

Reserved on: February 10, 2021

Pronounced on: February 22, 2021

+ BAIL APPLN. 4104/2020

RASHID @ MONU

..... Petitioner

Through Ms. Tara Narula and Ms. Nikita
Agarwal, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. S.V. Raju, ASG with Mr. Amit
Mahajan, SPP, Mr. Amit Prasad, SPP,
Mr. Rajat Nair, SPP, Mr. Shantanu
Sharma, Mr. Dhruv Pande, Ms.
Sairica Raju, Mr. A. Venkatesh, Mr.
Guntur Pramod Kumar, Mr. Shaurya
R. Rai, Ms. Zeal Shah, Ms. Aarushi
Singh and Mr. Anshuman Singh,
Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

The hearing of the case was conducted through video conferencing.

1. The present petition has been filed by the petitioner under Section 439 Cr.P.C. for grant of bail in case FIR No.39/2020, for the offences punishable under Sections 147/148/149/302/201/436/427/120-B/34 IPC, registered at PS Gokul Puri, Delhi.

2. Case of the prosecution is that on 26.02.2020 at 01.04 PM, a PCR call vide DD No.17A regarding stone pelting near Kabir Builder, Gall No. 11, Bhagirathi Vihar, Delhi was received at PS GokulPuri. On spot, it was found that mob had burnt a building of Anil Sweet situated at A-29, Chaman Park, Main Brijpuri Road, Delhi. The building was in burnt condition and on the 2nd floor, one body without hands and legs was found lying in burnt condition. The deceased was identified as Dilbar Singh Negi S/o Gopal Singh R/o Village- Shekhda, Chaki Sen, Pauri Garwal, Utrakhand, who used to work as a waiter in Anil Sweet Corner. Accordingly, the present FIR was registered. The investigation of case was transferred to Crime Branch SIT.

3. During investigation, it has been found that Anil Pal is owner of building No.A-29, Ghaman Park and his another shop has also been torched by the rioters. On 24.02.2020, a riot had taken place on main road in front of A-29, Ghaman Park, Main Brijpuri Road where the mob pelted stones, chanted anti-Hindu slogans, ransacked and torched many shops. On the basis of statements of eye-witnesses, Section 153A IPC was also incorporated in case. During investigation, CCTV footages of nearby Rajdhani Public School and several mobile phone footages have been found.

During the analysis of CCTV footage, it was found that there was huge gathering at Main Brijpuri Road and rooftops of building and people in mob were promoting enmity & disharmony by rioting, stone pelting and instigating others. Some persons in mob also killed the deceased Dilber Singh Negi and burnt him along with the whole building. Petrol bottles and bag of *kanche* have also been seized from the roof of the building. Statements of the other eye-witness also recorded and on the basis of statements of the eye-witness, CCTV footage and mobile locations, total 12 accused have been arrested in the present case. Petitioner herein was arrested on the basis of statement of eye-witness Himanshu and on the basis of location of the mobile No.9564796812 which was carried by the petitioner.

4. Case of the petitioner is that on the afternoon of 24.02.2020, large scale violence unfolded in Shiv Vihar Tiraha, Karawal Nagar, resulting in large scale destruction and loss of life and property. Accordingly, several FIRs were filed regarding the damage incurred and the first among them was the present FIR No.39/2020 in which the petitioner was arraigned and thereafter, he was arrested. The present FIR was registered at Gokulpuri Police Station subsequent to the retrieval of the charred body of a young

worker Dilbar Negi by the police on the second floor of Anil Sweet Shop.

Pertinently, several other FIRs were also registered regarding different damages incurred, including the FIR No.134/2020 which was registered at Police Station Dayalpur on 05.03.2020 for the alleged vandalism, robbery and arson in DRP Convent School in Shiv Vihar Tiraha, Karawal Nagar in which the petitioner has been additionally been arraigned.

5. Learned counsel for the petitioner submitted that in the present FIR, the provisions of Sections 144/147/148/149/188/153-A/302/201/427/436/120-B/34 IPC were invoked and the investigating agency completed investigation and filed a charge-sheet and a supplementary charge-sheet thereafter. The charge-sheet has been committed before the Court of Ld. ASJ Court on 15.01.2021 and the matter was listed for charges on 17.02.2021. Crucially, the prosecution has a flimsy case against the petitioner which is; (i) a statement of Himanshu, a student of 12th standard who claims to have seen the petitioner participating in sloganeering and stone pelting; and (ii) the CDR location which claims to establish the presence of the petitioner at the scene of the incident.

6. It is submitted that pertinently, the prosecution has admitted the factum that the CDR location of the petitioner does not establish his

presence at the incident site in bail application bearing No.214/2021 which was filed by the petitioner seeking bail in FIR No.134/2020 before Ld. ASJ. This admission by the prosecution cements the submission of the petitioner that his CDR location is only in the vicinity of the incident site for he resides in Shakti Vihar which is close to the incident site, and the petitioner is an auto-rickshaw puller. Further, the Ld. ASJ, while allowing the bail application bearing No.214/2021 took note of the unreliability of the testimony of Roop Singh, who is in fact, a key eye-witness in the instant case FIR No.39/2020.

7. Further submitted that the FIR No.134/2020 was registered at P.S. Dayalpur on 05.03.2020 for alleged vandalism of DRP Convent School by rioters on the same day and is a part of the continuum of the incident therein. In fact, the Google map distance between DRP Convent School and Anil Sweet Shop shows them only 50 metres apart. A copy of the Google map showing the location of DRP Convent School and Anil Sweet Shop has been annexed hereto and marked as Annexure A-11.

8. Also submitted that the petitioner herein was arrested in FIR No.134/2020 on 01.04.2020 from jail only after being identified by Mr. Roop Singh, when he was shown a picture of those arraigned in FIR

No.39/2020. It is relevant that Mr. Roop Singh never claimed to have seen, named or identified the petitioner herein until 31.03.2020, i.e., when he was shown the photograph of the petitioner and asked to identify him. Moreover, credibility of witness Roop Singh has been doubted by the Ld. ASJ mentioned above. Thus, the petitioner deserves bail.

9. On the other hand, Mr. S.V. Raju, Ld. ASG appearing on behalf of the State submitted that during the course of investigation, statements of the eye-witnesses, who were living in the vicinity of the incident and were got effected by the riots were recorded. On 11.03.2020, one eye-witness, namely, Himanshu, whose house was looted and torched by the riotous mob named, identified and stated u/s 161 Cr.P.C that petitioner was actively involved in the riot which took place on 24.02.2020 which caused the death of Dilber Negi.

10. It is further submitted that as per CDR, Mobile location of the phone of the petitioner (9564796812) was found in the area. TIP was not conducted as the eye-witness identifies the petitioner. Himanshu was present at the time of arrest of the petitioner.

11. Mr. Raju, learned ASG submitted that the present case has emerged from deep rooted conspiracy, which was hatched under the garb of

democratically opposing the Citizenship Amendment Bill. On 24.02.2020, riots were organized at large scale in North East Delhi. At the vicinity of the scene of crime, several similar incidents took place. In these riots many police personnel got severe injuries. One H.C. Ratan Lal was murdered, DCP Shahdara District, Mr. Amit Sharma & ACP Gokulpuri also sustained serious injuries in the riots. Thus, keeping in view the serious allegations against the petitioner, the present petition deserves to be dismissed.

12. Heard learned counsel for the parties and perused the material on record.

13. It is not in dispute that the prosecution has admitted the factum that CDR location of the petitioner does not establish his presence at the incident site in bail application No.214/2021 filed by the petitioner in FIR No.134/2020 before Ld. ASJ. This admission supports the case of petitioner that his CDR locations are only in the vicinity of the incident site for he resides in Shakti Vihar which is close to the incident site and his possibility is there being an Auto Rickshaw Puller. Further, while allowing the bail application No.214/2021, the Ld. ASJ took note of unreliability of the testimony of Roop Singh a key witness in the present FIR No.39/2020. In

addition, incident took place on 24.02.2020 and statement of Himanshu u/s 161 Cr.P.C. was recorded on 11.03.2020 which heavily relied upon.

14. Moreover, IO himself, while seeking judicial remand against the petitioner on 12.03.2020, admitted that only evidence they have against the petitioner is under Sections 147/148/149/153-A IPC. Even in supplementary charge-sheet, nothing more has been said against the petitioner.

15. The petitioner being Auto Rickshaw Puller is not a flight risk and no opportunity to temper with the evidence.

16. The charge-sheet has been filed and case is committed before Ld. ASJ on 15.01.2021 and now listed for arguments on charge. Thus, trial of the present case will take substantial time.

17. Undisputedly, the petitioner was arrested in FIR No.134/2020 on 05.03.2020 of PS Dayal Pur. Thereafter, being identified by Roop Singh, petitioner was arrested in the present FIR No.39/2020, registered at PS Gokul Puri, Delhi from jail on 01.04.2020.

18. In view of the aforesaid facts, however, without commenting on the merits of the prosecution case, I am of the view, the petitioner deserves bail.

19. Accordingly, he shall be released on bail on his furnishing a personal bond in the sum of Rs.15,000/- with one surety in the like amount to the

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satisfaction of the Trial Court.

20. The petitioner shall not influence the prosecution witnesses during trial.
21. The petition is, accordingly, allowed and disposed of.
22. Copy of this order be transmitted to the Jail Superintendent concerned and Trial Court for necessary compliance.
23. It is made clear that the Trial Court shall not get influenced by the observations made by this Court while passing the order.
24. The judgment be uploaded on the website of this Court forthwith.

(SURESH KUMAR KAIT)

JUDGE

FEBRUARY 22, 2021/rk

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