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

+ CRL.M.C. 441/2011

PUSHPA DEVI

..... Petitioner

Through: Mr.A.K.Vali, Advocate

versus

STATE GOVT OF NCT OF DELHI & ORS Respondents

Through: Ms.Ritu Gauba, APP

Mr.Manaranjan Kumar, Advocate
for R-2.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

ORDER

17.11.2011

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1. By virtue of the present petition u/s 482 Cr.P.C. r/w 439 (2) Cr.P.C., the petitioner has assailed the order dated 14.01.2011 passed by Ms.Savita Rao learned ASJ granting bail to one Sonu Singh. The contentions of the learned counsel for the petitioner is that while granting bail to Sonu Singh, the learned Sessions Judge has grossly ignored the factual matrix to the effect that deceased had named Sonu also as an accomplice of Neeraj while committing the offence of dragging and pouring petrol on him and then setting him ablaze. It has been contended that the observation of the learned Sessions Judge to the effect are not supported from the statement of the deceased. For this purpose learned counsel has drawn the attention of the Court to the

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physical file have been compared and
the digital data is as per the physical
file and no page is missing.

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statement of the deceased at page 34 of the paper book wherein the description of the incident has been given.

2. It has also been submitted by the learned counsel for the petitioner that accused Sonu Singh after release on bail has been advancing threats to life and property of the petitioner as a consequence of which the petitioner and his family members had to sell their residence which was by the side of the residence of Sonu Singh and, therefore, his continuance on the bail any further is not conducive to the holding of the fair trial. The learned counsel has also placed reliance in order to support his submission on a case titled Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan & Anr 1987 2 SCC 684 wherein it has been observed as under:-

"Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case."

3. As against this learned counsel for the accused has justified the order of grant of bail by contending that ground on which the cancellation of bail has been sought is not tenable. It is contended that the petitioner has not been able to show any arbitrariness and irrationality in the order of grant of bail much

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less the continuance of the accused is not conducive to the fair trial. In this regard learned counsel has referred to the judgment of the Apex Court in case titled as CBI Vs. Subramani Gopalkrishnan & Anr. (2011) 5 SCC 296, wherein it has been observed that there must be overwhelming consideration for cancellation of the bail once the same is granted to an accused.

The exact language used by the Apex Court is as under:-

"It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due manner. These are all only few illustrative materials. The satisfaction of the court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether nay supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

4. I have considered the rival contentions and gone through both the judgments. I do not agree with the learned counsel for the petitioner that there has not been any proper exercise of discretion by the learned Sessions Judge while granting bail to Sonu Singh. Although grant of bail is a matter of discretion and

in a non-bailable offence it is very difficult to apportion the blame at the time of grant of bail in a case where Section 34 is invoked. But nevertheless the Court has to take the overall view of the evidence in this regard. In the instant case the Sessions Judge has rightly relied upon the testimony of the purported statements of the deceased where he says that the scuffle had taken with all the accused persons but while talking about pouring of petrol and setting him ablaze he specifically telling about Neeraj alone. Seen in this context no specific act is attributed to the Sonu Singh. It is in this context that the learned Sessions Judge has taken this decision of extending the grant of bail to accused Sonu Singh. I do not feel any justification for disturbing the observation of the learned Sessions Judge. The other ground on which the bail would be cancelled is when he continued to be a threat to the holding of fair trial inasmuch as the accused would be administered some threats or created conditions which impeded the holding of a fair trial then also bail could have been cancelled. In this regard, Mr.A.K.Vali learned counsel for the petitioner has stated that threats have been administered by Sonu Singh but I do not consider them to be real and genuine inasmuch as said submission is not matching by the contemporaneous conduct of

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the complainant/petitioner.

5. Having regard to the totality of the circumstances, I do not feel it is a fit case where Court ought to exercise its power u/s 482 Cr.P.C. in order to disturb the exercise of discretion by the learned Sessions Judge in favour of respondent No.2. However, an expression of any opinion hereinbefore may not be considered as an expression on the merits of the case and foreclosing the rights in event of mutual settlement arrived at between either of the party.



V.K. SHALI, J

NOVEMBER 17, 2011

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