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

+ BAIL APPLN. 151/2017

MOHD IRSHAD

..... Petitioner

Through Mr.Murari Chaudhary, Adv.

versus

STATE (NCT OF DELHI)

..... Respondent

Through Mr.Ashish Dutta, APP with Insp.
Ranjeet Dhaka and SI Ravinder, PS
Bawana.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% **13.02.2017**

Arguments heard.

The present application has been filed under Section 439 Cr.P.C. for the grant of regular bail in FIR No.981/2014, under Sections 302/201 IPC, Police Station Bawana.

As per record, the facts in brief are that on 30.11.2014, a call was received by the police regarding a dead body. The police reached the spot i.e. main road coming from Kanjhawala towards Bawana before Shri Krishan Gaushala and a dead body of male was found lying in the drain. A white string tied with a piece of muffler was found around the neck of the deceased. A purse was found from the pant of the deceased. The deceased was identified as Md. Hasmat. Accordingly, FIR of the instant case was registered. The post mortem on the dead body of the deceased was conducted. On 04.12.2014,

accused/petitioner was arrested who disclosed that he along with his associate Saurabh and another person had murdered the deceased in EECO Car No.DL 1YD 1065 on 29.11.2014 and they threw the dead body in the drain. The car used in the crime was recovered at the instance of the accused. Co-accused Saurabh could not be arrested and he was declared Proclaimed Offender. After conclusion of investigation, charge sheet was filed.

Argument advanced by the learned counsel for the petitioner/accused is that the accused has been falsely implicated in the present case. There is no previous involvement of the accused in any other case. The public witnesses examined by the prosecution have not supported its case. It is further submitted that the accused is in custody since 04.12.2014. In support of the contentions, he has relied upon judgments in the cases of ***Virendra Amrutbhai Patel v. State of Gujarat IV (2000) CCR 264 (SC)*** and ***Amit @ Mandeep v. State (N.C.T. of Delhi) 2006 (3) Crimes 585*** in which the accused were released on bail keeping in view the custody period of the accused and other factors.

On the other hand, learned APP for the State opposed the bail application on the ground that the DNA profile generated from the nail clippings of the deceased and gauge cloth piece lifted from the recovered car is similar with the DNA profile of the deceased. Location of the call details of the accused and deceased was found to have matched. Statement of one Baldev was also recorded, who stated that he had seen the accused and deceased together on the day of incident.

From the allegations levelled in the instant case, it is specifically alleged against the accused that he along with his associates had committed the murder of the deceased. It is also alleged that the DNA profile of deceased lifted from the dead body and from the spot matched with his samples lifted from the vehicle in which the murder of the deceased was allegedly committed. The present case is based upon circumstantial evidence. It is submitted during the course of arguments that there are total 25 prosecution witnesses out of which, 23 witnesses have already been examined and only 2 witnesses are yet to be examined. The next date fixed before the trial court is 29.03.2017 for prosecution evidence. So far as the contention raised by the learned counsel for the accused with regard to non-supporting of prosecution case by the public witnesses is concerned, same are matter of trial and no comment on the same can be made at this stage and the same can be ascertained by the trial court at the time of passing the final judgment.

In view of the seriousness of the offence and the allegations levelled against the petitioner/accused, this Court is of the considered opinion that no ground is made out to release the accused on bail.

However, the trial court is directed to conclude the examination of prosecution witnesses within three months from the next date of hearing fixed before the trial court.

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.

The present bail application is accordingly dismissed.

P.S.TEJI, J

FEBRUARY 13, 2017
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