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

% ***Date of decision: 04.06.2021***

+ **BAIL APPLN. 1967/2021 & CRL.M.A. 8887/2021**

SHABUDDINE Petitioner

Through: Mr. Abdul Gaffar, Advocate

Versus

STATE OF NCT DELHI Respondent

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

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

The hearing has been conducted through video conferencing.

1. Petitioner is seeking bail in FIR No. 119/2020, registered at police station Khajuri Khas, Delhi for the offences under Sections 147/148/149/302/153A/505/120B/34 IPC and Sections 27/30 Arms Act on the ground that he is innocent and has been falsely implicated in this case. He is in custody since 20.03.2020.

2. Notice issued.

3. Mr. Amit Mahajan, learned Special Public Prosecutor for

respondent/State accepts notice.

4. With the consent of both the sides, the present petition has been taken up for final hearing and disposal.

5. The crux of the prosecution case is that FIR in question has been registered at the instance of one Pappu, who has alleged that on 25.02.2020 at about 02:15 PM, when his brother, Babu, who is an auto driver by profession, reached Khajuri Khas, he was attacked by the mob and received grievous injuries. Thereafter, on 27.02.2020 he succumbed to the injuries sustained during treatment in the hospital.

6. As per the charge sheet, during investigation in the present case, through some source in social media, one video of riots dated 25.02.2020 came on record and the said was shown to the complainant of this FIR. In the said video a person could be seen lying on the ground, who was identified as deceased Babu by the complainant. The place of rioting was identified as Pusta Road, 40-50 meters away from Khajuri Khas, Delhi. In the course of further investigation, it was revealed that one official witness Constable Amit had also sustained injuries in the said incident.

7. Thereafter, statements under Section 161 Cr.P.C. of official witnesses who were on duty in the said area on the day of riots, were recorded and

after further investigation, on 21.03.2020 two days PC remand of Shahbudin (petitioner herein), Bharat Bhushan and Tayyab was obtained. The disclosure statement of petitioner was recorded on the same day, wherein petitioner admitted that on 25.02.2020 he was involved in riots with the mob.

8. The role attributed to the petitioner is that he in conspiracy with the other members of the mob, committed riots on the alleged day and pelted stones on the other persons of the community. He has been duly identified by the police officials who were on duty on that day. Besides, there are statement of public eyewitnesses Dalip Sharma and Deepak Kumar against him.

9. At the hearing, learned counsel for petitioner submitted that petitioner is innocent and he has been falsely implicated in this case. Further submitted that statement of official witness Head Constable Anil, who is allegedly the eye witness of the incident, was recorded on 12.03.2020 and no PCR call of the incident was made by the said witness. Also submitted that statement of public witness Dalip was recorded on 15.04.2020 and that of Deepak was recorded on 23.04.2021 and no PCR call was made by them too regarding the alleged incident.

10. Learned counsel for the petitioner submits that the case of petitioner is at par with other accused who have been granted bail in this case. Learned counsel also submits that there is no electronic evidence i.e. CCTV footage etc. in this case, which further strengthens the case of petitioner for bail. Lastly, he submitted, that this petition deserves to be allowed and petitioner be released on bail.

11. On the other hand, learned Additional Public Prosecutor for State has opposed the present petition and submits that the role attributed to the petitioner is different from the other accused and the evidence available on record is highly reliable and, therefore, petitioner does not deserve to be released on bail.

12. A perusal of material placed on record reveals that the statement under Section 161 Cr.P.C. of public witness, namely, Dilip, who had allegedly identified petitioner, was recorded on 15.04.2020 i.e. after a lapse of around 40 days and the said witness had not made a PCR call or complaint on the day of the incident or even thereafter. Moreover, this witness has claimed that he identified four accused persons, namely, Tayyab, Adil, Farman, and the petitioner herein, but the fact remains that two co-accused, namely, Tayyab and Adil have been released on bail vide

order dated 24.06.2020 and 06.05.2021 respectively.

13. Similarly, the statement of eye witness Deepak under Section 161 Cr.P.C. was recorded on 23.04.2020 i.e. after lapse of 57 days of the incident and even he had not made any PCR call or complaint on the day of incident or even thereafter. Also, four accused persons were identified by him, namely, Israr, Iqbal, Maroof and the petitioner herein, and except petitioner, other three have been released on bail.

14. According to charge sheet, the role attributed the petitioner is of being part of the mob and participating in the riots and indulging in pelting stones. How and in what matter the claim of prosecution that petitioner's role is different than the other co-accused will be tested during trial. Charge sheet in this case has been filed, however, charge is yet to be framed and trial will take substantial time.

15. Keeping in view that there is no direct evidence like CCTV footage etc. coupled with the fact that co-accused of petitioner have been granted bail in this FIR case, I am of the view that petitioner deserves to be released on bail on parity as well as on merit.

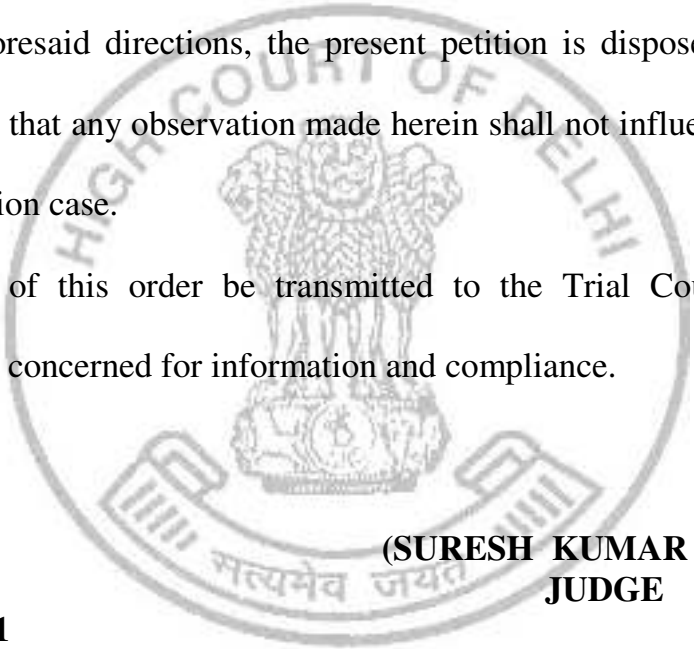
16. Accordingly, without commenting on the merits of the prosecution case, the petitioner is directed to be released on bail forthwith upon his

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 concerned.

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

18. With aforesaid directions, the present petition is disposed of, while making it clear that any observation made herein shall not influence the trial of the prosecution case.

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



(SURESH KUMAR KAIT)
JUDGE

JUNE 04, 2021

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