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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 156/2016

MOHD ZAKIR

..... Petitioner

Through: Mr.Mukesh Kalia, Advocate

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Mr.A.K.Garg, Additional Public
Prosecutor for the State alongwith
sub-Inspector Pankaj from Police
Station Chandni Mahal.
Ms.Nusrat Hussain with Ms.Rakhi
Bora, Advocates for the complainant.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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11.07.2016

This is a bail application under Section 439 Cr.P.C on behalf of petitioner who is the brother-in-law (Jeth) of the deceased in FIR No. 74/2012 under Section 498A/304B/302 IPC registered with police station Chandani Mahal, Delhi.

Initially the FIR was registered against the petitioner as well as husband, mother-in-law, father-in-law, sister-in-law, the other brother-in-law of the deceased under Section 498A/307/34 IPC on the statement of one Aziz-Ur-Rehman, brother of the deceased wherein he alleged that on 17.05.2012 in the night his younger brother-in-law

(Behnoi) Shaifiquddin informed him that his sister i.e, Kesar Jahan was taken to the LNJP Hospital by her neighbours. Thereupon he reached the hospital where he saw his sister Kesar Jahan on bed to whom he tried to talk but the doctor refused to allow to talk to her as she was on ventilator. There he had met husband and father-in-law of his sister and asked them as to why they did not inform him, to which, they replied that they were not at home at that time. He further alleged that marriage of his sister was solemnized on 04.03.2011 as per Muslim rites and ceremonies at Delhi. After her marriage, her husband as well as her in-laws used to quarrel with her and used to give beatings to her. He further alleged that he had also noticed a big black spot in her hair from which it appeared that her in-laws had tried to kill her. Her sister-in-law (Nannad), brothers-in-law (devar and Jeth) are all involved in the alleged incident. He also alleged that his sister used to tell him that her mother-in-law used to tell her as what has been given by her family members. On the basis of aforesaid statement, FIR under Section 498A/307/34 IPC was registered against the aforesaid petitioner as well as other family members.

During the course of investigation, statement of one Mohd. Wasid was recorded on 03.08.2012 thereupon chargesheet was filed. On 12.09.2012 charge under Section 307/498A/34 IPC was framed against the accused persons including the present petitioners. On the aforesaid day, bail was also granted to them by the learned Additional Sessions Judge. On 05.12.2012 the complainant moved an application for cancellation of bail. On 24.12.2012 victim Kesar Jahan had expired. Vide orders dated 04.01.2013, the learned Additional

Sessions Judge has directed the IO to obtain post-mortem report. The IO had filed a special report with post-mortem report and also moved an application seeking cancellation of bail and permission to re-arrest the accused on the ground that as per post-mortem report, the cause of death is cerebral damage occurring in a clinically diagnosed case of ligature strangulation and the FIR is being amended to incorporate section 302/304B IPC instead of section 307 IPC. After the addition of section 302/304B IPC in the FIR, the present petitioner moved an application for grant of bail. The learned Additional Sessions Judge observed that in view of change in circumstances, the earlier bail order cannot continue and their bail application was rejected in view of seriousness of allegations against them.

Learned counsel appearing for the petitioner has submitted that petitioner is innocent and has been falsely implicated in the present case. The petitioner had been living separately with his family at F-24, DDA Flats, Shish Mahal, Chandani Mahal, Delhi and was also having independent business and had no concern with the family life of Kesar Jahan. It is contended that the alleged incident is of 17.05.2012 whereas the victim had expired on 24.12.2012. The deceased remained alive for about seven months. No efforts were made by the police to record her statement. The prosecution is relying on the statement of one Mohd. Wasid PW-3 who claims to be an eyewitness to the alleged occurrence and who allegedly made a statement to the police on 03.08.2012 i.e., after about two months of the alleged incident making allegations of murder against the petitioner and other co-accused persons. Counsel submits that there is

no explanation for such inordinate delay in recording the statement of the aforesaid witness. In fact, the alleged statement is a fabricated statement. Reference is made to the order passed by learned Additional Sessions Judge while initially releasing the accused persons on bail on 12.09.2012 when the FIR was registered under Section 498A/307/34 IPC. Dealing with the statement of Mohd. Wasid, the alleged eyewitness of the incident, the learned Additional Sessions Judge had observed that more than two and a half months after the lodging of the FIR, for the first time it was stated by him that he saw the accused persons trying to kill Kesar Jahan by strangulation with a rope. He claims himself to be maternal cousin of Kesar Jahan. It is quite unnatural for a brother to leave the spot despite allegedly watching the incident of attempt on life of his sister followed by keeping mum for more than two and a half months. Apart from this belated statement there is nothing on record which could corroborate sequence of events as narrated by Mohd. Wasid. Counsel further submits that the case of present petitioner is almost identical to co-accused Nadeem who is also brother-in-law (devar) of deceased. He was admitted to bail by this Court vide order dated 17.12.2013. The petitioner is in jail for last more than three and a half years. All material witnesses have already been examined except Habib-Ur-Rehman who could not be examined as he has undergone bypass surgery. It is further stated that the statement of this witness was also recorded belatedly. Moreover he is not an eyewitness of the incident. The petitioner is having a 14 years old daughter who is critically ill. There is nobody to look after her as such, he be released on bail.

It is not in dispute that all public witnesses except Habib-Ur-Rehman have been examined. Besides that, police witnesses and doctors /forensic surgeons remains to be examined. However, the bail application is opposed on the ground that the trial is likely to be concluded in next few months.

I have heard the submissions made by learned counsel for the parties and have perused the material on record. Initially, FIR was registered against the petitioner and co-accused persons under Section 498A/307/34 IPC. The alleged incident occurred on 17.05.2012. The victim died on 24.12.2012. The statement of eyewitness PW-3 Mohd. Wasid was recorded after two and a half months of the occurrence. As per his statement, there are allegations under Section 302 IPC against the present petitioner as well. There are no specific allegations of dowry demand or harassment to the deceased by him in the initial FIR. In the initial FIR there are no allegations that he used to quarrel with her or used to demand dowry or used to beat her. As per the nominal roll dated 06.02.2016 the petitioner has spent a total period in custody as undertrial three years three months and twenty eight days. His overall conduct has been reported to be satisfactory. The only public witness is Habib-Ur-Rehman who remains to be examined. There is no possibility of tampering with the evidence as he is the brother of the deceased. As per the medical documents placed on record by the petitioner his daughter requires treatment. Under the circumstances, without expressing any opinion on merits of the case, petitioner is admitted to bail on furnishing:

- (i) personal bond in the sum of Rs.50,000/- with one surety of the

like amount to the satisfaction of the learned Trial Court.

- (ii) He is further directed not to leave Union Territory of Delhi till the conclusion of trial without prior permission of the Trial Court.
- (iii) He is further directed not to contact, coerce or threaten any prosecution witnesses.

The bail application stands disposed of accordingly.

It is clarified that observations made herein are confined to the application and will have no bearing on merits of the case.

Order dasti.

SUNITA GUPTA, J

JULY 11, 2016
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