

Bail Application No.198/2021

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State V/s Kuldeep Singh

FIR No.119/2020

U/s: 147/148/149/302/153-A/505/120-B/34 IPC

PS: Khajuri Khas

03.02.2021

Ld. Special PP for the State and Ld. Counsel for the applicant have made a joint request that they may be heard through Video Conferencing.

Present: Shri Naresh Kumar Gaur, Ld. Special PP for the State alongwith IO, Inspector Vikas Rana (IO appeared physically).

Shri Gaurav Kochar, Ld. Counsel for accused Kuldeep Singh/applicant.

ORDER

I have heard arguments advanced at bar by both the sides, perused the report filed in the matter as well as the chargesheet.

2. Learned counsel for the applicant at the very threshold fairly submitted that this is the third bail application filed on behalf of applicant; his first bail application was dismissed by this Court vide order dated 10.07.2020 and thereafter his second bail application was also dismissed by this Court vide order dated 11.11.2020. However, it is very strenuously submitted that thereafter there has been an epochal change in circumstance(s) in the matter in as much as two co-accused persons namely Jubair @ Zuber and Iqbal have been enlarged on regular bail by Hon'ble High Court of Delhi vide order(s) dated 09.12.2020, passed in Bail Applications No.3773/2020 and 3097/2020 respectively. It is further submitted that based upon the observations made by Hon'ble High Court in the aforesaid orders,

this Court has also admitted on bail another co-accused namely Maruaf vide order dated 19.12.2020 and as such, the applicant is also entitled to grant of bail in the matter on the ground of parity, as role assigned to him is on the same page/identical footing. As a corollary thereof, it is further submitted that three other co-accused persons namely Mohd. Rizwan, Mohd. Tayyab and Israr Ahmad were also admitted to bail by this Court vide order(s) dated 24.06.2020.

3. Besides, harping very heavily on the ground of parity, learned counsel for the applicant has very vehemently argued that applicant is a young married man, aged about 28 years and is the sole bread earner of his family consisting of his wife, one minor daughter aged about 2 years, two unmarried sisters and old aged ailing parents. He has been falsely implicated in the present matter by the investigating agency. He has been in judicial custody since 30.03.2020. He has not been specifically named in the FIR. His arrest in the matter has been effected merely on the basis of disclosure statement of co-accused. No recovery of any sort has been effected from him. The police never sought his custody remand in the matter. **He is not seen in any CCTV footage/clipping.** It is further argued that the statements of Constable Amit, Constable Bhupender and HC Anil, who have identified the applicant cannot be considered as authentic or reliable, as the same were recorded after a long gap of days of the incident and there is no 100 number call or any DD Entry got recorded by them. In continuation of aforesaid, it is further argued that all the aforesaid three police officials being “**Beat Officers**” of the area/locality in question used to frequently visit the dairy of applicant for having tea on regular/daily basis and as such the applicant was very well known to them. He has used the expression “**Doodh mein Patti**” to point out the proximity between applicant and the aforesaid police officials on account of their daily interaction. It is further contended that the statement of independent public witnesses namely

Munna (recorded by IO in the matter on **18.05.2020**, i.e after an “**unexplained delay**” of **about 81 days**) and Imran recorded on 20.06.2020 (i.e.after 93 days) and that of police witnesses namely HC Anil Kumar and Constable Bhupendra (recorded in the matter on 03.05.2020) are contradictory to each other, as PW Munna in his alleged statement has stated that applicant was carrying a “*lathi/danda*” in his hand while the aforesaid police witnesses stated that the applicant was carrying “*stones*” in his hand. It is argued that the “**unexplained delay**” of **about 81 days and 93 days** in recording the statement of alleged eye witnesses PW Munna and PW Imran casts a serious doubt upon the credibility of said witnesses. In this regard, the learned counsel(s) placed heavy reliance upon the case titled as, “**Prabhakar Tewari V/s State of UP & Anr.**”, **Criminal Appeal No.153/2020**, decided on 24.01.2020 by the Hon’ble Supreme Court of India, to put forth a point that if statements of witnesses is delayed by substantial time, particularly when the witnesses were available with the police, then it casts a doubt upon the prosecution story and the accused becomes entitled for bail. In continuation of aforesaid, it is further argued by the learned counsel that the said PW Munna and PW Imran neither made any call at number 100 on 25.02.2020 nor informed the family members of deceased about the incident in question nor he approached the local police station to inform the authorities about the said incident which prima facie gives rise to the presumption that he is a “*planted witness*”. It is further argued that “*pre-trial detention has been deprecated by the Courts*” and “*bail is the rule and jail is an exception.*” In the end, it is argued that the investigation in the matter is complete; chargesheet has already been filed; applicant is no more required for custodial interrogation and no useful purpose would be served by keeping the applicant behind bars as the trial in the matter is likely to take long time. It is claimed that the applicant has clean past antecedents.

4. Per contra, learned Special PP has very vehemently argued that the communal riots in North-East Delhi were of a very high magnitude, wherein 53 innocent lives were lost and a lot of public and private property was damaged/vandalized and looted and several vehicles, houses and business establishments were set on fire. These riots were part of large scale conspiracy hatched at various levels all over Delhi in the aftermath of enactment of *Citizenship Amendment Act, 2019* (in short “CAA”) and the same did not take place spontaneously. These riots were result of a well-planned and meticulously executed action by the anti-CAA protesters. The communal riots continued till 26.02.2020. During this period, a number of cases of riots have been registered at PS Khajuri Khas and other police stations of North-East District. A heavy damage to government and public property and loss of innocent lives were reported and paramilitary forces had to be deployed to control law and order situation in the area.

5. As regards the case in hand, it is very vehemently argued that present matter pertains to the **brutal murder of an innocent young auto- driver namely Babbu**. A video footage showing the incident of murder of deceased “*Babbu*” was captured by BBC and the IO of the case has already written to BBC to provide them video footage and the same is in process of being delivered to the IO. It is next contended that the applicant is resident of same locality where the independent eye witness resides and there is every possibility that if applicant is released on bail at this stage, then he shall threaten the witnesses.

6. It is further argued that applicant has been categorically identified by public witnesses namely Munna (vide his statement recorded U/s 161 Cr.P.C on 18.05.2020) to be part of the riotous mob that had caught hold of deceased “*Babbu*” on the date of incident and beating him black and blue with stick/laathi, which

ultimately resulted in his death. It is further argued that applicant has also been categorically identified by another independent public witness namely Imran (vide his statement recorded U/s 161 Cr.P.C on 20.06.2020). His identity has also been established by police witnesses namely HC Anil Kumar (statement dated 03.05.2020); Constable Bhupendra (statement dated 03.05.2020) and Constable Amit (statement dated 11.05.2020). The applicant has refused to take part in judicial “*Test Identification Parade*” (TIP) and as such, an adverse inference is liable to be drawn against him. He has further drawn attention of this Court to various orders vide which bail applications of several co-accused persons have already been rejected by this Court. In continuation, he further submitted that this Court has recently dismissed the bail application of co-accused Shamim @ Lala @ Arif vide detailed order dated 28.01.2021 (despite two co-accused persons namely Jubair @ Zuber and Iqbal having been admitted to bail by Hon’ble High Court) and thus, the applicant claiming parity with said co-accused persons is factually incorrect and uncalled for.

7. I have given thoughtful consideration to the arguments advanced at bar.

8. It is a matter of record that two co-accused persons namely Jubair @ Zuber and Iqbal have recently been enlarged on bail by Hon’ble High Court of Delhi vide order(s) dated 09.12.2020, passed in Bail Applications No.3773/2020 and 3097/2020 respectively. At this stage, I am not able to restrain myself from reproducing para No.5 of the order dated 09.12.2020, passed by Hon’ble High Court in Bail Application No.3773/2020 (vide which co-accused Jubair @ Zuber was enlarged on bail in the matter). To quote:

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5. It is not in dispute that chargesheet was filed on 16.06.2020. Petitioner was arrested on the basis of statements of the HC Anil Kumar and Constable Bhupendra recorded on 12.03.2020 and Constable Amit on 11.05.2020, whereas incident is dated 25.02.2020 around 2 PM. Statement of PW Sandeep Kumar and Virender Kumar recorded on 15.04.2020 and 23.04.2020 u/s 161 Cr.P.C., who said in their statement that they were present on the spot and had seen the incident and identify the petitioner, is highly unreliable for the reason that neither any complaint was lodged by them nor did they make any PCR calls.

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(underlining which is mine emphasized)

9. Admittedly, the incident in question had taken place on 25.02.2020. The statement under Section 161 Cr.P.C of eye witness PW Munna was recorded by IO on 18.05.2020, i.e after a **humungous delay of about 83 days**. The prosecution has not been able to accord any cogent explanation for such a huge delay in recording the statement of said witness. It is the case of prosecution that PW Munna had witnessed the incident in question on 25.02.2020 itself, however, it is matter of record that the said witness neither approached the local police station on the date of incident, i.e on 25.02.2020 nor he made any call at number 100 on the said date and instead he went on to name the applicant for the first time during the course of recording of his statement under Section 161 Cr.P.C by the IO on 18.05.2020. Between 25.02.2020 to 18.05.2020 PW Munna never made any complaint whatsoever to the local police/investigating agency. On somewhat similar pedestal is the case of PW Imran. Even PW Imran, who is stated to be another eye witness of the incident in question (who had identified the applicant vide his statement recorded U/s 161 Cr.P.C on 20.06.2020) never of his own made any complaint whatsoever to the local police/investigating agency about the

involvement of applicant in the matter. He also even did not make any call at number 100 on the day of incident. In case of “**Prabhakar Tewari V/s State of UP & Anr.**”, **Criminal Appeal No.153/2020**, decided on 24.01.2020 by the Hon’ble Supreme Court of India, it has been categorically held that if statements of witnesses is delayed by substantial time, particularly when the witnesses were available with the police, then it casts a doubt upon the prosecution story and the accused becomes entitled for bail. As such, I find substance in the submissions of learned counsel(s) for the applicant that applicant is entitled for grant of bail in the matter on the ground of parity with co-accused Jubair @ Zuber, as Hon’ble High Court while granting bail to said accused has taken serious note of the aforesaid developments.

10. As regards the identification of applicant by Constable Bhupender and HC Anil, it is noted that the said police officials in their initial statements did not identify the applicant and they went on to identify the applicant in their supplementary statement(s) recorded under Section 161 Cr.P.C by the IO on 03.05.2020. Even Constable Amit had identified the applicant vide his statement recorded in the matter on 11.05.2020, whereas the incident in question happened on 25.02.2020. In my opinion, the identification of applicant by aforesaid police officials (who were stated to be posted as Beat Officers in the area in question at the relevant time) is hardly of any consequence, as this Court is not able to comprehend as to why said Beat Officers waited till the recording of their statements/ supplementary statements under Section 161 Cr.P.C to name the applicant, when they had categorically seen and identified the applicant indulging in riots on the date of incident, i.e 25.02.2020. Being police officials, what stopped them from reporting the matter then and there in the PS or to bring the same in the knowledge of higher police officers. This cast a serious doubt on the credibility of aforesaid

two police witnesses. I am fortified in my aforesaid view on the strength of specific observations made by Hon'ble High Court of Delhi vide *order dated 07.10.2020*, passed in *Bail Application No.2696/2020*, titled as, "*Irshad Ahmed V/s State of NCT of Delhi*", whereby the Hon'ble High Court has been pleased to observe in paragraphs No.3 and 4 thereof as under:

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3. It is not in dispute that there is no electronic evidence such as CCTV footage or photos to implicate the petitioner in the present case. As per the statement of Constable Pawan and Constable Ankit (both are eye witnesses and were present at the spot), they had identified the petitioner and other co-accused. However, they have not made any complaint on the date of incident, i.e 25.02.2020, whereas the FIR was lodged on 28.02.2020. Thus, the said witnesses seem to be planted one.

4. Chargesheet has already been filed. Trial of the case shall take substantial time. However, without commenting on the merits of the case, this Court is inclined to grant bail to the petitioner.

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11. Admittedly, the applicant is neither visible in any CCTV footage nor he has been specifically named in the FIR. As regards the applicant's refusal to undergo judicial Test Identification Parade (TIP), the effect thereof will be seen at the time of trial. *At this stage*, I am of the considered opinion that applicant Kuldeep Singh is entitled for grant of bail in the matter on the ground of parity with two co-accused persons namely Jubair @ Zuber and Iqbal, who have recently been enlarged on bail by the Hon'ble High Court of Delhi vide order(s) dated 09.12.2020, passed in Bail Applications No.3773/2020 and 3097/2020 respectively and thereafter based upon the observations of Hon'ble High Court in the aforesaid orders, another co-accused namely Maruaf has also been admitted to bail by this Court vide order dated 19.12.2020. Accordingly, applicant Kuldeep Singh is

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admitted to bail in the matter on his furnishing a Personal Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one surety in the like amount to the satisfaction of Ld.CMM/Ld.Illaka MM/Ld.Duty MM, subject to the condition that he shall not tamper with the evidence; he shall not make any endeavour to contact/influence the witness(es); he shall maintain peace and harmony in the locality and that he shall appear before the Court on each and every date of hearing to attend the proceedings in accordance with the terms of Bail Bond, which would be executed by him; he shall furnish his mobile number to SHO, PS Khajuri Khas upon his release from the jail and will ensure the same to be in working condition and further he shall also get installed “*Aarogya Setu App*” in his mobile phone.

12. The application stands disposed off.

13. It is hereby clarified that anything stated hereinabove shall not be construed as expressing any opinion on the final merits of the case, as the case is at “*pre-cognizance/pre-committal stage*”.

14. A copy of this order be sent to Superintendent Jail concerned as also to the learned counsel for the applicant through electronic mode.

(VINOD YADAV)
ASJ-03(NE)/KKD COURTS/03.02.2021