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

+ BAIL APPLN. 446/2016

PARMINDER @ PARME ..... Petitioner  
Through: Mr.R.S.Malik, Mr.Sahil Malik &  
Mr.Kavish Sukhija, Advocates

versus

THE STATE (GOVT OF NNCT OF DELHI) ..... Respondent  
Through: Mr.Amit Ahlawat, APP for the State  
with Inspector Dhiraj Singh  
PS Narela

**CORAM:**  
**HON'BLE MS. JUSTICE PRATIBHA RANI**

**ORDER**  
**12.05.2016**

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1. The petitioner herein is facing trial in case FIR No.64/2015 registered under Sections 302/120-B/34 IPC & Sections 25/27/54/59 of Arms Act at PS Narela.
2. He has filed this application praying for his release on bail pending trial. Mr.R.S.Malik, Advocate appearing on behalf of the petitioner has submitted that the petitioner has not been named in the FIR which was recorded on the basis of statement made by brother of the deceased. In the FIR it is mentioned that one person remained sitting in the car on driving seat without identifying him.
3. Mr.R.S.Malik, Advocate has further submitted that petitioner has been arrested with the aid of Section 34 IPC i.e. common intention on the basis of

disclosure statement made by the co-accused which is inadmissible in evidence. It has been further submitted that co-accused Rahul who was also not named in the FIR has already been released on bail by learned ASJ and on parity as well the petitioner should have been released on bail which has been denied by learned ASJ.

4. Mr.R.S.Malik, Advocate has read the contents of the FIR as well the order dated 9<sup>th</sup> October, 2015 whereby co-accused Rahul was released on bail. Mr.R.S.Malik, Advocate has also read the order dated 7<sup>th</sup> January, 2016 whereby the application of the present petitioner for release on bail has been dismissed. He has also placed on record copy of the MLC of the deceased Jitendra Khatri submitting that Jitendra Khatri has died because of acts of his own relatives as recorded on the MLC. He has referred to the following noting made by the Doctor who prepared the MLC:-

*“Relatives was/were all drunk & were under intoxication of alcohol.They did not allow examine & treat & manage patient properly.”*

5. Learned counsel for the petitioner has also placed on record the following reports:-

- (i) Sonu @ Deela Vs. The State (N.C.T. of Delhi), 2009(4) JCC 2628;
- (ii) State of Karnataka Vs. L.Muniswamy & Ors., AIR 1977 SC 1489;
- (iii) State of Gujrat Vs. Mohammed Atik and Others, AIR 1998 SC 1686;
- (iv) Nanha Vs. State of U.P., 1993 CrI.L.J. 938

However, out of the above four reports he has referred **Sonu @ Deela Vs. The State (N.C.T. of Delhi), 2009(4) JCC 2628 and Nanha Vs. State of U.P., 1993 CrI.L.J. 938.**

6. On behalf of the State, prayer for grant of bail to the petitioner has been strongly opposed contending that there is enough material to connect

the petitioner with the murder of Jitendra Khatri. He was at the driving seat of the vehicle in which the other three assailants allegedly came to the spot and committed murder of Jitendra Khatri. Vehicle No. HR-99 PF Temp. 9401 is also registered in the name of the petitioner. The FIR has been registered on the basis of statement of Sandeep Khatri, who is a witness to the occurrence wherein he has stated that Samunder @ Surender S/o Sh. Prahlad Singh R/o Village Mamurpur, Narela who came in a white colour car in front of his house alongwith Naveen, Rajesh Pandit and one other who was driving the car. Samunder took out his pistol and fired upon Jitender on the instigation of accused Rajesh Pandit.

7. Distinguishing the role of the present petitioner with that of Rahul who has been released on bail, learned APP submitted that the complainant informed on 1<sup>st</sup> March, 2015 that he suspected Rahul who was seen moving near the place of occurrence. CDR of the mobile numbers of accused 1. Naveen 8800998789, 9654700777 2. Parminder @ Parme 9899192057, 9911192057 3. Rajesh Pandit 9999250780, 9211442836 4. Rahul 9999822083 were obtained and analyzed which revealed that all the accused persons were in contact with each other at the relevant time. The petitioner Parminder @ Parme was arrested on 23<sup>rd</sup> July, 2015 under Section 41.1 Cr.P.C. vide DD No. 29A and disclosed his involvement in commission of murder of Jitender and use of his white colour car Renault Duster HR-99 PF Temp 9401. He refused to join TIP.

8. In the case **Sonu @ Deela (supra)** relied upon by the petitioner, the bail was granted on the ground that allegations against the petitioner was only that he was present at the spot at the time of incident. This is not the case here as petitioner was alleged to be on the driving seat in which the

assailant came and after committing the murder escaped.

9. Reliance placed by learned counsel for the petitioner on **Nanha Vs. State of U.P., 1993 Crl.L.J. 938** is on the following paras:-

*“Per Virendra Saran, J. (Concurring): If bail is granted to one co-accused the other co-accused whose case stands on the same footing is entitled to bail. It cannot be said that it is open to different Judges to reject or grant bail to accused even if their cases stand on same footing. The High Court is one Court and each Judge is not a separate High Court. It will be unfortunate if the High Court delivers inconsistent verdicts on identical facts. The public, whose interests all judicial and quasi judicial authorities ultimately have to serve, will get a poor impression of a Court which delivers contrary decisions on identical facts. Hence, for the sake of judicial uniformity and non-discrimination it is essential that if the High Court grants bail to one co-accused it should also grant bail to another co-accused whose case stands on the same footing.*

*Judicial consistency is a sound principle and it cannot be thrown to the winds by the individual view of judges. After all the judicial discretion cannot be arbitrarily exercised. Moreover high aspirations of the public from the courts will sink to depths or despair if contrary decisions are given on identical facts. All judicial and quasi judicial authorities have not only to serve the public but also to create confidence in the minds of the public.”*

10. Suffice it to note here that the role attributed to Rahul who was allegedly seen wandering near the place of occurrence cannot be equated with the role of the petitioner who was allegedly on the steering wheel of the vehicle in which the assailants came at the spot and after causing gun shot injury to Jitender Khatri fled in the same car.

11. The Hon'ble Apex Court in **Prasanta Kumar Sarkar Versus Ashis Chatterjee and another, (2010) 14 SCC 496**, has laid down the following principles to be kept in mind, while deciding petition for bail:

*"(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;  
(ii) nature and gravity of the accusation;  
(iii) severity of the punishment in the event of conviction;  
(iv) danger of the accused absconding or fleeing, if released on bail;  
(v) character, behavior, means, position and standing of the accused;  
(vi) likelihood of the offence being repeated;  
(vii) reasonable apprehension of the witnesses being influenced; and  
(viii) danger, of course, of justice being thwarted by grant of bail."*

12. Taking into consideration the nature and gravity of the offence and the role attributed to the petitioner, I do not find it to be a fit case to enlarge him on bail.

13. The application is dismissed.

14. Any observations made hereinabove for the purpose of dealing with the contentions raised during hearing of the bail application shall not be deemed to be an expression on merits of the case.

**PRATIBHA RANI, J.**

**MAY 12, 2016**

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