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

+ CRL.M.C. 356/2017

SHIKHA AGGARWAL

..... Petitioner

Through: Mr. Sudarshan Ranjan, Advocate with
Mr. Qaman Ali, Adv.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Amit Chadha, APP for the
State with SI Ram Kishan, PS Crime
Branch.
Mr. Puneet Mittal, Sr. Adv. with
Ms. Vasudha Bajaj, Mr. Amitey
Nagar, Adv. & Mr. Sagar Mittal, Adv.
for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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01.05.2017

By this petition moved under Section 439 (2) of the Code of Criminal Procedure, 1973 (Cr.P.C.) read with Section 482 Cr.P.C. and Article 227 of the Constitution of India, the order dated 13.01.2017 passed by the court of Additional Sessions Judge-01, Shahdara, Delhi on the bail application of the second respondent, in the context of First Information Report (FIR) No.549/2016 involving offence under Section 302 of the Indian Penal Code, 1860 (IPC) of Police Station Madhu Vihar, is brought under challenge mainly on the propriety of the procedure adopted and the material entertained in reaching certain conclusions which, the petitioner submits, were definitive in nature and, therefore, uncalled for at the stage of the proceedings wherein they were recorded.

Though the substance and merit of the above contentions are refuted by the learned senior counsel for second respondent, he and the learned Additional Standing Counsel for the State fairly agree that the matter may be remitted to the court of Sessions Judge, rather than the court of Additional Sessions Judge which passed the order, for consideration of the prayer for cancellation of the bail order in exercise of the jurisdiction vested in such court under Section 439 (2) Cr.P.C.

Ordered accordingly.

The contentions on all sides are reserved to be adjudicated in such proceedings.

It is made clear that the petitioner will have to move a fresh application urging all the grounds under Section 439 (2) Cr.P.C. before the court of concerned Sessions Judge who himself shall consider the prayer rather than making it over to any court of Additional Sessions Judge and before doing so shall not only call for the up-dated investigation report but also hear all sides.

Given the nature of the case, it is expected that the Sessions Judge shall take a decision on such application as is proposed to be moved by the petitioner within one month of it being presented.

The petition is disposed of with these directions.

Copy of the order be given *Dasti*.

R.K.GAUBA, J.

MAY 01, 2017

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