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

Date of Decision: March 26, 2015

+ CRL.M.C. 3502/2014

AFTAB ALAM

..... Petitioner

Through: Mr. Niraj Kumar Mishra, Advocate

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Vinod Diwakar, Additional
Public Prosecutor for respondent
No.1-State with SI Narender Singh
Mr. R. Menon, Advocate for
respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

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In this petition, challenge is to the trial court's order of 7th April, 2014 vide which respondent-accused has been granted statutory bail under Section 167 (2) of the Cr.P.C. in FIR No.02/2014, under Section 307/201/34 of the IPC, registered at police station Mehrauli, New Delhi.

The aforesaid order has been affirmed by the Revisional Court vide impugned order of 15th May, 2014. Both the courts below have held that the charge-sheet filed was incomplete and so, grant of statutory bail is justified.

At the hearing, learned counsel for petitioner had drawn attention of this Court to the trial court's order of 7th April, 2014 to submit that abscondance of co-accused- *Dilshad Akhtar* is no ground to hold that there is lapse in the investigation and refusal to take cognizance for the offence under Section 307 of the IPC is wholly unjustified, as trial court vide subsequent order of 23rd April, 2014 has taken cognizance for the aforesaid offences on the basis of the same very charge-sheet. Thus, quashing of the impugned orders is sought by placing reliance upon decisions in *Sanjay Dutt Vs. State* (1994) 5 SCC 410; *State of Maharashtra Vs. Sharadhachandra Vinayak Dongre & ors.* (1995) 1 SCC 42; *Dinesh Dalmia Vs. CBI* (2007) 8 SCC 770 and *Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra & anr.* (2013) 3 SCC 77.

This petition is opposed by learned counsel for respondent No.2 who submits that impugned orders do not suffer from any illegality or infirmity and respondent No.2 is now on bail for the last one year and the charge in this FIR case has been framed for the offence under Section 308 of the IPC and not under Section 307 of the IPC and so, there is no basis to cancel the bail granted to respondent-accused.

Upon hearing and on perusal of the impugned orders, material on record and the decisions cited, I find that scope and applicability of Section 167 (2) of the Cr.P.C., as reiterated by the Apex Court in *Dinesh Dalmia (Supra)* has not been considered by the courts below in the right perspective. The settled position, as reiterated by Apex Court in *Dinesh Dalmia (Supra)*, is that the court takes cognizance of offence and not offender. Merely because no investigation was conducted qua third accused i.e. *Dilshad Akhtar* would not be a ground to hold that the

charge-sheet filed is incomplete. Supplementary charge-sheet can be filed qua co-accused after efforts are made to obtain his presence.

In the aforesaid view of this matter, grant of statutory bail to respondent-accused is not at all justified. However, since respondent – accused has remained on bail for the last one year and keeping in view the fact that he is facing trial for the offence under Section 308 of the IPC, it would serve no purpose to direct respondent –accused to surrender and then obtain bail afresh.

In the facts and circumstances of this case, although impugned orders are quashed but respondent –accused is permitted to remain on bail, as he is facing trial for the offence under Section 308 of the IPC and not for the offence under Section 307 of the IPC.

This petition is accordingly disposed of while refraining to comment upon the merits of this case.

(SUNIL GAUR)
JUDGE

MARCH 26, 2015

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