

\$~
*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 19.05.2021

Pronounced on: 24.05.2021

+ **BAIL APPLN. 1360/2021**

MOHD. MANSOORPetitioner
Through: Mr. Tanveer Ahmed & Mr.Kartik
Venu, Advocates

Versus

STATE OF NCT DELHIRespondent
Through: Mr. Amit Prasad, Special Public
Prosecutor, Mr.Saransh &
Mr.Ayodhya Prasad, Advocates
With Inspector Gurmeet Singh
Crime Branch

**CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

JUDGMENT

1. The petitioner has filed the present petition seeking bail in FIR No. 60/2020, registered at police station Dayalpur, for the offences under Sections 186/353/332/333/323/109/144/147/148/149/153-A/188/336/427/307/97/412/302/201/120-B/34 IPC read with Section 3/4 of Prevention of Damage to Public Property Act, 1984, read with Sections 25/27/54/59 Arms Act,1959.

2. The FIR in question was registered on 25.02.2020 at the instance of

Constable Sunil, posted at police station Dayalpuri, Delhi, who on 24.02.2020 along with other members of the police team was deployed at Chand Bagh, Delhi, and were brutally attacked by mob during riots. In the alleged incident, Head Constable Ratan Lal lost his life and DCP Shahdara and ACP Gokulpuri sustained grievous injuries.

3. During the course of investigation, witnesses were examined; their statements under Section 161 Cr.P.C. were recorded; crime spot was inspected by the crime team; CCTV footages were retrieved from the cameras installed by GNCTD and private persons; other exhibits were collected and sent to FSL for expert opinion. Upon analysis of the CCTV footages, the persons involved in the riots were identified and 22 persons, including petitioner, were arrested. Consequently, charge sheet in this case was filed on 08.06.2020. Thereafter, four supplementary charge sheets have been filed on 30.06.2020, 20.08.2020, 17.11.2020 and 30.12.2020 respectively.

4. At the hearing, Mr. Tanveer Ahmed, learned counsel appearing on behalf of petitioner submitted that petitioner's name was not there in the FIR in question and in the charge sheet. Thereafter, prosecuting agency further investigated the case and filed three supplementary charge sheets, still

petitioner was not charge sheeted. However, his name has been mentioned in the fourth supplementary charge sheet and the only allegations against the petitioner is that in the footage of CCTV camera installed by GNCT of Delhi and a video shot by one Vishal Chaudhary, he is seen as part of the mob and pelting stones.

5. On the aforesaid aspect, it has further been pleaded on behalf of petitioner that vide order dated 28.11.2020 petitioner was granted bail in FIR No. 136/2020, where the prosecution had alleged that in the CCTV footage of PWD camera, petitioner was seen carrying a 'danda' in his hand, whereas in the CCTV footage played before this Court, petitioner is seen walking empty handed. Further pleaded that in the CCTV footage the size of the person sought to be identified is less than 01 cm and the prosecution itself is unable to identify who actually the accused is.

6. Learned counsel further submitted that the prosecution has relied upon testimony of Head Constable Mukesh, whose statement has already been rejected by the trial court in order dated 28.11.2020. Further submitted that in the alleged incident, unfortunately Head Constable Ratan Lal lost his life but it is not the case of prosecution that the petitioner was found in possession of pistol or rifle. Learned counsel also submitted that no weapon

of offence has been recovered from petitioner and being the local resident of the area in question, it is obvious that call detail record would show petitioner's presence in the said area.

7. In addition, learned counsel submitted that petitioner is suffering from 'Acute Transient Psychotic Disorder' (ATPD) and he was admitted at Institute of Human Behaviour and Allied Sciences, Dilshad Garden, Delhi (IHBAS) from 19.12.2019 to 24.12.2019 and later was examined again on 17.02.2020 and was diagnosed having a disease in the nature of 'acute ailment' and, therefore, on 24.02.2020 petitioner was suffering from the above mental disorder.

8. Lastly, learned counsel submitted that Mohd. Danish, co-accused in the present FIR case, has been granted bail by this Court and petitioner has a good case on medical grounds as well as on merits and so, this petition deserves to be allowed.

9. On the contrary, learned Special Public Prosecutor has opposed the present petition by submitting that petitioner is a resident of Chand Bagh and as per his call detail records, he was present at Main Wazirabad Road, Chand Bagh where the alleged incident had taken place on 24.02.2020. The petitioner had actively participated in the riots, he was a part of unlawful

assembly and has been duly identified by Constable Mukesh. Learned Special Public Prosecutor played the video footage procured from CCTV camera installed by GNCTD and video clipping shot by independent witness Vishal Chaudhary, which he prepared from the terrace of Gym Body Fit Garage, to submit that petitioner was a part of the mob and involved in pelting stones upon the police personnel on duty. Next submitted that in these videos petitioner is clearly seen as wearing dark brown colour *kurta* with white check & yellowish *Payjama* (lower). Further submitted that petitioner with intention to destroy evidence, had destroyed his mobile phone and burnt his clothes.

10. Learned Special Public Prosecutor also submitted that the learned petitioner's counsel submission that petitioner was suffering from ATPD and reliance placed upon a document dated 17.02.2021 to show that petitioner was under treatment, is accepted at Bar, however, submitted that there are different *subtypes of ATPD, some of which have a maximum duration of symptoms for one month and others for a maximum duration of 3 months.*

11. Lastly submitted that in the alleged incident Head Constable Ratan Lal died due to pistol fire shot and DCP Shahdara and ACP Gokulpuri had

sustained serious injuries. Moreover, witnesses to the case live in the vicinity where petitioner lives and if petitioner is enlarged on bail, it would endanger their lives.

12. In rebuttal, learned counsel for petitioner submitted that the fire shot from which Head Constable Ratan Lal was shot from the roof of Mohan Nursing Home, whereas in the CCTV footage and video clipping played before this Court, petitioner's hands are empty and no recovery has been made from his possession and, therefore, no case is made out against the petitioner and hence, petitioner deserves bail in this case.

13. The submissions advanced by both the sides were heard at length and the material placed on record has been carefully considered.

14. From the CCTV footage and video clip played before this Court, there is no iota of doubt that petitioner was a part of mob, which had disturbed the peace and harmony of different communities by creating riots on 24.02.2021. In the still photographs shared on the screen before this Court, petitioner has allegedly been shown wearing dark brown colour *kurta* with white check & yellowish *Payjama* (lower). It is also apparent that the said person (allegedly petitioner) is following the mob, walking empty handed and in another clipping, he can be seen picking up stones from the road and

pelting on the police personnel who were trying to stop the mob. Hence, the role attributed to the petitioner is being part of mob and of pelting stones on the police officials on duty.

15. So far as the submission of learned petitioner's counsel that the identification of petitioner is different in the CCTV footage played before this Court and that the one before the trial court is concerned, the learned trial court in the order dated 28.11.2020 while granting bail to the petitioner in FIR No. 136/2020, registered at police station Dayalpur, Delhi, in Para-11 has observed that the prosecution had opposed the bail on the strength of CCTV footage wherein petitioner could be seen holding a "danda" in his hands and of having been specifically identified by official witness Beat Constable Mukesh, but has doubted the statement of this witness Mukesh. Though this Court refrains from commenting upon the credibility of Mukesh amidst trial, yet takes notice of the fact that the identification of petitioner by the prosecution before the trial court and this court is at variance. In one of the videos played before this Court, a person (allegedly the petitioner) 'showing his back' and walking with the mob is shown, whereas in another clipping, the distance between the camera and person is such that the face and features cannot be seen clearly to identify correctly as to who the person

is. Further the case of prosecution is that petitioner had burnt his clothes to hide his identity and these facts, *prima facie* brings the case of prosecution under cloud.

16. Further the plea taken on behalf of the petitioner is that at the time of alleged incident, he was suffering from Acute and Transient Psychotic Disorder (ATPD) and this mental disease indicates that the patient would suffer from delusions, hallucination, inconsistent and incoherent speech and behaviour. To that effect, various medical prescriptions from IBHAS have been placed on record to show that petitioner was hospitalized from 19.12.2019 to 24.12.2019 and lastly examined on 17.02.2020. In this regard, the stand of prosecution is that there are different subtypes of ATPD, some of which have a maximum duration of symptoms for one month and others for a maximum duration of three months. The fact remains that the ground of mental illness or fitness of petitioner is a matter of trial and if the person shown in the CCTV footage and video played before this Court is the petitioner, then he was a part of mob involved in riots and has pelted stones on the police personnel with an intention to cause injury and harm and to stop them in performing their duties. However, nothing stops the parties to establish their case at trial.

17. Moreover, fourth charge sheet in this case has already been filed and trial shall take substantial time. The petitioner is behind bars in this case since 19.11.2020 and in view of facts and circumstances of this case, this Court finds that petitioner cannot be made to languish behind bars for an indefinite period of time.

18. In view of the above, without commenting on the merits of the case, the petitioner is directed to be released on bail forthwith upon his furnishing personal bond in the sum of Rs.20,000/- with one surety in the like amount, to the satisfaction of the Trial Court/ Duty Magistrate, while making it clear that any observation made herein shall not influence either side during trial.

19. The petitioner shall not directly or indirectly influence any witness and shall appear before the trial court as and when directed.

20. A copy of this order be transmitted to the Trial Court and Jail Superintendent concerned for information and compliance.

(SURESH KUMAR KAIT)
JUDGE

MAY 24, 2021

r