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

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+ **BAIL APPLN.505/2017**

MOHD. RIZWAN

....Petitioner

Through: **Mr. R.D. Maurya, Advocate.**

versus

STATE (NCT OF DELHI)

....Respondent

Through: **Ms. Anita Abraham, APP for the State
with Inspector Mukesh Kumar, PS
Sangam Vihar.**

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

19.07.2017

BAIL APPLN.505/2017

1. By this petition filed under Section 439 of the Code of criminal Procedure, 1973, the petitioner seeks grant of regular bail in FIR No.554/2013 U/s 302/201/411/120B/34 of the Indian Penal Code (hereinafter referred to as 'IPC') & 25/54/59 of Arms Act at Police Station Sangam Vihar, New Delhi.

2. The case of the prosecution is that on 23.12.2013 an information vide DD No. 10A was received in the Police Station New Delhi, pertaining to a dead body which was found in "Pahari" of J-Block, Sangam Vihar, New Delhi near a Government School. SI Bijender Singh along with Ct. Rajender Kumar reached at the spot where the dead body of a male in burnt condition was found. There were injuries found on the head of the dead body. The FIR was registered U/s – 302/201 IPC. On 25.12.2013, Sh. Banne Singh along with Sh. Shiv Singh (brother of deceased) came to the police station

Sangam Vihar, New Delhi to inform the police that his brother Satish, had not returned home since 22.12.2013. Both of them were taken to AIIMS mortuary where they identified the dead body of Satish. During investigation, it was revealed that the last call which was received by the deceased was from a mobile no. 8468903282 which was in the name of one Ms. Asha who informed that the same was in possession and use by her son Nathu Ram. On interrogation, Nathu Ram confessed his guilt disclosing that he had an illicit relationship with his Aunt which came to the knowledge of his maternal uncle Sh Banne Singh who thereon gave beating to him and also scolded him. In order to take revenge of the humiliation, Nathu Ram hatched a conspiracy with co-accused Arvind, Mohd. Rizwan and deceased Satish to kidnap the son of Banne Singh. As the deceased Satish refused to co-operate with accused Nathu Ram he got apprehensive that Satish may disclose their plan to his maternal uncle and thus he along with his other associates Arvind and Rizwan committed the murder of Satish and burnt his dead body by pouring petrol over it.

3. The present petitioner filed an application U/s 439 of the CrPc for grant of bail before Sh. Sandeep Yadav, Additional Sessions Judge, Saket Courts, New Delhi, however the same was dismissed.

4. Mr. R.D. Maurya, learned counsel for the petitioner contended that the petitioner has not been involved previously in any criminal case and bears neat and clean antecedents; that the petitioner is a permanent resident of Delhi and thus there is no apprehension of his absconding or tampering with the prosecution evidence; that as per the disclosure statement of the petitioner it is categorically mentioned that

he gave one blow by a piece of stone at the back portion of the head of the deceased; that it is Arvind Chaudhary (co-accused) who inflicted knife blows on the eyes, neck and stomach of the deceased; that as per the post mortem no injury is detected on the head of the deceased and thus no case is made out against the present petitioner.

5. Per Contra, Ms. Anita Abraham, learned APP for the State urged that the present petitioner was the one who first hit Satish on his head with a stone from behind; that the deceased fell down and Nathu Ram started hitting him with the stone; that Arvind inflicted multiple injuries on the body of the deceased with a knife; that the mobile phone of the deceased was recovered from the house of the present petitioner; that the bail application of the co-accused Ram Nathu has been dismissed by this Court.

6. Heard the arguments advanced by learned counsel for the parties and have also perused the allegations leveled in the FIR, charge sheet and other documents available on the file.

7. On perusal of the post-mortem of the dead body of the deceased and as per the opinion of the doctor, it shows that the injury number 1 to 11 mentioned in the post mortem report caused by sharp edged weapon, is possible by the alleged weapon (knife).

8. Undoubtedly, the present case is based on circumstantial evidence. Also, the case is pending trial and twelve witnesses out of twenty six witnesses have been examined. As per the record the present petitioner conspired with the co-accused to kidnap the son of Banne Singh; that he was the one who first hit deceased Satish on his head with a stone from behind and also the recovery of the phone of

deceased from the house of the petitioner clearly indicates that this is not the appropriate stage to release the petitioner on bail.

9. Moreover, the fact that the offence charged includes murder under Section 302 IPC having the punishment of death or imprisonment for life, it is a heinous crime against the society and therefore in the interest of justice, there is no merit in the contentions raised by learned counsel for the petitioner and the application, being devoid of any merit, is hereby dismissed.

10. Before parting with this order, this Court would like to place it on record by way of abundant caution that whatever has been stated in this order has been 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 arising for decision in the case which shall naturally have to be done by the Trial court.

11. Accordingly, the present petition is dismissed.

SANGITA DHINGRA SEHGAL, J.

JULY 19, 2017

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