

\$~15

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

+ BAIL APPLN. 2925/2020

KASIM

..... Petitioner

Through Mr. Salim Malik, Adv.

versus

STATE

..... Respondent

Through Mr. Manoj Chaudhary, SPP

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**ORDER**

% **13.10.2020**

The hearing has been conducted through video conferencing.

1. The present petition has been filed by the petitioner under Section 439 Cr.P.C. read with Section 482 Cr.P.C. for grant of bail in case FIR No.91/2020 dated 02.03.2020, for the offences punishable under Sections 147/148/149/453-A/505/436/307/120-B/34 IPC and Sections 27/30 Arms Act, registered at PS Dayalpur, Delhi.

2. Learned SPP has opposed the present petition by stating that the injured Ajay had identified the rioters including the petitioner as he has been living in the same area from past many years. During the course of investigation, injured Ajay was examined who stated that on 25.2.2020, around 4:00 pm, he came out of his house to purchase some household articles and when he reached near Lakhpat School, Chand Bagh, he found that riots broke out in the whole area of Chand Bagh and nearby areas. When he reached near Tahir Hussain's house, he saw angry mob on the terrace of the said house, who were pelting stones, firing gun shots and throwing petrol bombs upon the houses of Hindu community. The mob was chanting anti-communal slogans. However, one of the boy namely, Gulfam

@ VIP (whom he identified later on), fired upon him which hit on his right shoulder. He was familiar with other boys as well as they have been living there in the same locality for many years. Other boys were Tahir Hussain, Shah Alam, Tanveer Malik, Nazeem and Kasim (the petitioner herein). Regarding phone location of the petitioner, learned SPP submits that his mobile phone from 17.02.2020 to 23.03.2020 was not in active mode, therefore, his phone location could not be established.

3. In addition to that Ct. Saudan and Ct. Pawan were also present on duty at the spot on 25.2.2020, who had seen incident and identified the petitioner along with other co-accused persons. The petitioner is a “BC” of area. There are ten cases on his head due to which Ct. Saudan and Ct. Pawan knew him. Therefore, they could identify him and accordingly, their statement under Section 161 Cr.P.C. was recorded on 03.03.2020.

4. Learned counsel for the petitioner submits that petitioner was in Sambhal, Moradabad, UP at the time of incident and from 17.02.2020 to 23.03.2020. Thus, he was not present in Delhi on the date of incident.

5. It is not in dispute that the incident took place on 25.02.2020 and statements of Ct. Saudan and Ct. Pawan were recorded who were on duty at the spot on 25.02.2020 and they saw the incident and identified the petitioner being “BC” of the area along with other co-accused persons. There is no explanation as to why the said police officials did not make any PCR call/DD entry to the concerned police station regarding involvement of petitioner on 25.02.2020. The injured made his statement on 02.03.2020 wherein he named the petitioner and only thereafter, the Ct. Saudan and Ct. Pawan made their statements on 03.03.2020 stating that they were on duty at the spot on the date of incident and had seen the incident and identified the

petitioner.

[WWW.LIVELAW.IN](http://WWW.LIVELAW.IN)

6. It is also not in dispute that as per the charge-sheet, in column 10 at page 23 it is stated that 11 video footages were received from different social media showing the incident or riot dated 24/25.02.2020 showing the rioting incident on the crime spot and house of accused Tahir Hussain. At the time of filing of charge-sheet, Sections 153-A/505/120-B and Sections 27/30 Arms Act were added by the Investigating Officer and present charge-sheet has been filed against the petitioner under Sections 147/148/149/453-A/505/436/307/120-B/34 IPC and 27/30 Arms Act.

7. It is also not in dispute that co-accused Tahir Hussain and Liyakat were seen in the CCTV footage, however, petitioner is not seen in any of those 11 footages received from different social media.

8. However, without commenting on the merit of the case, in view of the aforesaid facts, this Court is inclined to grant bail to the petitioner.

9. Accordingly, he shall be released on bail, if not required in any other case, on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the Trial Court.

10. The petition is, accordingly, allowed and disposed of.

11. Copy of this order be transmitted to the Jail Superintendent concerned and Trial Court for information and necessary compliance.

12. The order be uploaded on the website forthwith.

**SURESH KUMAR KAIT, J**

**OCTOBER 13, 2020/rk**