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

+ **BAIL APPLN. 1496/2015**

Date of Decision : September 17th, 2015

VIKAS @ VICKY

..... Petitioner

Through: Mr.Vargisha Kochar, Adv.

versus

GOVT OF NCT OF DELHI

..... Respondent

Through: Mr.Vinod Diwakar, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present application has been filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1908 for the grant of bail in FIR No.69/2012, Police Station Samaipur Badli, under Sections 302, 394, 397, 411 and 120-B read with Section 34 of the Indian Penal Code and Sections 25, 27, 54, 59 of the Arms Act.

2. The allegations levelled against the accused are that he along

with his co-accused persons committed the murder of one Sonu. It is further alleged that at the time of incident, the petitioner was armed with country made pistol and fired a gun shot upon the deceased. On the day of incident, robbery was also committed from the spot.

3. On the basis of statement of an eye witness, FIR of the present case was registered and during investigation, petitioner and co-accused persons were arrested. After conclusion of investigation, charge sheet was filed in the Court.

4. The argument advanced by the counsel for the petitioner is that the petitioner is in incarceration since 25.02.2012. Since all the public witnesses including the eye witness have already been examined, there is no chance of influencing the public witnesses or tampering with the evidence. It is further argued that the co-accused Ajay @ Rinku and Ajay @ Chhota have already been granted bail. It is further submitted that the trial is likely to take long time and no purpose would be served in keeping the petitioner behind the bars for an indefinite period.

5. In support of the arguments, counsel for the petitioner relied upon judgment in case of *Sumer Singh (Sh.) v. State, 2008 I AD*

(Cr.) (DHC) 1 in which the petitioner was granted bail while observing that where the prosecution case appears to be weakening, justifying grant of bail, limited exercise of prima facie evaluating the evidence can be carried out by the Court. Next judgment relied upon is in case of *Vankat Salum and Anr. v. State (Delhi Admn.)*, **MANU/DE/1480/2009** in which the appellant was acquitted while giving him benefit of doubt while observing that the eye witness did not support the case of prosecution completely.

6. In the present case, the bail application of the petitioner was dismissed by the Trial Court on 06.06.2015. There is no force in the ground taken by the petitioner that since the co-accused persons have already been granted bail, he is also on the same footing. As per the charge sheet and the evidence recorded, the role attributed to the petitioner and co-accused persons is different. It is specifically alleged against the petitioner that on the day of incident, he was armed with country made pistol and fired a gun shot upon the deceased which resulted into his death. The co-accused persons who have been granted bail were the co-conspirators in the crime committed.

7. So far as the other ground regarding period of incarceration of the petitioner is concerned, the mere fact that the petitioner has undergone a certain period of incarceration by itself would not entitle him to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future by itself would be sufficient for enlarging the petitioner on bail, keeping in view the gravity of offence. This view gets strength from ***Rajesh Ranjan Yadav alias PapuYadav v. CBI through its Director, AIR 2007 SC 451.*** Therefore, the petitioner cannot get any assistance from the judgments in case of ***Sumer Singh*** (supra) as the facts and circumstances of the present case are distinguishable from the facts of the present case. The petitioner also cannot get any help from the judgment in case of ***Vankat Salum*** (supra) inasmuch as the said judgment is on merits of the case and not on the subject of entitlement of bail.

8. In view of seriousness of allegations and the gravity of offence and specifically the role attributed to the petitioner in the incident are concerned, this Court do not find any ground to enlarge the petitioner on bail.

9. Application is accordingly dismissed. However, the Trial Court is directed to expedite the trial and conclude the trial preferably within a period of six months.

P.S.TEJI, J

SEPTEMBER 17, 2015
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