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

+ BAIL APPLN. 2082/2020

YOGESH Petitioner
Through Mr. Gaurav Verma, Adv.

versus

STATE OF NCT OF DELHI Respondent
Through Mr. Manoj Chaudhary, SPP

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% **20.10.2020**

The hearing has been conducted through video conferencing.

1. Present petition has been filed by the petitioner under section 439 Cr.P.C. for grant of regular bail in pursuance to FIR No.97/2020 for the offences punishable under Sections 147/148/149/302/153-A/436/505/34/120B IPC registered at police station Karawal Nagar, Delhi.
2. Learned SPP has opposed the present petition by stating that deceased Aftab's body was recovered from drain in highly decomposed state on 01.03.2020, Post Mortem report states that deceased was having 2 bullet injuries and 17 lacerated wounds on his body, thus he was killed in brutal manner. Further submits that both FIR No. 62/2020 and 97/2020 pertains to incidents similar in nature. The petitioner was arrested in FIR No. 62/2020 and he himself disclosed his involvement in the present case.
3. In addition to above, witnesses Mohd Firoz and Fahim were shown photographs of various suspects and they have clearly identified Yogesh (petitioner), Lakhpat and Kuldeep in their Statement recorded under Section

161 . Learned SPP further submits that the three accused persons mentioned above were leading mob and were shouting anti muslim slogans. Deceased was initially beaten with rod and sticks by violent mob and then 3 bullets were fired at him on 25.02.2020. His house and factory where he worked were also set on fire.

4. This Court is conscious of the fact that petitioner's Regular Bail Application No. 2053/2020 was dismissed by this Court vide order dated 31.08.2020 by recording that petitioner had played active role in commission of offence and recovery was effected from him (katta) and because of his involvement in another FIR No. 97/2020 (present FIR)of similar nature.

5. Pursuant to the directions passed by this Court, the results of FSL and DVRs are on record. As per the result of FSL report, three recovered bullets from the dead body of the deceased were not fired from country made pistols recovered from the accused persons of FIR No. 62/2020. Moreover, result of 3 DVRS, as per data available on DVR no.1 seized from MNB Modern School,33 Futa Road, Devi Nagar, Shiv Nagar, DVR no.2 was seized from Deepak Mittal, Near Shiv Vihar pulia retrieved, however, data available on DVR no.3 seized from Bhajanpura Cooperative Thrift & Credit society, 33 Futa Road, Shiv Vihar, could not be retrieved.

6. Data available on DVR no. 3 was crucial evidence of this case as camera of CCTV was installed just near the place of incident of this case. DVR no.1- camera was not entirely covering the requisite portion as was installed far from the spot. It was found that in the night of 24/25.2.2020, lot of persons of all age group were roaming here and there in groups on 33 Futa Road, Shiv Vihar. Mostly persons were carrying lathi/danda in their

hands and some were wearing caps and helmet etc on their heads. Door of the houses near the spot were seen as closed. It was observed that angle of such camera of Ch. no.1 was changed to wrong side at about 08.54.51hrs and camera of Ch. no. 2 was changed to wrong side at about 08.54.12 hrs to avoid capture in the CCTV Footage. DVR no.2 covering mostly the area of counter and nearby portion.

7. Keeping in view the result of FSL report which does not support the prosecution case and the result of DVRs, it is not established that petitioner was present on the spot at the time when the incident took place in the present case.

8. In view of above, without commenting on the merits of the prosecution case, I am of the view that the petitioner deserves bail.

9. Accordingly, he shall be released on bail forthwith on his furnishing a personal bond of Rs.25,000/- and a surety of the like amount to the satisfaction of Trial Court

10. Petitioner shall not directly or indirectly influence any witness or tamper with the evidence.

11. The Trial Court shall not get influenced by the observation made by this Court while passing the order.

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

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

14. The order be uploaded on the website forthwith.

SURESH KUMAR KAIT, J

OCTOBER 20, 2020/ms