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

Judgment delivered on: 6th November, 2015

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Bail Application No.2116/2015

SHEHZAD

..... Petitioner

Represented by: Mr. N.K.Sharma, Advocate.

Versus

STATE OF NCT OF DELHI

..... Respondent

Represented by: Ms.Meenakshi Chauhan,
Additional Public Prosecutor for
the State with SI Amit Verma, P.S.
Gokalpuri.
Mr. H. P. Aditya, Advocate for the
Complainant with Complainant in
person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. By way of this petition filed under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks directions to admit him on bail till conclusion of the trial in case bearing FIR No.273/2010 registered at Police Station Gokul Puri, Delhi, for the offences punishable under Sections 302/363/364A/201/120B IPC.

2. For the aforesaid relief, the petitioner had moved an application, before the Trial Court has been dismissed vide order dated 14.08.2015.

3. Learned counsel appearing on behalf of the petitioner submits that

the learned Trial Court while rejecting the said application has not appreciated in depth the evidence and ignored the same on the ground that the same is not required at the time of granting bail.

4. He submits that the learned Trial Court has not considered the fact that only two public witnesses not connecting the petitioner remained unexamined and other witnesses are official. The learned Trial Court has not considered the fact that how the mobile phone records connects the petitioner with the case. He further submits that detention of an under trial in custody for an indefinite period is a gross violation of Article 21 of the Constitution of India and that detention during trial has a substantive punitive content unless there is a possibility of his fleeing from justice.

5. To strengthen his submissions, learned counsel for the petitioner has relied upon the cases of ***Rajat Sharma Vs. State of NCT of Delhi, 2015 (3) JCC 1493*** and ***Sahil Dahiya and Ors. Vs. State, 2015 (3) JCC 1521***.

6. Learned counsel further submits that charge was framed on 09.03.2011 and the petitioner is in custody since 24.08.2010, however, till date only seven witnesses have been examined out of 34 witnesses.

7. The State has filed the status report, whereby stated that during course of investigation on 24.08.2010 at 4.00 PM, two accused persons, namely, Shehzad, petitioner herein and Haseen were arrested from Bhagirathi Water Plant, Main Wazirabad Road, Delhi, on the basis of a secret information. During interrogation, both of them disclosed that they had kidnapped a boy Mohd.Aman on 16.08.2010 for ransom but smothered him to death as they feared identification and disposed off his

dead body near Aligarh, UP. One Maruti Alto Car No.DL-2CAK-0679, one mobile phone No.9717722348 with instrument IMEI No.355722025038280 were recovered from the possession of the petitioner and one mobile phone No.9313180243 was recovered from the possession of co-accused Haseen at the time of their arrest. The petitioner refused to participate in the TIP proceedings.

8. During their custody in the police, they identified the PCO booth located in Lal Quan, Ghaziabad, UP, from which deceased child was made to talk to his father, i.e., complainant on 16.08.2010, pointed out the place at Village Lohpur More, Delhi-Aligarh GT Road, i.e. where the kidnapped boy was strangled by the accused in Maruti Alto Car No.DL-2CAK-0679 and the place at Village Pairai Bus shed on Delhi-Aligarh GT Road, where the dead body of the deceased was thrown by the accused.

9. Further investigation reveals that call details of all suspect numbers were analyzed during which it transpired that the petitioner was using mobile phone No.9717722348 with instrument IMEI No.355722025038280. On 16.08.2010 at around 8 PM, when the kidnapped body was made to call his father from the aforementioned PCO Booth, location of aforementioned mobile phone of the petitioner was found of Lal Quan area of Ghaziabd, UP.

10. Out of 34 witnesses, only seven witnesses have been examined. The offence alleged against the petitioner is of grave nature. Moreover, in order dated 14.08.2015, conduct of the family members of the petitioner was recorded that they had earlier also attempted to influence the

witnesses and that a complaint regarding the misbehaviour of the family members of the petitioner was lodged with the police.

11. Moreover, at the time of considering the bail, the courts need not to go into the depth of the evidence and have to see only if *prima facie* case is made out to grant bail or not. Therefore, keeping in view the fact that the allegations levelled against the petitioner are of serious nature, I am not inclined to allow the instant petition.

12. Thus, considering the conduct of the petitioner and the role assigned to him, the present petition is dismissed.

**SURESH KAIT
(JUDGE)**

NOVEMBER 06, 2015

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