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

+ **Bail Application No.1382/2011**

% Judgment delivered on:12th October, 2011

JITENDER CHOWDHARY @ JATAN

RAJENDRA

..... Petitioner

Through:Mr. Sudhir Nandrajog, Sr. Adv.
with Mr. Rajendra Sahu,
Ms.Hema Sahu, & Mr.Rishabh
Sahu, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through : Ms.Rajdipa Behura, APP for
State.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No. |
| 2. To be referred to Reporter or not? | No. |
| 3. Whether the judgment should be reported
in the Digest? | No. |

SURESH KAIT, J. (Oral)

1. Vide the instant petition the petitioner Jitender Chowdhary @ Jatan Kumar has sought to be released on bail in the case FIR No. 333/2006 dated 21.06.2006 registered at PS-Anand Vihar under Section 365 of the IPC.

2. Mr.Sudhir Nandrajog, Ld. Senior Advocate appearing for

petitioner/accused submits that on 15.6.2006 missing report of deceased Shailender was registered at the aforesaid Police Station, whereas as per the prosecution story the missing information was telephonically received by Mr. Prahlad Singh from Ms. Deepshikha on 14.06.2006, whereby she informed about the kidnapping of the deceased by the accused persons. Ld. Senior Counsel has pointed out that this information by the informant Mr. Sahib Singh, neither transmitted to the Police nor mentioned in the FIR.

3. Further submits that the investigation of this case was transferred to Special Cell, Lodhi Colony on 25.8.2006. Before transfer, on an application moved by the local police the Ld. trial court issued non-bailable warrants against the applicant / accused. Thereafter, applicant /accused was arrested on 03.09.2006 from Agra, UP.

4. Ld. Sr. Counsel argued that PW-1 Sahib Singh, PW-2 Prahlad Singh & PW-6 mother of the deceased have not identified the wrist watch of the deceased, allegedly recovered by the police.

5. Further submits that Ms. Saloni Arora, girl friend of co-

accused Deepak has been charged u/s 182 read with Section 201 IPC for giving false information and destruction of the evidence as she stated that she has damaged the Sim Card of the Mobile Phone. Ms. Saloni Arora, filed Revision Petition against the said order in this Court and vide Order dated 25.09.2009 all other charges have been set aside except charge U/s 182 Indian Penal Code.

6. Ld. Senior Counsel has further referred to the deposition of PW-1 Sahib Singh, who stated that deceased Shailender was having two mobile phones. He was unable to recollect the entire phone numbers, however could tell only last two digits 441 and 439. Deepshikha was the girlfriend of Shailender. He used to keep one mobile phone with him. He had given one mobile phone bearing the last digit 441 to Deepshikha. Shailender and Deepshikha used to talk to him on mobile phone. PW-3 deposed that Mr. Prahlad told him these facts, which were told to him by Ms. Deepshikha that Mr. Shailender was in custody of accused Deepak, Jitender (applicant / accused), Adesh Chaudhary and Saloni Arora and they may kill him.

7. Ld. Sr. Counsel has further referred to the cross-examination of PW-1 Sahib Singh, who admitted that whatever had been disclosed by him to the Duty Officer, the same had been recorded by him in DDR. He had gone through the entry No. 9A before putting his signatures. He had also not discussed with Jagdish or Prahlad as to what should have been incorporated in the missing report. Further stated that on 21.6.2006 also Prahlad and Jagdish were with him, when he had lodged the FIR. Further admitted that whatever had been told to the Police on 21.6.2006, the same had been recorded by the police officials. He had Ex.PW1/E after the report lodged on 15.6.2006.

8. Therefore, he submits that applicant / accused is not connected with the crime. There is no other evidence except the recovered wrist watch and gold ring of the deceased. Even FSL Report does not support the prosecution story.

9. Further submits that all family members of the deceased and public witnesses have already been examined. There is no apprehension of any threat or pressure on

witnesses.

10. Ld. APP for the State submits that it is true that missing report was given to the Police on 15.6.2006. Before that family of the deceased were searching on their own. Though the information received on 14.6.2006 from Deepshikha regarding the abduction of the deceased by the accused persons, somehow due to the fear that anything could happen to the deceased, they did not inform the name of the accused persons at the time of registering the FIR. But, this much information has already been given that deceased was in trouble and kept in a place where he may be killed by the accused persons.

11. She has further argued that applicant is the brother of Deepshikha who was having love affair with the deceased. The applicant / accused was not happy with this relationship. Therefore to eliminate the deceased he conspired with the co-accused and committed the offence.

12. Further submits, accused persons took the aid of one Saloni, who called on Shailender on mobile phone. The investigating team has verified the call and found to be the

correct. Co-accused Saloni has disclosed that she was sitting in a Santro Car, whereas the deceased was taken in a Wagon-R belongs to Saloni. The deceased was killed in the car itself and thereafter his body was thrown in Gang Nahar, Murad Nagar, UP. However, the body could not be recovered.

She submits, the guilt of the applicant / accused has been corroborated by the deposition of Saheb Singh. After the commission of the offence, the aforesaid car, which was used in the Offence was taken by co-accused Deepak Singh for dry-cleaning at Bagga Link Motors. This has also been corroborated by the Supervisor of the Bagga Link Services.

13. More so, co-accused Adesh Chaudhary was admitted to bail vide order dated 9.4.2007, thereafter he threatened Jagdish Prasad. Accordingly, case u/s 506/341 Indian Penal Code, 1860 was registered against him. On 04.01.2008 Jagdish Prasad, father of the deceased was killed on the direction of Tejbir, maternal uncle of the applicant / accused and father of co-accused Deepk Singh. Accordingly a case

under Section 302/120B/34 Indian Penal Code, 1860 was registered at PS Iglash, Aligarh, UP. All the accused were arrested in the said case.

She further submits, thereafter, a false case u/s 406 Indian Penal Code was got registered against Saheb Singh and his brother-in-law Prahlad at PS-Taj Ganj Agra, UP. The Police investigated the case and found that the above two persons Saheb Singh and Prahlad Singh were not in Agra on that day and in fact they were in Delhi and casted their votes in Assembly Elections at Delhi.

14. Witness Deepshikha turned hostile during trial. Perusal of the record reveals that deceased Shailender was in love with Deepshikha. Therefore, to save the accused persons, she has not supported the case of the prosecution. More so, she wrote a letter to DM before this incident. The copy of the original letter was recovered from co-accused Adesh Chaudhary, whereas the photocopy of the same was recovered from search of the bag of deceased by the father of the deceased. The same was handed over to the Investigating Agency. Some photographs of Deepshikha and

Shailender were also handed over to the Police, which proves that Deepshikha and Shailender were in relationship and they wanted to marry each other, to which the applicant / accused and his family members were not agreeable.

Further submits, the charges against co-accused Saloni have been dropped by this Court and left only one Charge under Section 182 Indian Penal Code, 1860. The State has taken decision to challenge the same by filing the SLP in the Supreme Court.

15. Further submits that CFSL Report is also against the accused where it is recorded that the hand writing of the letter was found to be of Deepshikha. In the present Case, total witnesses are 39, out of which only 16 witnesses have been examined.

16. It is not the case where he may threaten the material witnesses including the complainant. All the family members have been examined. He is somehow connected with the crime as the deceased was having relationship with his real sister namely Deepshikha. The past experience is also not positive as the father of the deceased has already been

eliminated by the closed relatives of the applicant / accused. The murder in the present case alleged to be a planned murder. So, I am not giving any opinion on this issue since the matter is pending for evidence. After admitting the co-accused on bail, the father of the deceased has been eliminated.

In these circumstances, I am not inclined to admit the petitioner/accused on bail.

17. Keeping the above discussion in view, the instant bail application is dismissed.

18. No order as to cost.

SURESH KAIT, J

October 12th 2011

JG