



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

% ***Judgment Reserved on : 7th December, 2023***
Judgment Delivered on: 18th December, 2023

+ BAIL APPLN. 2372/2023

MOHD.MUSTAQEEM Petitioner
Through: Ms.Tara Narula, Ms.Bija Harinig,
Ms.Priya Sahil and Ms.Shivangi
Sharma, Advocates.

versus

STATE (GOVT OF NCT) OF DELHI Respondent
Through: Mr.Rajat Nair, SPP with Mr.Dhruv
Pande, Advocate for State.
Insp. Sanjay Gupta, Crime Branch.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

1. By way of the present application, the applicant seeks regular bail in FIR No. 75/2020 dated 28th February, 2020 under Sections 302/149/147/148/436/120B/34 of the Indian Penal Code, 1860 (IPC) registered at Police Station Dayalpur.
2. The present FIR has emerged out of riots and communal disharmony, which took place in certain parts of the North-East Delhi in the month of February, 2020 which resulted in the death of an innocent bystander.
3. The case set up by the prosecution is as under:-
 - I. An information was received at Police Station Dayalpur from GTB Hospital at 11:15 P.M. on 24th February, 2020 that one Rahul Solanki (hereinafter the deceased/victim) had received a gunshot injury at Shiv Vihar and was declared dead by the concerned doctor.



- II. On 25th February, 2020, the post-mortem was conducted and body of the deceased was handed over to his father, Hari Singh Solanki and the deceased's brother, Rohit Solanki. The statements, under Section 161 of the Criminal Procedure Code, 1973 (Cr.P.C.) of Hari Singh Solanki and Rohit Solanki were recorded on 26th February, 2020. Thereafter, the present FIR was registered.
- III. The investigation was initially conducted by the police officials of Police Station Dayalpur. Thereafter, on 7th March, 2020 the investigation was handed over to SIT, Crime Branch for further investigation.
- IV. During the course of the investigation, the place of incident was visited and local enquiry was made. It revealed that on the date of the incident, the deceased along with his cousin, Anil Kumar, had gone to purchase some grocery items in *Pal Dairy Wali Gali* when they noticed the presence of a large number of rioters present in the *gali* with rods, stones, pistols, etc. In this commotion, the applicant herein fired upon Rahul Solanki, causing his death.
- V. The statement under Section 161 of the Cr.P.C. of Anil Kumar, an eye-witness to the death-causing incident, was taken on 8th March, 2020.
- VI. The applicant was not named in the initial FIR. He was arrested based on the information given by an informer pursuant to a reward by the investigating agency. The informer identified the applicant on the basis of the applicant's photograph. The applicant was arrayed as an accused *vide* Supplementary Chargesheet filed on 1st December, 2020.
- VII. *Vide* order dated 6th March, 2023, charges have been framed against the applicant under Sections 147/148/153A/380/427/436/450/302 read



with Sections 149/188 of the IPC and under Sections 25/27 of the Arms Act, 1959.

4. The bail applications of the applicant were dismissed by the learned Sessions Court *vide* orders dated 30th June, 2021 and 11th May, 2023.
5. Counsel appearing on behalf of the applicant has made the following submissions: -
 - i. The applicant was neither named in the original FIR nor chargesheeted in the main Chargesheet. He was arrayed as an accused only *vide* a Supplementary Chargesheet dated 1st December, 2020, filed after a period of more than 9 months from the date of registration of FIR.
 - ii. The applicant was identified by the witness Anil Kumar only based on the 10-second mobile phone video clip along with screen grabs. It is submitted that the statements of the said witness dated 8th March, 2020 and 2nd April, 2020 have been recorded in a belated manner, have material contradictions and the later statement is an improvement to the earlier one.
 - iii. The applicant was identified on the basis of photographs/screen grabs of the aforementioned video clip, however as per the FSL Report dated 14th February, 2023, the figure of the applicant has not matched with the figure shown in the photograph.
 - iv. The gun and bullets recovered from the applicant could not be matched with the bullet recovered from the victim's body as per the FSL Report dated 17th September, 2021.
 - v. The applicant refused to join the judicial TIP proceedings as his photograph was taken by the Investigating Officer (IO) and shown to the witnesses, hence compromising the authenticity of the procedure.



- vi. CDR location cannot be a determinative factor as he is a resident of the area where the incident happened.
 - vii. The charges have already been framed and examination of witnesses shall take a considerable time. In view of the same, the applicant cannot be kept under incarceration for an indefinite period of time.
6. *Per Contra*, learned SPP, appearing on behalf of the State, has made the following submissions:-
- i. The applicant was part of the mob and was actively participating in rioting and looting. It is stated that he was seen carrying the pistol with which he allegedly killed the deceased.
 - ii. It is not the case of the prosecution that the applicant was identified by Anil Kumar solely on the basis of the aforementioned 10-second mobile phone video clip along with screen grabs. It is submitted that Anil Kumar has categorically identified the applicant and described him in detail in his statements dated 8th March, 2020 and 2nd April, 2020. The said video was merely used as an aid to pinpoint the applicant.
 - iii. Further, the applicant was identified by Anil Kumar during the pointing-out procedure held on 8th September, 2020.
 - iv. Additionally, the applicant refused to participate in the judicial TIP proceedings.
 - v. In respect of offences punishable by death or life imprisonment, as per Section 437(2) of the Cr.P.C, bail can be granted only if a positive finding is returned that as per material on record, there are reasonable grounds to believe that the accused has not committed the said offence. Therefore, a person charged of an offence punishable with death or life



imprisonment cannot be granted bail if *prima facie* material is available against him. Bail cannot be granted only on account of the long period of incarceration.

7. I have heard the counsels for the parties and perused the material on record.

8. In the present case, eye witness Anil Kumar, (cousin of the deceased) in his statement under Section 161 of the Cr.P.C on 8th March, 2020 has described the applicant as the person who had a helmet in his one hand and a pistol-like weapon in the other and who was wearing a blue t-shirt and had fired the bullet. The relevant portion of the transliterated statement is set out below:-

“Isi dauran ek bhari jism ka ladka jiske baye haath mein kaale rang ka helmet tha, dhahine haath mein pistol numa hathiyar tha, aur usne neeli t-shirt phena tha, mein ne mustafabad road ki taraf se gali ke andar ki ore daudta hua aya aur pal dairy ke godam ke saamne khade hokar, humari taraf goli chala di. Uske peeche uske saathi bhi the. Jo Goli seedhi aakar Rahul bhaiya ke gale mein samne ki taraf lagi aur goli lagte hi wo wahi, Narender ke ghar ke samne gir gaye va uske gale mein kaafi khoon nikalne laga.”

9. Subsequently, Anil Kumar in his next statement on 2nd April, 2020 identified the applicant in the photographs shown to him, as the heavy person wearing a helmet and blue t-shirt and who fired the shot. The relevant portion of the transliterated statement is set out below:-

“Photo No.1 mein jo mota tagda ladka hai jiska pet bhi nikla hai va neeli t-shirt va halka grey jeans phena hai va sir par helmet phena hai ussi ladke ne mere bhai Rahul Solanki par dinak 24.02.2020 ko goli chalai thi va us ladke ko mein ne kai baar arif chaabi wala jo gali No. 4-5, babu nagar mein kahin raheta hai ke saath baat karte hue dekha tha jo use janta va pehchanta hai.”...
“Mere bhai par goli chalan ke baad uss ladke ne ek baar helmet



uttara tha jisse mein saamne aane par pehchan sakta hun.”

10. Further, the applicant was identified by Anil Kumar during the pointing out procedure held on 8th September, 2020. The relevant portion of the transliterated statement is set out below:-

“..... Uss din usne grey rang ki jeans pant va neeli - rang ki t-shirt phen rakhi thi तथा शुरु mein helmet phen Rakha tha तथा Rahul ko goli maarne ke baad issne apna helmet Uttara tab humne uski shakal dekh li thi”

11. From the statements set out above, it appears that the applicant has been identified by the eyewitness Anil Kumar as the person who shot the bullet which killed the deceased. In light of these statements, it cannot be stated that the applicant has been identified only on the basis of the ten-second mobile phone video clip.

12. As regards the contention of the applicant of there being a discrepancy in the various statements made by the eye witness Anil Kumar and the inconclusiveness of the FSL Reports, the effect thereof can only be considered during the trial. The same cannot be considered at this stage and can be considered only at the stage of trial, on appreciation of evidence.

13. It is also pertinent to note that the applicant refused to participate in the judicial TIP.

14. On a prima facie view, there is material on record to show the involvement of the applicant in the alleged offences. I am in agreement with the submission of the learned SPP that the applicant cannot be granted bail only on account of long incarceration, as the applicant has been charged with offences punishable with death or imprisonment for life. Considering the aforesaid facts and circumstances in the present case and the fact that material



witnesses are yet to be examined, this Court does not find any ground to grant bail to the applicant at this stage.

15. Accordingly, the present application is dismissed.

16. Needless to state, that any observations made herein are purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the case.

AMIT BANSAL, J.

DECEMBER 18, 2023

at/rt