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

+ **BAIL APPLN. 233/2017**

MOHD.IZRAIL

..... Petitioner

Through

Mr.Vineet Mehta, Adv. with
Mr.Prateek Kumar, Adv.

versus

THE STATE (GNCT) DELHI

..... Respondent

Through

Mr.Ashish Dutta, APP for the State.
Inspt.A. Alok, PS Nabi Karim.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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15.02.2017

1. The present bail application under Section 439 of the Code of Criminal Procedure, has been filed by the applicant for grant of bail in a case arising out of FIR No.456/2015 registered under Section 302/120-B/34 of the Indian Penal Code at Police Station Nabi Karim, Delhi.

2. The facts of the present case are that the applicant was arrested on the disclosure statement of the co-accused namely Shahbuddin & Sehzaad for perpetrating criminal conspiracy in murdering the deceased. The co-accused were arrested at the spot and from their

possession, weapon of offence was recovered.

3. Learned counsel for the applicant has submitted that the applicant had no dispute with the deceased and that the applicant had been falsely implicated in the present case only on the disclosure statement of the co-accused. It is also submitted that the motive in the present case is missing for the reason that PW 6 Abdul Kalam, the father of the deceased had admitted that his son had given the whole amount which was due to the applicant. It is further submitted by learned counsel for the applicant that the cross-examination of PW 6 clearly establishes that the relations between the deceased and the applicant herein, were cordial.

4. Per contra, learned Additional Public Prosecutor for the State has submitted that the evidence has to be read in toto and that the part of the motive cannot be separated from it. It is further submitted that the statement of PW 6 Abdul Kalam recorded under Section 161 Cr.P.C. clearly establishes that there was threat of killing the deceased by the applicant. Learned APP further stated that the applicant had applied for bail earlier on two occasions which was rejected by the orders dated 2nd June, 2016 & 6th December, 2016 passed by the court

below.

5. I have heard learned counsel for the parties at length and gone through the available records. It is clear from the record that the other two accused namely Shahbuddin & Sehzaad have categorically pointed out the conspiracy made by the applicant as they did not have direct interest or the motive to kill the deceased. It is also a fact on record that from the possession of the co-accused, weapon of offence was recovered. So far as the motive is concerned, no doubt it is not an essential part of the offence of murder but even if there is no motive, a person can be held liable for the offence of murder. The depositions made by the other witnesses also point out the commission of offence by the applicant.

6. In view of the facts and circumstances of the present case as well as the seriousness of the offence, this court is not inclined to grant concession of bail to the applicant.

7. In view of the above scenario, the present bail application is dismissed.

8. 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.

9. With aforesaid directions, the present bail application stands disposed of.

P.S.TEJI, J

FEBRUARY 15, 2017/aa