

**IN THE COURT OF PULASTYA PRAMACHALA
ASJ-03, NORTH-EAST DISTRICT
KARKARDOOMA COURTS: DELHI**

IA 36/23 (Lokesh Solanki @ Rajput)

CNR No. DLNE01-002726-2020

SC No. 135/20

State v. Lokesh Solanki & Ors.

FIR No. 102/20

PS Gokalpuri

U/s.144/147/148/302/201/427/120B IPC r/w. Section 149 IPC

31.07.2023

Bail Order

Vide this order, I shall decide bail application u/s. 439 Cr.P.C., moved on behalf of applicant Lokesh Solanki @ Rajput.

1. Briefly stated, applicant is facing trial along with co-accused persons for several charges including charges u/s. 302 IPC r/w. 149 IPC. In this case, on 02.03.2023 a call was received to the effect that a dead body of a person was found in Ganda Nala road, Bhagirathi Vihar. The dead body was taken out from the nala and removed to RML Hospital and during the course of investigation, the dead body was identified to be of one Hamza. The postmortem of the dead body was conducted and as per postmortem report, cause of death was opined to be 'force which has caused inflicting of such injuries could be a heavy blunt weapon such as axe, brick flat and broadened wooden frame etc. for some of the injuries mentioned and also could be fall on surface for other injuries.
2. As per reply filed by IO, 7 public witnesses have been examined in this case, which include cited eyewitnesses. Out of these 7

PWs, only PW2/Sh. Nisar Ahmed has identified the accused/applicant. However at the same time, it is also informed by Id. Special PP that this incident had taken place on 26.02.2020 at about 09:15 PM and PW2 did not see any mob at that point of time.

3. Ld. Special PP submitted that the applicant was member of WhatsApp namely, Hindu Kattar Ekta and on same night at about 11 p.m., he had posted message on this group regarding killing of two muslim persons.
4. Ld. defence counsel submitted that identification by PW-2 is not of any use, because he was not present at the place of incident and at the time of incident. He further submitted that no chat was found in the mobile phone of the applicant and the messages in WhatsApp chat are not credible piece of evidence.
5. I have gone through the records.
6. As per record, PW2 deposed about riots from 24.02.2020 up to 26.02.2020. However, it is borne out from his testimony that on 25.02.2020 itself he had shifted to other place. His statement regarding murders taken place on 26.02.2020 appears to be based on hearsay evidence and for such reasons he could not identify any person involved in the killings on 26.02.2020. Other cited eyewitnesses have not supported the case of prosecution. Thus, in nut shell, till now eyewitnesses of the prosecution have not supported the case of prosecution in unequivocal manner, regarding identity of the accused persons.
7. The question is that whether the alleged messages from the mobile phone of the applicant in the above mentioned WhatsApp Group should be ground to refuse bail to the applicant, especially when alleged eyewitnesses did not support prosecution to

identify the applicant. Admittedly the WhatsApp chats placed on the record were obtained from the mobile phone of witnesses namely Shivam Bhardwaj and Mohit. Such chats were not found in the mobile phone of applicant as allegedly he had deleted this account. Aforesaid two witnesses did not support the prosecution in respect of being aware of aforesaid chats.

8. Thus, this would be one piece of circumstantial evidence and sufficiency as well as credibility of the same will be subject matter of appreciation at the final stage of the case. In my opinion, it shall not be fair to refuse bail only on the grounds of above mentioned piece of circumstantial evidence.

9. Keeping in view all these facts and circumstances, bail application is allowed and applicant Lokesh Solanki @ Rajput is admitted to bail, on his furnishing P/B and S/B in the sum of Rs.5,000/- each with one surety in the like amount, subject to the following conditions: -

- (1) Applicant/accused shall not leave India without express permission of the court.
- (2) Applicant and his surety shall intimate the court immediately after any change in their addresses or other particulars.
- (3) Applicant shall not try to influence any other witness of this case.
- (4) Applicant and his surety shall mention their mobile numbers to be used by them during the period of bail.

Copy of order be sent to Jail Superintendent for intimation to the applicants.

(PULASTYA PRAMACHALA)
ASJ-03(NE)/ KKD Courts/ 31.07.2023