

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			BA3 No30 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Pawan Mishra, learned counsel for the applicant. Mr. S.C. Dumka, learned Assistant Government Advocate for the respondent. This is the third bail application preferred by the applicant seeking his release on bail, for his alleged involvement in Case Crime No.278 of 2019, under Sections 302, 364, 201 and 120B of the IPC. The first bail application was dismissed as withdrawn on 22.07.2021. The second bail application was dismissed on merits on 02.01.2023. The third bail application has been preferred on 05.05.2023 by the learned counsel, who earlier was the counsel of the other co-accused persons, who have been granted bail. It is contended that, when the present counsel was engaged, then only it could be divulged to him with regards to the facts, which have been argued now for the first time by the learned counsel for the applicant, which are being discussed

		hereunder. The question would be, as to whether the lack of diligence with the counsel, who has argued the first bail application or the second bail application, which stood rejected, could be rectified or elaborated upon on merits by inducting a new counsel, when it involves no new facts or circumstances. Based upon the wisdom, which this noble profession has, while pressing the bail application, the learned counsel for the applicant has argued the bail application from the following perspectives and it would be apt to remark, that all these perspectives were already available to the applicant at the stage when the second bail application was considered and rejected on merits on 02.01.2023. Primarily, it was rejected on the ground, almost after considering the aspects of bail being granted to the other co-accused, because the aspect pertaining to the grant of bail to the co-accused persons, was a fact, which had chanced prior to the bail application filed by the applicant on 22.02.2021 and 30.09.2022 respectively. Hence, it would not be a new ground, as of now, to press the third bail
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			application by the applicant. Learned counsel for the applicant has argued the third bail application from the following perspectives:- 1) That the earlier counsel, who has argued the second bail, has not argued all the facts, which were already then available on record. 2) The earlier counsel has not argued the second bail application from the perspective with regards to the impact of the statement of Dilbar Singh, as recorded on 18.04.2022. With all due reverence at my command, it would not be a new fact or a ground to entail the applicant to press the third bail application, based on the similar fact, as it was a fact already available, when the second bail application was pressed and the then learned counsel arguing the matter has never drawn any attention towards the statement of Dilbar Singh and its impact, as it was recorded on 18.04.2022. Besides this, the statement of Dilbar Singh recorded on 18.04.2022, cannot be exclusively
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			read without its co-related effect to be made after its securitization with the other evidence on record. 3) Thirdly, he submits that, owing to the closure report, which was submitted under Section 174 of the Cr.P.C. to be read with Rule 349B, by the Rajasthan Police on 06.02.2019, was too an aspect, which was not considered. He should be conscious of the fact, that the report, as submitted by the Rajasthan Police, was yet again a fact, which was available way back since 06.02.2019 and it was chosen not to be argued by the counsel arguing the second bail application. The closure report, qua the present applicant for his involvement in the commission of offence, may not be having any bearing, as such, for the reason being, that, owing to other evidences, which has been brought on record after the seizure of the vehicle involved in the commission of offence from one of the co-accused persons, because it was shown to have been used by the present applicant in commission of offence.
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		Learned counsel for the applicant has strongly harped upon the post-mortem report, which has been submitted by the Doctors, who conducted the post-mortem. But having the post mortem report, the attention, which has been attempted to be drawn, is on the opinion of the doctors, that the cause of death was cardio-respiratory failure. But the later report submitted by the FSL, remarks that all injuries are ante-mortem in nature. In fact, this is a common expression given by the State Forensic Laboratory Rajasthan, Jaipur, in its report of 25.04.2019, as well as that of the FSL laboratory at Jaipur, which too almost happens to be similar to the one as it has been submitted by the State Forensic Laboratory. Since the FSL report had not examining the injuries nor any observation had been made therein, learned counsel for the applicant was called upon to elaborate upon the issue as to what was the nature of injuries suffered by the victim, which could have contributed as to be a cause of death of the deceased.
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		bleeding from nostrils and mouth. There were various scratches, abrasions from 8th Rib to Mid abdomen, left lateral side, measuring 14x5 cm in size, and bruises of varying size over left lateral aspect of abdomen and pelvis. No explanation of whatsoever type has been given with regards to how the above nature of injuries could have been caused to the deceased, when he was said to have been met with the sad demise due to cardio-respiratory arrest, nor is there any explanation as such in the bail application, which has been pressed by the applicant. All these aspects, which have been argued by the learned counsel for the applicant, in fact, were available when the earlier counsel had argued the second bail application and, hence, they will not be treated as to be fresh grounds, on which, the third bail application could have been pressed and considered by this Court. In fact, it is a reiteration of the major grounds, which were considered pertaining to the grant of bail to the co-accused persons—the effect of the recovery of the vehicle; the effect of the illicit relationship that the deceased had
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			with the wife of the applicant, all these aspects were already considered by this Court in the order of 02.01.2023. Hence, no new facts are required to be considered, at this stage, when the third bail application is being pressed. Thus, this Court does not find any merit in the third bail application, and the same would, accordingly, stand dismissed. (Sharad Kumar Sharma, J.) 09.11.2023 Sukhbant
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