

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

Date of decision: 10th DECEMBER, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 2608/2021**

AJAY @ MONU Petitioner

Through: Mr. Rajeev Kumar Tiwari &
Mr.Vimal Tiwari, Advocates.

versus

STATE OF N C T OF DELHI Respondent

Through Mr. Manoj Chaudhary,SPP for the
State

+ **BAIL APPLN. 2660/2021**

AJAY @ MONU Petitioner

Through: Mr. Rajeev Kumar Tiwari &
Mr.Vimal Tiwari, Advocates

versus

STATE OF N C T OF DELHI Respondent

Through Mr. Manoj Chaudhary,SPP for the
State

+ **BAIL APPLN. 3635/2021**

AJAY @ MONU Petitioner

Through: Mr. Rajeev Kumar Tiwari &
Mr.Vimal Tiwari, Advocates

versus

STATE OF N C T OF DELHI Respondent

Through Mr. Manoj Chaudhary,SPP for the
State

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

SUBRAMONIUM PRASAD, J.

1. BAIL APPLN. 2608/2021 has been filed for grant of regular bail in FIR No. 158/2020 dated 21.03.2020 registered at Police Station Dayalpur for offences under Section 147, 148, 149, 302, 120B, 34 IPC.
2. BAIL APPLN. 2660/2021 has been filed for grant of regular bail in FIR No. 163/2020 dated 22.03.2020 registered at Police Station Dayalpur for offences under Section 147, 148, 149, 302, 120B, 34 IPC.
3. BAIL APPLN. 3635/2021 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.
4. The FIRs herein state 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.
5. 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.158/2020 dated 21.03.2020 was registered with respect to the death of Zakir.
6. It is stated that during investigation, the brother of Zakir had told him to meet in the afternoon around 3:30 PM on the day of the alleged incident. It is stated that around 3:30 PM, the brother of the deceased left for a nearby

masjid for namaz. It is stated that around 6:30 PM in the evening, he was informed that his brother has been admitted to MeherNursing Home by some unknown people and that he was in an injured condition. It is stated that the brother of the deceased reached the hospital and was asked to take the deceased to another centre, but no vehicles were available. The deceased was then taken to GTB hospital where he was declared brought dead.

7. FIR No.159/2020 was registered on 21.03.2020 with respect to the death of Ashfaq 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. It is stated that on 26.02.2020, deceased was taken to GTB Hospital *vide* MLC No. D-01 with alleged H/o being injured in the evening of 25.02.2020 and he was declared dead there.

8. FIR No.163/2020 dated 22.03.2020 was registered at Police Station Dayalpur for offences under Section 147, 148, 149, 302, 34, 120B IPC with respect to the death of Mehtaab. It is stated that during investigation, the brother of the deceased informed the officials that he at around 2 P.M. on the day of the alleged incident, the deceased had ventured out to get milk. Around 6 P.M., the brother of the deceased was informed that the deceased had been admitted to Meher Nursing Home by some unknown individuals. On reaching the nursing home, the brother of the deceased was instructed to take the deceased to another hospital, however, he was unable to do the same as no ambulances were available. The deceased was later taken to

GTB Hospital where he was declared brought dead.

9. Chargesheets have been filed in the aforementioned FIRs for offences under Section 144,147, 148, 149, 188, 302, 120B and 34 IPC and the petitioner has been in judicial custody since 09.04.2020.

10. Bail application with respect to all the three FIRs were 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.

11. Mr. Rajeev Kumar Tiwari, learned Counsel for the Petitioner, has submitted that the Petitioner is an individual having clean antecedents, has never been involved in criminal or illegal activities, and that he has been falsely implicated in the present FIRs. He submits that the FIRs are *malafide* and concocted, and that while filing the chargesheet, the Police has also not investigated the case properly. He submits that there are no specific applications against the Petitioner and that the entire investigation and the present FIRs are based upon the statement of the sole eyewitness's statement i.e. Shashikant Kashyap, under Section 161 Cr.P.C. He submits that the statement of the eyewitness/Shashikant Kashyap is false as is indicated by the fact that despite knowing all the accused persons involved, he failed to name any one of them in his PCR calls that had been made on 25.02.2020 at 6:10 PM wherein he had described the incident leading to the death of the four victims.

12. The learned Counsel for the Petitioner submits that there exists

contradiction in the statement of the witness as the locations of the PCR call made by him indicates that he was present at the Brijpuri bus-stand which is contrary to the statement wherein he states that he had moved towards Brijpuri T-point for seeking help that led him to witness an incident which is registered in FIR No.87/2020. He submits that the statement of the witness should be brought into question as there was a Police picket at Brijpuri T-point where the Police force was standing, and it would have, therefore, been impossible to cross and reach the location that is elucidated by the PCR call.

13. Mr. Tiwari argues that the veracity of the statement of the eyewitness under Section 161 Cr.P.C. is further brought into question as the eyewitness had stated that all the deceased persons had died at one single spot whereas in FIR No.158/2020, 159/2020 and 163/2020, it has been specifically stated that the time and place of death of the four deceased are different. He further submits that the statements under Section 161 CrPC dated 09.04.2020 showcase that the deceased were killed by the mob during the riots, but as per the statements of the relations of the deceased, the deaths occurred due to one Police official. He states that this disclosure makes the statement of the witness highly doubtful and unreliable. Mr. Tiwari submits that placing reliance on a statement of a single eyewitness to convict the Petitioner herein is inconsistent with the rule of law and contravenes the Petitioner's rights as no piece of evidence has been brought on board for corroboration.

14. The learned Counsel for the Petitioner further argues that this Court in BAIL APPLN.823/2021 and BAIL APPLN.969/2021 in FIR No.87/2020 has granted bail to the Petitioners therein on the ground that the statement of eyewitness/Shashikant Kashyap could not be said to be wholly reliable. He

submits that on the ground of parity, the Petitioner herein should be given benefit of doubt and, thus, be granted bail. The learned Counsel for the Petitioner further submits that the alleged incident has occurred on 25.02.2020 at 5:30 PM and the statement of the sole eyewitness, namely, Shashikant Kashyap, had been recorded on 09.04.2020. He states that despite always being available to the Police officials, there was a delay of more than 44 days in the recording of the statement under Section 161 CrPC. He, therefore, states that if statements of witnesses are delayed by a substantial time, particularly when the witnesses are available with the Police officials, then a certain doubt is cast on the story that is being spurn by the prosecution and the accused invariably becomes entitled to bail.

15. The learned Counsel for the Petitioner submits that the statement of the eyewitness under Section 161 Cr.P.C. states that the eyewitness had seen the Petitioner hitting the deceased with a sword. However, the FSL report reveals that none of the incised stab wound would have been possible with a sword. He submits that the death of the deceased had been caused due to ante-mortem injuries and the weapon used to attack the deceased has not been recovered. He submits that the sword had been seized from the house of the Petitioner herein. He submits that the Petitioner was visible in the CCTV footage, but his presence only indicates that he was merely trying to defend the people of his community from the attack of a mob. He submits that the Petitioner has been in judicial custody since 09.04.2020 and as the chargesheet has already been filed, there is nothing that is required to be recovered from him and, therefore, the Petitioner should not be kept in further custody and no useful purpose would be served by keeping him behind the bars at this stage.

16. *Per contra*, Mr. Manoj Chaudhary, learned SPP, submits that during the investigation relating to the FIR No. 158/2020, 159/2020 and 163/2020, 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 torches 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 sword and on the basis of the same, he was arrested on 09.04.2020.

17. 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 from 4:19:23 PM to 6:44:44 PM. He submits that during investigation, a sword had been recovered from the person of the Petitioner.

18. 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. 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, *videa* common Order dated 22.04.2021.

19. 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.

20. Heard Mr.Rajeev Kumar Tiwari, learned Counsel for the Petitioner, and Mr. Manoj Chaudhary, learned SPP for the State, and perused the material on record.

21. A perusal of the three chargesheets reveals that during interrogation, 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 sword which was lying at 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.

22. The chargesheets reveal that the sword had been recovered by Inspector Surender Kumar during investigation of the case, along with the clothes that he had been wearing on the day of the alleged incident which had been captured in the CCTV footage, and after sufficient evidence was brought on record against the Petitioner, he was arrested. The chargesheets further reveal that the Petitioner had been seen in the footage of I.P. Camera 01_20200225155544.AVI dated 27.02.2020 at 16:39:46 hrs. located Chawla Kirana store showing main Brijpuri road, carrying a sword 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.

23. The chargesheets then go on to reveal that on 04.07.2020, an opinion of the Department of Forensic Medicine and GTB Hospital, Delhi was collected *vide* O.P. No.47/2020 dated 21.05.2020 in relation to the post-mortem No.353/2020 dated 28.02.2020 regarding deceased Zakir. This opinion states that after going through the post-mortem report and examination of article, i.e. sword, the autopsy surgeons had opined that none of the incised wounds were possible with the sword. However, of the injuries caused by blunt force, i.e. impact injuries No.8, 10, 11, 18 and 19, there existed a possibility that it was caused by the blunt edge of the sword. As per post-mortem No. 354/2020 dated 28.02.2020 regarding deceased Mehtaab, it was opined that injuries no. 1, 3, 4, 5, 6, 7 and 8 were produced by blunt force impact, and injuries no. 2, 9, 10 and 11 were caused by a sharp-edged weapon, with injury no. 9 being independently sufficient to cause death in the ordinary course of nature. Subsequent opinion of autopsy surgeons state that Injuries No. 1 and 7 could be possible by blunt edge of a sword, and Injuries No. 2, 10 and 11 could be possible by the sharp edge of

a sword. 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 states that injuries no. 10, 14, 24 to 26, and 29 to 31 were possible with a sword.

24. The charge-sheets further reveal that eyewitness/Shashikant Kashyap had identified the Petitioner pelting stones and carrying a sword 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. Further, the eyewitness/Shashikant Kashyap also identified the deceased Mehtab as he recalled that Mehtab was of unsound mind and would roam around the area.

25. A perusal of the material indicates that the Petitioner herein was recognised on the CCTV footage with a sword 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. Further, medical opinion pertaining to the post-mortem of the three deceased reveals that many of the injuries on the deceased could be caused by a sword. However, this too is a matter of trial.

26. 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 09.04.2020, 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.

27. 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.

28. In light of the above observations, the petitions are dismissed, along with pending applications, if any.

SUBRAMONIUM PRASAD, J

DECEMBER 10, 2021

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