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

Judgment delivered on: 7th September, 2015

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BAIL APPLICATION NO. 726/2015

RISHI RAJ AND ANR

..... Petitioners

Represented by: Mr. Brahm Singh, Mr. Atul
Kumar, Mr. S.S. Bhati and
Mr. Niranjana Singh,
Advocate.

Versus

STATE GOVT OF NCT DELHI

..... Respondent

Represented by: Mr. Hirein Sharma, Addl.
Public Prosecutor for the
State with SI Vipin Yadav,
PS New Ashok Nagar.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. By way of this petition filed under Section 439 of the Code of Criminal Procedure, 1973, petitioners seek directions to release them on bail in case bearing SC No.61/2012 arisen from FIR No.112/2012, registered at Police Station New Ashok Nagar, Delhi, for the offences punishable under Sections 302/364A/201/171 read with Section 120B IPC.

2. For the same relief, the petitioners approached the learned Trial Court, however, their joint bail application was rejected vide order dated 04.03.2015.

3. Learned counsel appearing on behalf of the petitioners submits that the petitioners are in judicial custody since 28.04.2012. Out of 58 witnesses, 27 witnesses have been examined and no public witness remains to be examined.

4. He further submits that the present case is based upon the circumstantial evidence. The FIR in question was registered on the complaint of PW4, Mohd. Murtaza, father of the deceased, who stated that at about 7.00 PM on 05.04.2012, his son, namely, Sandeep, aged about 5 years, height about 3 feet, colour brown, wearing white T-Shirt, had gone to purchase biscuits from the shop, however, did not return.

5. Thereafter, a call was received for ransom of Rs.5,00,000/- (Five Lacs) on Mobile No.9015422584, which continued upto 21.04.2012. As per evidence of PW15, Nodal Officer, the said mobile phone does not belong to the complainant and belonged to one Rakesh Mehto (Tribal).

6. As alleged, six accused including the petitioners were arrested from different places at Anand Vihar Bus Terminal on the same day within the gap of 3 to 4 hours, they were produced before the Trial Court and remanded for six days police custody. Thereafter, they were sent to the judicial custody vide order dated 28.04.2012.

7. Learned counsel submits that the petitioner No. 1 is from District Satna (Madhya Pradesh) and the petitioner No. 2 belongs to Jhansi (Uttar Pradesh). Both were working in a Factory in NOIDA, adjoining to Police Station New Ashok Nagar. Co-accused Kasim and Tikam remained in police custody till 04.05.2012. He further submits that thereafter, one skeleton alleged to be of deceased Sameer was recovered at the instance

of co-accused Kasim and Tikam.

8. Learned counsel further submits that no recovery of any amount was made from the petitioners. There is no connection of the petitioners with any of the calls made either to the complainant or any other person involved in this case. Since the petitioners were working in a factory adjacent to the jurisdiction of Police Station New Ashok Nagar, therefore, they were connected in this case and they are in judicial custody since then.

9. He submits that as per the FSL report qua DNA examination of the deceased and his parents, it is concluded as under:-

“ The STR analysis performed on the exhibit ‘1’ i.e., femur of deceased Sameer exhibit ‘2’ i.e., blood in gauze of Murtaza (father of deceased), exhibit ‘3’, i.e. blood in gauge of Sahrina (mother of deceased) are sufficient to conclude that the exhibit ‘2’ i.e., blood in gauze of Murtaza (father of deceased), exhibit ‘3’ i.e., blood in gauze of Sahrina (mother of deceased) are not the biological parents of (exhibit ‘1’, i.e., femur) deceased Sameer.”

10. Perusal of the aforementioned report shows that the said skeleton did not match either with the complaint or his wife. Thus, the said skeleton has become the disputed one.

11. On the other hand, learned Additional Public Prosecutor appearing on behalf of the State submits that the petitioners were in the conspiracy with other co-accused. Petitioner No. 1, Rishi Raj was arrested from the spot, where ransom was to be delivered. They had a direct nexus with the offence, committed a serious offence and killed a five years old child.

12. Moreover, the case is at the mid of trial. 27 witnesses have already been examined and the rest witnesses are formal witnesses. Therefore, at this stage, this Court may not admit the petitioner on bail.

13. It is not in dispute that the petitioner remained in six days police custody. Despite, no clue of the missing child, namely, Sameer could be established. The alleged skeleton was recovered at the instance of co-accused Kasim and Tikam. There is no evidence on record that the petitioners kidnapped the minor boy and demanded ransom from the complainant and his family members. There is no evidence that the skeleton was recovered at the instance of the petitioners.

14. Moreover, DNA examination of the said skeleton is under dispute. Mobile No.985808258 does not belong to petitioner No.1 Rishi Raj, however, it belongs to some other person, whose identity is not known. Thus, there is no evidence of last seen. There is no previous history of either of the petitioner. All material witnesses have already been examined. There is no apprehension that the petitioners may tamper with the evidence and influence the witnesses.

15. In addition, co-accused Sarvinder is already enlarged on bail vide order dated 31.07.2015 passed by this Court.

16. In view of the facts recorded above and that the case is pending trial, without commenting upon the merits of the case, I deem it appropriate to release the petitioners on bail.

17. Accordingly, the petitioners shall be released on bail on their

furnishing a personal bond in the sum of Rs.25,000/-each with one surety each in the like amount to the satisfaction of the Trial Court.

18. In view of the above, the present petition is allowed.

19. A copy of this order be given *dasti* to the learned counsel for the parties.

**SURESH KAIT
(JUDGE)**

SEPTEMBER 07, 2015

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