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

+ **BAIL APPLN. 706/2017 & CrI.M.(Bail) 701/2017**

VIJAY KUMAR Petitioner

Through Mr.Anunaya Mehta, Adv.

versus

STATE Respondent

Through Dr. M.P. Singh, APP.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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14.07.2017

The petitioner seeks bail in connection with FIR No.443/2016 dated 27.08.2016 (PS Bhalswa Dairy) instituted for the offences under sections 302/308/452/323/34 of the IPC.

The petitioner is in custody since 28.08.2016.

One Abhishek who was having an affair with the deceased Jyoti was unhappy with her for her having snapped the relationship of friendship. An objectionable message was sent by the aforesaid Abhishek to Jyoti (deceased).When a protest was made by the brother of the deceased, Abhishek was found to be in a toxicated state. Later Abhishek along with his associates came and assaulted the informant at the ground floor of his house. The other persons who had come to the rescue of the informant were also assaulted by other accused persons who were called at the instance of the aforesaid Abhishek.

While all this was happening, Abhishek along with the present petitioner, who happens to be the uncle of Abhishek travelled upstairs and as the allegations stand in the FIR, poured kerosene oil over the deceased and set her on fire. The deceased died in the hospital after about 2 days of the occurrence.

Learned counsel for the petitioner has drawn the attention of this Court to the dying declaration of the deceased recorded on 28.08.2016. The deceased has clearly stated that Abhishek had entered the room of the deceased, sprinkled kerosene oil which was kept near the kitchen and set her on fire. The statement of the sister of the deceased was also shown to this Court which was recorded under section 161 of the Cr.P.C. Though the sister of the deceased has spoken about this petitioner also having accompanied Abhishek in the room of the deceased but the act of sprinkling kerosene oil and setting the deceased on fire has been attributed by her to Abhishek only and not to the petitioner. Immediately after the occurrence, the informant of this case had reported the matter to the police on telephone. The PCR form records that the deceased committed suicide by immolating herself.

Dr. M.P. Singh, APP has vehemently opposed the prayer of bail of the petitioner on the ground that these grounds could be tested only in the trial and the petitioner could cross examine the witnesses at the trial to elucidate the truth. He further submits that the deceased died of 95% burns at the hands of the accused persons. He has also opposed the present bail application on the ground that in cases of this kind, individual overt act ought not to be assessed/analysed at the stage of grant of bail.

Regard being had to the aforesaid facts namely the dying declaration

of the deceased in which no overt act has been attributed against the petitioner, the statement of the sister of the deceased, who claims to have seen the occurrence and the PCR form, wherein there is a report of the deceased having immolated herself, this Court is inclined to release the petitioner on bail during the pendency of the trial.

Let the petitioner be released on bail on his furnishing a bond in the sum of Rs.10,000/- with one surety of the like amount to the satisfaction of the Trial Court.

The petitioner shall participate in the trial and his absence from the trial proceedings on three consecutive occasions without there being any plausible reason, would entitle the Trial Court to initiate proceedings against him for cancellation of his bail.

The application stands disposed of.

Dasti.

ASHUTOSH KUMAR, J

JULY 14, 2017
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