

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

Date of decision: 10<sup>th</sup> DECEMBER, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 1459/2021**

SHUBHAM

..... Petitioner

Through: Mr. Aditya Aggarwal, Advocate.

versus

STATE

..... Respondent

Through Mr. Manoj Chaudhary, SPP for the State.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**SUBRAMONIUM PRASAD, J.**

1. BAIL APPLN. 1459/2021 has been filed for grant of regular bail in FIR No. 159/2020 dated 21.03.2020 registered at Police Station Dayalpur for offences under Section 147, 148, 149, 302, 120B, 34 IPC.

2. The FIR herein states that information had been received that FIR No.77/2020 dated 26.02.2020 was registered at Police Station Dayalpur for offences under Section 147, 148, 149, 302, 34 IPC as per which the bodies of four persons, namely, Zakir, Mehtaab, Ashfaaq Husain, Jameel were recovered during the riots which had taken place in North East Delhi in February 2020.

3. It is stated that during investigation, the bodies of the four deceased were identified and it appears that the time and place of their deaths were different. Accordingly, four different cases were registered. FIR No.159/2020 was registered on 21.03.2020 with respect to the death of

Ashfaaq Hussain. It is stated that the brother of the deceased had been informed by one Zulfikar Siddiqui that his brother had been taken to a hospital near Shiv Vihar Tiraha. It is stated that the brother of the deceased was not aware of the people who brought the deceased to the hospital. It is stated that the brother of the deceased was informed that his brother had been admitted at Al-Hind Hospital. It is stated that the brother of the brother of the deceased was instructed to take the deceased to another hospital but no vehicles were available. It is stated that the deceased was taken to GTB Hospital where he was declared as dead.

4. Chargesheet has been filed in FIR No. 159/2021 for offences under Section 144,147, 148, 149, 188, 302, 120B and 34 IPC and the Petitioner has been in judicial custody since 10.04.2020.

5. Bail applications with respect to the FIR herein, along with FIR No. 158/2020 and FIR No. 163/2020 had been dismissed *vide* a common order dated 22.04.2020 passed by the learned Additional Sessions Judge-03, Karkardooma Court, on the ground that offences levelled against the Petitioner herein are serious in nature and that one cannot rule out a possibility of the Petitioner threatening or intimidating the sole public witness who resides within the same locality. Consequently, the Petitioner herein has approached this Court seeking regular bail.

6. Mr. Aditya Aggarwal, learned Counsel for the Petitioner, submits that the Petitioner is a youngster of 23 years and owns a shop. He states that the Petitioner herein, *vide* Order dated 09.12.2020 passed by the learned Trial Court, had been granted interim bail and had not misused the liberty. He argues that this Court in BAIL APPLN.969/2021 in FIR No.87/2020 granted bail to the Petitioner therein on the ground that the statement of

eyewitness/Shashikant Kashyap could not be said to be wholly reliable as he was a resident of Gali No. 8 and could not have seen what had taken place in Gali No. 3 which was 350 metres away.

7. The learned Counsel for the Petitioner submits that the learned Trial Court has failed to appreciate how this Court found the veracity of the statement of the eyewitness doubtful. He further states that the authenticity of the statement should be delved into during the course of trial and not at this juncture. Mr. Aggarwal also brings into question how the prosecution has solely relied upon CCTV footage that showcases the Petitioner herein walking with an iron *danda/palta* and that no other video footage has been brought on record that reveals that the Petitioner used the same for inflicting injuries. He states that at the time of the alleged incident, many people were carrying similar things in order to protect themselves from the unruly mob.

8. Mr. Aggarwal, learned Counsel for the Petitioner, argues that there is discrepancy in the information preferred by the eyewitness regarding the location of the alleged incidents and that, therefore, there should be no reliance on his statement under Section 161 Cr.P.C. He submits that though the site plan states that the three deceased, i.e. Zakir, Ashfaq Hussain and Mehtab, were beaten to death in front of Chawla General Store, the CCTV footage indicates that no such incident took place in its vicinity. He further submits that there has been an unexplained delay of more than 24 hours in registration of the FIR herein.

9. The learned Counsel for the Petitioner submits that the chargesheet has been filed, and that the Petitioner is not in a position to tamper with the evidence or powerful enough to influence the witness, Shashikant Upadhyay. He submits that there exists no reason to prolong the

incarceration of the Petitioner and, therefore, prays for grant of bail.

10. *Per contra*, Mr. Manoj Chaudhary, learned SPP, submits that during the investigation relating to the FIR No. 159/2020, it had been found that a riot on 25.02.2020 had taken place on main road Brijpuri near Chawla Kirana store where a mob had pelted stones and ransacked and torched many shops and many people had been killed there. He states that CCTV footage was retrieved from the nearby store and an analysis indicated that the mob which had gathered in Brijpuri store had caught three Muslim boys and started beating them brutally. He submits that the CCTV footage reveals that the Petitioner herein was carrying a stick and on the basis of the same, he was arrested on 09.04.2020.

11. Learned SPP submits that the Petitioner herein had confessed that before 24.02.2020, there had been a buzz that some event would occur and, therefore, the Petitioner along with other neighbours had equipped themselves with a variety of weapons. He submits that the Petitioner had actively participated in the riot wherein the four victims were murdered. He submits that the statement of the eyewitness/Shashikant Kashyap under Section 161 Cr.P.C. was recorded on 09.04.2020 wherein he had identified the Petitioner and stated that the Petitioner took active part in the unruly mob that had pelted stones and was carrying deadly weapons. He submits that as per the CDR, the mobile location of the phone of the Petitioner had been found in the area of the alleged incident. He submits that the Petitioner could be seen at the spot of the alleged incident with a stick in his hand and was a part of the aggressive mob. He states that just because the witness has not been trusted in other bail applications is no ground that he should not be trusted in the instant case.

12. Mr. Manoj Chaudhary, learned SPP, submits that the nature and gravity of the accusation is such that bail should not be granted to the Petitioner herein. He submits that considering the conduct of the Petitioner, there is a reasonable apprehension that the Petitioner is likely to abscond or flee, if released on bail. He submits that there is also likelihood of the Petitioner influencing the witnesses as he has deep connections with the people of his community in the area where he is residing.

13. Mr. Manoj Chaudhary, learned SPP, further submits that on the basis of the above reasoning, the bail application of the Petitioner herein in FIR No.158/2020, 159/2020, 163/2020 had been dismissed by the learned Additional Sessions Judge, Karkardooma Courts, *vide* a common Order dated 22.04.2021. He further states that on 09.12.2020, the Petitioner herein had been granted interim bail by this Court on account of marriage of his sister. However, the Petitioner failed to surrender, and subsequently, the Petitioner herein only surrendered after this Court rendered an Order dated 17.03.2020 directing the same. Mr. Chaudhary further opposes the submission of the learned Counsel for the Petitioner regarding bail on ground of parity as, unlike the Petitioners therein, the Petitioner herein was seen in the CCTV footage of Chawla Kirana Store that was installed near the scene of crime.

14. Mr. Chaudhary, learned SPP, while vehemently opposing the instant bail applications, has fairly conceded that the final examination of the sole eyewitness/Shashikant Kashyap is fixed for 20.01.2022, and that the Petitioner herein may file a subsequent bail application post the examination of the eyewitness whose evidence is crucial to the case.

15. Heard Mr. Aditya Aggarwal, learned Counsel for the Petitioner, and

Mr. Manoj Chaudhary, learned SPP for the State, and perused the material on record.

16. A perusal of the chargesheet reveals that the Petitioner herein is a student who is currently studying further. It states that the Petitioner herein confessed that due to the protest and slogans raised by Muslims against CAA and NRC, his religious sentiments had been hurt and he was agitated by the same which led him to join the gathering against the Muslim community that was crowding Brijpuri road on 25.02.2020. It states that after both the communities started pelting stones at each other, the Muslim community outnumbered Hindus. The Petitioner, therefore, retrieved a stick from his house and indulged in the riots. It states that the Petitioner also threw stones at the Muslims and that when he witnessed a crowd beating three Muslim boys, he joined in the same.

17. The chargesheet reveals after sufficient evidence was brought on record against the Petitioner, he was arrested. The chargesheet further reveals that the Petitioner had been seen in the footage of I.P. Camera 02\_20200225162959.AVI dated 25.02.2020 at 17:06:06 hrs. Located at the backside of Chawla Kirana store showing main Brijpuri road, carrying a stick along with the violent mob. The chargesheets further reveal that the CDR of the Petitioner places him at the scene of crime during the riots on 25.02.2020. The chargesheets then go on to reveal that as per post-mortem No. 349/2020 dated 28.02.2020 regarding deceased Ashfaq Hussain, it was opined that injury no. 29 was sufficient to cause death in ordinary course of nature, both individually and collectively. Further, all injuries were fresh before death, and injuries no. 4, 24, 25, and 29 to 31 were produced by a sharp-edged weapon while the rest were due to a blunt force. Subsequent

opinion collected on 04.07.2020 collected from Department of Forensic Medicine, UCMS and GTB Hospital *vide* O.P. No. 46/2020 dated 25.02.2020 states that injuries no. 10, 14, 24 to 26, and 29 to 31 were possible with a sword, and injuries no. 15, 17, 19, 20 to 23 and 27 were possible with scissors.

18. They further reveal that eyewitness/Shashikant Kashyap had identified the Petitioner pelting stones and carrying a stick on the day of the alleged incident. They state that photographs of the deceased Zakir and Ashfaq Hussain were shown to the eyewitness/Shashikant Kashyap who identified them as two of the three boys who were being brutally beaten up by the mob.

19. A perusal of the material indicates that the Petitioner herein was recognised on the CCTV footage with a stick in his hand and his CDR indicates that he was present at the scene of the alleged incident. However, the authenticity of the same is a matter of trial and cannot be delved into at this juncture.

20. The sole public witness in this matter resides in the same locality as the Petitioner herein. This Court, while being cognizant of the fact that the Petitioner herein has been in custody since 10.04.2020, cannot discount the issue that there exists a possibility of the Petitioner herein influencing or threatening the sole public witness. Bail jurisprudence attempts to bridge the gap between the personal liberty of an accused and ensuring social security remains intact. It is the intricate balance between securing the personal liberty of an individual and ensuring that this liberty does not lead to an eventual disturbance of public order. Therefore, a duty resides in this Court to be conscious of whether granting of bail can lead to a possible

impediment in the conducting of investigation that can cause inevitable rupture in public order.

21. In the instant case, it has been submitted by the learned SPP for the State that examination of the sole public witness remains and is fixed for 20.01.2022. Taking into account this statement of the learned SPP and the possible apprehension of influencing/threatening the sole public witness whose evidence is crucial to this matter, this Court is of the opinion that the present case is not fit for grant of bail at this juncture. This Court, however, grants liberty to the Petitioner herein to approach this Court for bail after the examination of the sole public witness is conducted, i.e. after 20.01.2022. The learned Trial Court is requested to examine the sole public witness preferably on a day-to-day basis and conclude the examination preferably within one month from the date of the order.

22. In light of the above observations, this application is dismissed, along with pending application(s), if any.

**SUBRAMONIUM PRASAD, J**

**DECEMBER 10, 2021**

*Hsk*