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

+ **BAIL APPLN. 1877/2015**

BALBIR SINGH

..... Petitioner

Through Mr.Aman Saroha & Mr.Jaideep
Malik, Advs.

versus

THE STATE (GOVT OF NCT OF DELHI) Respondent

Through Mr. M.P. Singh, APP for the state.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **09.09.2015**

The petitioner seeks anticipatory bail in connection with FIR No.325/2014 (PS Jahangir Puri) instituted for offence under Sections 498A/304B of the IPC.

The petitioner is the father-in-law of the deceased. The son of the petitioner namely Ajay Singh, after institution of the case, was arrested.

The investigation of the case led to the submission of final report under Section 173 of the Cr.P.C. wherein the petitioner also was arrayed in the column of the accused persons.

It has been submitted on behalf of the petitioner that there was a mistake by the police for the reason that during the entire period of investigation, neither the petitioner was summoned under Section 161 of the Cr.P.C. by the police nor was he arrested.

The petitioner did not approach any court for seeking protection

against arrest. It has been submitted that since the petitioner was not looked for during the stage of investigation by the police, he was sanguine that he will not be sent up for trial.

Perhaps for this reason, no summons were issued against him under Section 204 of the Cr.P.C. when the chargesheet was acted upon by the learned Magistrate. It is submitted that the case of the petitioner was not even committed to the Court of Sessions. This contention has been further buttressed by the fact that charges were also not framed against the petitioner.

In the Trial Court, some of the witnesses were examined. Thereafter, an application was filed under Section 193 of the Cr.P.C. by the prosecution for summoning the petitioner. By order dated 13.05.2015, the petitioner has been summoned to face trial.

It has been submitted that a weird procedure was adopted by the Trial Court and instead of applying its mind over the materials which came before the Trial Court through the mouth of the witnesses, for summoning the petitioner under Section 319 of the Cr.P.C., summons were issued under Section 193 of the Cr.P.C.

It is further submitted that the order dated 13.05.2015 has not yet been challenged.

There appears to be some confusion in as much as no cognizance was taken against the petitioner and he was not even summoned under Section 204 of the Cr.P.C.

This predicates that the case of the petitioner was not committed to the Court of Sessions for trial.

The petitioner prayed for anticipatory bail before the Additional

Sessions Judge which was rejected vide order dated 24.08.2015 on the ground that the application was not maintainable before that Court.

As against the aforesaid order dated 24.08.2015, the petitioner has approached this Court.

The petitioner is directed to approach the Trial Court for such relief as the Trial Court has summoned the petitioners to face trial along with other accused persons.

The petitioner is permitted to withdraw this application in order to enable him to file a fresh application before the Trial Court.

The petitioner shall file an application within a period of 10 days from today and on filing of such application, the Trial Court would consider that no cognizance was taken against the petitioner and he was not even summoned at the stage of 204 of the Cr.P.C. The Court below will not be influenced or prejudiced by the fact that the present application has not been maintained and would decide the application in accordance with law after going through the facts and allegations levelled against the petitioner.

Petition is permitted to be withdrawn.

Till filing of such petition, no coercive action shall be taken against the petitioner.

Dasti.

ASHUTOSH KUMAR, J

SEPTEMBER 09, 2015

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