

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : December 23rd, 2016

+ BAIL APPLN. 2562/2016

ISLMA @ CHHOTE

..... Petitioner

Through Mr.Rajender Yadav, Adv.

versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through Mr.Ashish Dutta, APP with SI Jasmer
Singh, PS Jahangir Puri.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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P.S. TEJI, J.

1. The present application under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr. P.C.), has been filed by the petitioner for seeking regular bail in a case registered as FIR No.407/2013, under Sections 302/34 of Indian Penal Code, at Police Station Jahangirpuri.

2. The allegations leveled in the instant case are that on 17.10.2013 at about 06.10 a.m., an information regarding an unidentified dead body lying in a street near Madarsa, Darul Ulam Hamidiya CD Park, Jahangir Puri was received at the police station. One Mohd. Azim @ Cheikh came at the spot and identified the dead body as of his son Amir. He informed that since Amir indulged in bad

company, he was sent to his native place in West Bengal. Amir came to Delhi on 08.10.2013 to attend a hearing of his case. On 16.10.2013, Amir came to the house to celebrate Eid festival. At about 08.30 p.m., Amir left the house to see his friends. Mohd. Azim and his wife Amina saw Amir at about 11 p.m. standing in the street talking to his friends who were drinking. Amir did not come home that night. On 17.10.2013, somebody informed him that one dead body of a boy was lying near Madarsa and on seeing the dead body he identified the same to be of his son Amir. FIR of the instant case was registered.

3. During investigation, accused persons were arrested at the instance of Smt.Amina who stated that she had seen her son Amir last time in the company of accused persons. She also stated that the accused persons, who came to her jhuggi and were talking about their share in some robbed amount, have murdered her son. Investigation further revealed that the petitioner/accused along with deceased Amir indulged in robbery and similar activities and Amir used to share the robbed articles with the co-accused persons. During one of such incidents, Amir found handsome valuables and did not share it with them and ran away to West Bengal. On 16.10.2013, they came to know that Amir had come to his home. They met Amir who denied having any such cache of valuables. Thereafter, accused Islam @ Chhote and Sikandar hold the hands of Amir and Kallu and Jamshu hold his feet. Accused Anabul and Jaggu hit the deceased on his head and face with stones till he died.

4. Argument advanced by the counsel for the petitioner/accused is

that the accused has been falsely implicated at the instance of the complainant who had enmity with the family of the accused. The alleged eye witnesses have not supported the case of prosecution and have not identified the accused/petitioner. Nothing has been recovered at the instance of the accused. It was further submitted that all the public witnesses have already been examined and the remaining witnesses are the police officials, therefore, there is no chance to influence the witnesses.

5. Per contra, learned APP for the State has opposed the bail application. It was argued that the petitioner/accused is already charged under Section 302/34 IPC along with co-accused persons. The allegations leveled against the accused are serious in nature. Evidence is still continuing and 12 witnesses are yet to be examined. There is apprehension that if the accused is enlarged on bail, he may influence the witnesses.

6. As per the allegations leveled, the accused/petitioner along with his co-accused persons has committed the murder of the deceased. The present case is based on circumstantial evidence and not on the basis of direct evidence. The instant case is based on last seen evidence. In the cases based on circumstantial evidence, no evidence can be read in piecemeal. The contentions raised by the counsel for the petitioner that the public witnesses examined so far have not supported the case of prosecution and no recovery was affected from the petitioner, is a matter of trial and no comment on the same can be made at this stage. The said contentions can be answered only at the

time of passing the judgment after conclusion of evidence.

7. Keeping in view the seriousness of the offence and in view of the facts and circumstances mentioned, this Court is not inclined to grant bail to the petitioner/accused.

8. However, the trial court is directed to expedite the trial.

9. Before parting with the order, this court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

10. Bail application is accordingly dismissed.

(P.S.TEJI)
JUDGE

DECEMBER 23, 2016
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