

\$~37

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

+ BAIL APPLN. 3098/2021

MOHD BILAL

..... Petitioner

Represented by: Mr. Feroz Khan Ghazi, Ms. Nagma Naaz, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Represented by: Mr. Anuj Handa, SPP for State with Mr. Sarang Shekhar, Adv. with Insp. Data Ram Yadav, PS Crime Branch.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

06.10.2021

%

The hearing has been conducted through Physical Mode.

1. By this petition the petitioner seeks regular bail in case FIR No. 138/2020 under Sections 147/148/149/435/186/353/302 IPC registered at PS Welcome.
2. Learned counsel for the petitioner states that the petitioner is not seen in the video recorded by the police. Based on the CCTV footage of 24th February, 2020 the petitioner cannot be implicated for the incident dated 25th February, 2020. Statement of Babu Dule cannot be relied upon for the reason he could not have witnessed the place of incident from where he is claiming to have seen the same. Constable Sunder is not an eye-witness to the incident and has identified as per the CCTV footages.
3. Case of the prosecution is that on 25th February, 2020 a mob of about

100-150 persons armed with rods, lathis, stones and firearms gathered in front of Shamshan Ghat, Kabir Nagar and started raising slogans against Government to protest against CAA, NRC etc. On duty police officers from PS Welcome and District Line of North East District were present there to control the mob. The Police officials warned the members of unlawful assembly bringing to their notice that Section 144 Cr.P.C. has been promulgated in the area from 24th February, 2020. The mob indulged in arson, stone pelting and firing towards the Police officers on duty. At about 1.40 PM one member of the rioting mob namely Mudassir sustained bullet injury and was later declared brought dead. Initially FIR No. 94/2020 under Sections 143/144/147/148/149/323/307/302 IPC read with Section 27 Arms Act was registered at PS Welcome in respect of murder of three persons, including deceased Mudassir and rioting in the area. However, thereafter the FIRs were separated and for the incident of riot and murder of Mudassir, separate FIR being FIR No. 138/2020 was registered.

4. As per the post-mortem report the cause of death of the deceased was '*shock as a result of ante-mortem injury to head produced by projectile of firearm*'. The post-mortem notes an entry wound from the right side of the head of the deceased Mudassir. Statement of the wife of the deceased was recorded on 28th March, 2020 wherein she stated that on 25th February, 2020 at about 1.40 PM some unknown persons brought Mudassir in Gali outside their residence in unconscious condition stating that the deceased sustained bullet injury near Shamshan Ghat, Kabir Nagar. Her husband was taken to GTB Hospital where he was declared brought dead.

5. To bring home the charge against the petitioner, the prosecution relies on three pieces of evidence; firstly that the petitioner Mohd. Bilal was seen

damaging the CCTV cameras on 24th February, 2020 near the spot, secondly, statement of witness Babu Dule in relation to the dislocation of the cameras on 24th February, 2020 as also having witnessed the incident on 25th February, 2020, and thirdly statement of Constable Sunder who has identified the petitioner on the basis of CCTV footages

6. It is the case of the prosecution that due to riots, videographs were taken of the various places where rioting were going on. In relation to the incident resulting in the death of Mudassir, a video clip of 35 seconds is available. In the said video recording, the deceased Mudassir is seen standing with the mob, and is also seen falling down after receiving the projectile. However, in the video recording clip of 35 seconds which is focussing on the mob, petitioner is not visible. However, the case of the prosecution is that the petitioner was behind the wall, where Mudassir was standing and which was seen by Babu Dule from his house. This Court has seen the video footage No. 464 which is a 35 seconds video clip. One fails to understand that while the videography was going at the spot, why videography of only 35 seconds when Mudassir got injured was captured and it did not have any videography prior thereto or thereafter, for the reason the same would have captured all the people around the place of occurrence. Be that as it may, as noted above the videography conducted by the Police to keep a watch on the people protesting does not show the presence of the petitioner.

7. The star witness of the prosecution is Babu Dule who stated that he was residing at House No. D-75/76, Gali No.3, Kabir Nagar and on the ground floor of the house he was selling iron sheets. He stated that CCTV cameras had been installed outside his house by the Delhi Government and

on 24th February, 2020 at about 12.00 Noon some boys collected and on seeing the CCTV camera towards his side stated that the CCTV cameras will have to be broken otherwise they will capture the events. After some time, one boy named Bilal i.e. the petitioner brought a ladder and on climbing the ladder, he diverted the focus of the camera. Babu Dule further stated that on the next day i.e. 25th February, 2020 at about 12.00 Noon some people again came for protesting against the CAA law and they were armed with lathies, dandas and pistols. They all collected at Shamshan Ghat, Kabir Nagar. He stated that Bilal was armed with pistol in his hand and was shouting slogans. After some time Police used tear gas, on which the rioters started pelting stones and burnt bundle of wires lying there. According to him in the said mob Bilal was also there along with the other rioters and was standing behind the wall towards the drain and was firing towards the Police. Some other boys were also firing. Around 1.30/2.00 PM one person who was amongst the rioters fell down due to firing and he was taken to hospital, whose name was later revealed as Mudassir @ Mullahji. When some boys were running from there, he heard them say that Bilal has fired at Mullahji.

8. In his statement Constable Sunder stated that there was mob which was pelting stones at the Police and out of the said mob he identifies Zahid, Asif, Amir @ Jonti, Sallauddin, Imran @ Cheera and Bilal. Constable Sunder identified Bilal as the person who diverted the focus of the camera installed in front of the house of Babu Dule, based on the CCTV footage of 24th February, 2020.

9. A perusal of the statements of the two witnesses clearly show that the petitioner was the one who has changed the focus of the CCTV camera on

24th February, 2020. However, as regards the incident dated 25th February, 2020 is concerned, the main witness who claims that the petitioner was present with a pistol in his hand and from his pistol the deceased Mudassir received the shot is Babu Dule. A perusal of the 35 seconds video footage covered by the Police would not show presence of the petitioner. Case of Babu Dule is that the petitioner was at the back of the wall towards the drain, however when this Court wanted to know the location of Babu Dule's house from the video footage, Babu Dule's house could not be seen in the video footage. It is claimed that the house of Babu Dule was in a side lane and thus the possibility of his being able to see the exact incident in a mob of hundreds of people from his residence is too remote.

10. Considering the nature of evidence against the petitioner and the fact that the petitioner has been in custody since 22nd June, 2020, this Court deems it fit to grant regular bail to the petitioner. Consequently, the petitioner is directed to be released on bail on his furnishing a personal bond in the sum of ₹50,000/- with two surety bonds of the like amount subject to the satisfaction of the learned Trial Court, further subject to the condition that the petitioner will not leave the country without the prior permission of the Court concerned and in case of change of residential address and/or mobile phone number, the same will be intimated to the Court concerned by way of an affidavit.

11. Petition is disposed of.

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

MUKTA GUPTA, J.

OCTOBER 06, 2021

'ga'