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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 7th October, 2021

Decided on: 12th October, 2021

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BAIL APPLN.2581/2021

ANKIT CHAUDHARY @ FAUZI Petitioner

Represented by: Mr.Jitendra Bakshi and Mr.Pradeep
Teotia, Advocates

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Represented by: Mr. Amit Mahajan and Mr Rajat Nair,
Spl.P.P with Mr Dhruv Pande and
Mr.Shantnu Sharma, Advocates for
the State with Inspector K.C. Sharma.

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BAIL APPLN.3225/2021

RISHABH CHAUDHARY @ TAPAS Petitioner

Represented by: Mr. Rakesh Kumar, Ms.Navreen and
Ms.Tanisha Kaushal, Advocates.

versus

STATE NCT OF DELHI Respondent

Represented by: Mr. Amit Mahajan and Mr Rajat Nair,
Spl.P.P with Mr Dhruv Pande and
Mr.Shantnu Sharma, Advocates for
the State with Inspector K.C. Sharma.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By these petitions, the petitioners seek regular bail in case FIR No.103/2020 under Sections 147/148/149/302/201/120B IPC registered at

PS Gokulpuri, Delhi.

2. Learned counsel appearing on behalf of Ankit Chaudhary @ Fauzi contends that there are material contradictions in the statements of the alleged eye witnesses namely Narottam Singh, Mohit Sharma, Shivam Bhardwaj, Aman Saxena and Nisar Ahmed. The petitioner was first arrested in FIR No.41/2020 wherein there were no allegations under Section 302 IPC however, thereafter the petitioner has been implicated in 14 different FIRs including for offence punishable under Section 302 IPC. The dead body stated to be of Aamin has not been identified. As per the post-mortem report the dead body was of a Hindu male. When the dead body was recovered it was in a highly decomposed condition and thus could not have been identified by anybody. Even the father of the deceased stated that he identified the body from the clothes worn by the deceased. The location of the petitioner based on the call detail records does not show that the petitioner was present at the place of incident. The location of the petitioner at the relevant time is near his residence. No recovery has been effected from the petitioner. There is no CCTV footage which shows the involvement of the petitioner in the alleged offence. There is gross delay in recording of the statements of the witnesses and hence manipulation therein cannot be ruled out.

3. Learned counsel for the petitioner Rishabh Chaudhary @ Tapas contends that after the instances of commission of violence and riots nine bodies of persons from Muslim community were found on different dates in Bhagirathi Nala and in the nine FIRs registered for the said murders, eleven common accused including the present petitioners have been implicated based on the general allegations and statements of the same witnesses. The

said FIRs were registered on the basis of the applicant and other co-accused being members of a whatsapp group named '*Kattar Hindu Ekta*.' The petitioner has never been a member of the whatsapp group '*Kattar Hindu Ekta*' and there is no recovery from the petitioner or pursuant to his disclosure statement. The location of the petitioner based on his call detail records would show that the petitioner was at his residence and not at the Nala, that is, the place of incident which is under different cell towers. The petitioner has not been subjected to any test identification parade. Statements of the alleged eye witnesses are manipulated, vague and general in nature. The charge-sheet does not disclose as to how the police got to know that the dead body was of Amin and how they reached his parents. There is a considerable delay of two months in recording the statements of the prosecution witnesses. Even as per the eye witness Aman Saxena, whose statement has been heavily relied upon by the learned Trial Court to reject the bail of the petitioner, the deceased was aged 15 to 16 years whereas as per the post-mortem report the deceased was approximately 25 years old. The petitioner is a young boy aged 21 years with clean antecedents and has been falsely implicated.

4. Case of the prosecution against the petitioners is that on 1st March, 2020 on receipt of DD No.7A at PS Gokulpuri, the Investigating Officer reached the nala at C-Block, Bhagirathi Vihar, behind Ganga Vihar Shamshan Ghat and one male dead body was found lying in the nala. The body was taken out and it was found to be of a male aged 15 years, height 5' 5" and there were injury marks on the backside of the head. The dead body was in decomposed position and was thus shifted to RML Hospital where the doctor declared him brought dead. To identify the body whatsapp

messages were circulated in the area and based thereon on 13th March, 2020 Shahbuddin, the father of the deceased identified the body by the clothes worn by him. Thus, the post-mortem was conducted on 6th March 2020 as unknown. As per the post-mortem report the cause of death was opined to be due to head injury and its complication due to blunt force effect. It was opined that all the injuries were ante mortem in nature and the time since death was around 10-12 days. During the course of investigation blood samples of the parents of the deceased were taken and as per the DNA analysis report which has been received, the deceased was a biological son of Shahbuddin and Ameer Bano.

5. The prosecution relies upon the statements of five eye witnesses to the incident namely Narottam Singh, Mohit Sharma, Shivam, Aman Saxena and Nisar Ahmed.

6. Mohit Sharma in his statement recorded under Section 161 Cr.P.C. stated that he was working at Metro Depot making pneumatic brakes. On 24th February, 2020 he left his office at 4.00 PM and due to the riots in Khajuri Khas, he reached his home navigating his way to the riot hit areas. He reached home at about 5.30 PM and thereafter till 27th February, 2020 his parents did not let him go outside. He further stated that he was added in a whatapp group from mobile No.8287809349 which was named '*Kattar Hindu Ekta*' group. Every information regarding the riots was posted on the said group. On 26th February, 2020 at around 11.44 PM he received a message on the said group noting '*tumhare bhai ne abhi 9 baje k karibb.Vihar me 2 mulla mare he. aur nale me fenke he apni team ke saath*'. He further stated that later Lokesh @ Rajput told him that he along with his associates namely Sumit, Ankit Chaudhary, Pankaj, Prince, Monu,

Himanshu, Jatin, Rishabh, Awdesh Mishra @ Sardar, Monty Nagar, Vivek Panchal @ Nandu, Shekar, Mogli, Babu and Tinku were involved in the said riots where they were catching hold of people from one community and killing them. Similar statement was made by Shivam Bhardwaj.

7. As per the prosecution, Aman Saxena is the eye witness to the incident who claimed that he was doing a private job in a cloth shop at Gandhi Nagar. On 24th February, 2020 he left his house for work at 8.00 AM in the morning because he had to reach the shop by 9.00 AM. On the night when he was coming back home, he saw rioting going on at Zafrabad, Mauzpur etc. The next day on 25th February, 2020 he saw many people collected at Brijpuri Pulia and Bhagirathi Vihar Nala road wherein people from both the religions were present and were shouting slogans against each other. On 25th February, 2020 the condition became very bad since early morning and at about 7.00/7.30 AM he reached near the main nala road Bhagirathi Vihar and saw that some people belonging to one religion had gathered whose name he knew were Pankaj Sharma, Prince, Ankit, Sumit Chaudhary, Lokesh. Himanshu, Jatin, Vivek, Rishabh, Sahil, Awdhesh Mishra, Shekhar, Mogli, Baba, Tinku, Monty and Monu. These people were armed with lathis, dandas, stones and they were being incited by Ankit and Sumit. They were all near the Poolia and any person who was passing through, they stopped and checked their IDs and on finding the person from one religion they would attack him with sticks, rods and stones and thereafter threw the dead body in the nala.

8. Supplementary statement of Aman Saxena was recorded on the same day wherein he clarified that the incident occurred around 9.30 PM and not 9.30 AM.

9. Even Narottem Singh stated that while he was coming back on 24th February, 2020 somebody from the mob hit him due to which he fell down and after two-three minutes when he regained conscious he found that his motorcycle was missing. Thereafter he was searching his motorcycle. On 25th February, 2020 at around noon time he went to lodge his complaint of theft of the motorcycle however, his complaint was not received and he was asked to come later. While tracing the motorcycle when he reached near Bhagirathi Vihar drain, he found number of people gathered there who were checking everybody's ID and people belonging to one religion were being assaulted and injured. He identified the two petitioners among the other accused as the person in the said incident. Similar statement was made by Nisar Ahmed.

10. It is thus evident that the three witnesses have clearly identified the two petitioners with the other accused who were present at the spot and were looking at the IDs of each and every person and on being identified from the other religion, the said passer bye's were being assaulted. Since the accused have been named in statements of the witnesses, no TIP was required to be performed of the accused.

11. In the supplementary statement recorded on the same day it was clarified that the incident was around 9.30 PM in the evening. Thus the contention of learned counsel for the petitioners that there are material contradictions in the statement of the witnesses at the moment is prima facie not fortified.

12. The deceased has been duly identified to be the biological son of Shahbuddin and Ameer Bano. As regards the call detail record location of the petitioners is concerned, the petitioners are residing in the vicinity of the

place of incident and hence the tower location of the petitioners at the relevant time would not be sufficient to conclude that the petitioners were not present at the spot for the reason it may also be possible that the petitioners left their mobile phone at their residences.

13. Considering the nature of evidence against the two petitioners particularly the ocular testimony of the witnesses who are local residents this Court finds no ground to grant regular bail to the petitioners.

14. Petitions are dismissed.

15. Order be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

OCTOBER 12, 2021

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