Shamshan Ghat, Kabir Nagar area where the incident took place. On his disclosure, two more accused, namely, Imran @ Cheera and Asif were apprehended and produced before the Court on 14.04.2020. During interrogation, Imran @ Cheera and Asif admitted that they were part of rioting mob near Shamshan Ghat, Kabir Nagar and when during police custody they were shown the video of the alleged incident, they disclosed name of Mohd. Bilal and said he was firing on the day of incident and had also damaged CCTV cameras in the said area.

7. Thereafter, upon being duly identified by Constable Sunder and pursuant to recording of his statement under Section 161 Cr.P.C., notice was

served upon petitioner herein and he joined the investigation on 11.06.2020.

8. In his disclosure statement petitioner admitted having participated in mob during riots on 25.02.2020 and the fact that he was firing towards the police party but received a push from the mob and deceased Mudhasir came into his firing line and sustained gun shot injury. He also confessed having damaged the CCTV cameras in the riotous areas on 24.02.2020. During PC remand, the investigation team searched for weapon of offence and the clothes which petitioner was wearing at the time of alleged incident but could not recover, however, the shoes he wore were recovered and seized.

9. At the hearing, learned counsel for petitioner submitted that the petitioner had no communication with any of the accused who were part of mob during riots and there is nothing in the charge sheet to suggest that petitioner had entered into any conspiracy with a common intent to cause riots. Further submitted that on the day of alleged incident, petitioner was not even present in the said area and till date call detail record of petitioner's mobile, which was seized during investigation, has not been placed on record.

10. Lastly, learned counsel tried to persuade this Court to take a lenient view towards petitioner, as his wife is suffering from kidney problem and

his parents have already expired and there is no other member in the family to take care of her and his five years old minor child.

11. On the contrary, learned Special Public Prosecutor for State opposed the present petition and submitted that one eye witness- Mr. Babu Dule, has stated that the petitioner along with other accused had damaged the CCTV installed in the riotous area and the shoes worn by petitioner/accused at the time of alleged incident have been recovered at his instance. He further submitted that accused Imran and Asif in their disclosure statements have named petitioner having actively participated in the alleged incident and further one official witness, Constable Sunder, has also identified him. Also submitted that petitioner in his disclosure statement has himself admitted having fired the pistol shot from which Mohd. Mudhasir had died.

12. Learned Special Public Prosecutor next submitted that the petitioner is a habitual offender and against him another FIR of attempt to murder has been registered at police station Bhajanpura, Delhi.

13. Lastly, submitted that though charge sheet has been filed but the FSL report is still awaited and further investigation is also in progress and at this stage, petitioner's release on bail will hamper the judicial process of law.

14. The rival contentions raised by both the sides were heard in detail and

the material placed on record has been perused.

15. During the course of hearing, learned Special Public Prosecutor had played a video clip and shown some still photographs wherein petitioner was seen a day prior to the alleged incident in the said area, standing in the middle of the street with a large group of young boys and having a close look at the CCTV cameras installed in the area. In the video he is clearly seen talking with the boys for some time and in another shot, he is seen climbing ladder to damage a CCTV camera installed. Even though petitioner had tried to hide his identity by rounding off a muffler or cloth round his face and neck and taken off his jacket, which he wore in the first shot, but he can be easily identified not just with his body built but also the trouser and shoes he wore at the relevant time.

16. Pertinently, the said video was shot a day prior to the alleged incident of riots. Petitioner's presence in the area on 24.02.2020, his body language while talking to a large group of boys and damaging the CCTV cameras by climbing a ladder, *prima facie* shows his *mala fide* intention to hatch a conspiracy with other persons, who were part of the mob to commit riots which were designed to occur on 25.02.2020.

17. Petitioner's stand that he was not even present in the said area on

25.02.2020 is yet to be established and his further plea that prosecution has not been able to produce his call detail record and location of his mobile, cannot be accepted on the face of it, as the stand of the prosecution is that FSL report as well as call detail record are awaited and further investigation in this FIR case is also in progress and supplementary charge sheet is yet to be filed.

18. Most importantly, how petitioner will establish his innocence despite having been caught on camera damaging and destroying CCTV cameras installed in the area of riots, just one day before the alleged incident, is subject to trial.

19. Further, petitioner is a Bad Character (BC) of the area and one case for attempt to murder is pending to his credit and in this FIR case also, a person has lost his life.

20. The aforesaid facts and circumstances of this case and the technical evidence produced before this Court, coupled with fact that investigation is in progress and supplementary charge sheet is yet to be filed, this Court does not find it a fit case to grant relief of bail to petitioner at this stage.

21. The 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.

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

(SURESH KUMAR KAIT)
JUDGE

MAY 13, 2021

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