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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2150/2015**

Date of Decision: October 20th, 2015.

RAJESH @ KALA Petitioner
Through Mr.Hans Raj Singh and Mr.Amit
Kumar, Advs.

versus

STATE (NCT OF DELHI) Respondent
Through Mr.Satya Narayan, APP with SI
Sonu Ram, PS Vijay Vihar.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

ORDER
% **13.10.2015**

1. The present bail application has been filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in FIR No.294/2014 under Sections 323/341/304/427/34 of the Indian Penal Code registered at Police Station Vijay Vihar.

2. The allegations levelled against the petitioner are that on 15th March, 2014, an information vide D.D. No.116B was received at Police Station Vijay Vihar regarding quarrel at Shamshan Ghat Road, Gopal Vihar Phase 2, Delhi. The police reached at Shamshan Ghat Road but nobody was present there and the DD entry was kept pending. On 16th March, 2014, an information vide

DD No.16 A was received at Police Station Vijay Vihar from Braham Shakti Hospital, Budh Vihar with regard to the admission of Mr.Jai Narayan and his son namely Samunder @ Sonu. The MLCs of both the injured were collected on which the doctor mentioned that the injured were having injuries on their person caused by physical assault.

3. During inquiry, statement of Mr.Samunder @ Sonu was recorded in which he alleged that on 15th March, 2014 at around 9:00 p.m., when he was going towards his house, he saw that Denny, Sunny and Rajesh, who happened to be real brothers, were quarrelling on the Kohlu of Abdul at Gopal Vihar with Abdul. Samunder @ Sonu enquired the reasons of quarrel from Abdul, when he came to know that Denny, Sunny and Rajesh had taken sugarcane juice from him but they were not making the payment for the same. Samunder asked all of them to make payment to Abdul upon which all of three started beating him. On hearing the noise, Mr.Jai Narayan, the father of the Samunder came there and tried to pacify the matter. In the meantime, Denny picked a stone from the roadside and hit the same on the head of Jai Narayan.

4. During the course of treatment, injured Jai Narayan expired on 18th March, 2014. As per post-mortem report, doctor opined that no definite opinion regarding the cause of death can be given

in the case, however, death is likely to have been caused by fat embolism caused by fracture of long bones of leg. Co-accused Ravi @ Denny and Sunny could not be arrested and were declared as Proclaimed Offender (PO).

5. It is stated that the main public witness namely Abdul is yet to be examined and sixteen witnesses out of a total twenty two witnesses have already been examined so far.

6. Learned counsel for the applicant argued that the applicant has been falsely implicated in this case. No recovery has been made from the petitioner in this case or at his instance and no evidence against him has been found. It is further argued that quarrel arose between the petitioner-herein and the tenant of the complainant where the complainant intervened and started quarrelling. After hearing noise, Jai Narayan, the father of the complainant, fully drunk, also reached the spot and started intervening. Upon this, both sides started pelting stones and the accused Rajesh @ Kala threw a stone which struck the head of Jai Narayan and one of the co-accused hit the deceased with sugarcane on his right leg. As per the post-mortem report, the deceased died due to heart attack as there was 70% to 80% blockage on right and left coronary arteries and the death of the deceased was due to sudden cardiac arrest. The Department of Forensic Medicine has

opined that no definite opinion regarding cause of death can be given in this case, however, death is likely to have been caused by fat embolism caused by fracture of long bones of leg. It has also been stated by the doctor that Mithail alcohol was found in the stomach of the deceased.

7. The present bail application is vehemently opposed by learned Additional Public Prosecutor who submits that the accused Rajesh @ Kala is involved in seven criminal cases prior to the case in hand. The petitioner was already convicted in a case arising out of FIR No.99/10 under Section 174 A of the Indian Penal Code as he was declared proclaimed offender. The petitioner can threaten the witnesses of the case and can commit similar offence again and there is also a possibility of jumping the bail by the petitioner as his brothers/co-accused are already absconding and have been declared Proclaimed Offender. The learned APP has shown the apprehension that if the petitioner is released on bail, he may also abscond.

8. Perusal of record reveals that there are specific allegations against the petitioner/accused that he along with his co-accused/brothers gave beatings to the deceased as well as to the complainant. The petitioner/accused picked a stone from the roadside and hit the same on the head of the deceased which later

on resulted into death of the deceased. The petitioner/accused was apprehended at the spot and was duly identified by the complainant. The trial of the case is at the initial stage and in the considered opinion of this Court, it is not a fit case to enlarge the petitioner/ accused on bail as the possibility of tampering with the evidence and influencing the prosecution witnesses cannot be ruled out. Even, the learned APP has shown the apprehension that the accused may flee from justice, if released on bail.

9. In the facts and circumstances, no ground is made out to release the petitioner/accused on bail at this stage. The bail application is accordingly dismissed. However, it is made clear that the observations made above shall not affect the merits of the case.

(P.S.TEJI)
JUDGE

OCTOBER 20th, 2015
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