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

+ CRL.M.C. 2499/2015

GYANENDER

..... Petitioner

Through: Mr.Brijender S.Dhull, Advocate.

versus

VISHAL @ VISHU & ANR

..... Respondents

Through: Mr.Mukesh Kumar, APP for State
with SI Amarpreet, P.S. Narela,
Delhi.

Mr.Kanwar Kochhar, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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03.05.2017

Rejoinder has not been filed by the petitioner. Counsel for the petitioner submits that he does not wish to file the rejoinder.

Counsel for the petitioner further submits that the Court below has passed the bail order dated 7th April, 2015 and appreciated the evidence in the said bail order. Counsel further submits that appreciation of evidence in the said bail order may affect the merits of the final judgment in the case. Therefore, the said bail order may be modified to the extent that the observations made in para-2 page 10-11 of the order dated 7th April, 2015 passed by the learned Addl. Sessions Judge in case FIR No.562/2013, case No.132/13, under Section 302/34 IPC would not come in the way of the final judgment to be passed in the case. The relevant portion of the order dated 7th April, 2015 is reproduced as under:-

“ Upon hearing arguments and on the perusal of the material available on record reveals that as per the submissions made on

behalf of the accused Vishal @ Vishu, the applicant/accused has been falsely implicated in this case as PW-2 & PW-3, who were the star witnesses in this case, have not supported the case of the prosecution. The star witnesses of the prosecution were stated to be only PW-2 & PW-3 as the blood soaked clothes of the witnesses i.e. PW-2 & PW-3 were seized by the police officials, which illustrate the presence of the said witnesses on the spot. Since the star witnesses namely PW-2 & PW-3 have not supported the prosecution case, the whole prosecution story becomes doubtful. Father of the deceased i.e. PW-4 was stated to be not present at the spot and stated to have subsequently planted by the investigating agency. PW-4 was not found by the police official at the spot at Delhi Hospital. PW-4 has not removed the deceased to the Delhi Hospital or to SRHC Hospital. PW-4 has not made a call to the PCR about the incident as the clothes of this witness were not seized by the investigating agency, which illustrate that PW-4 was not present at the spot of the incident. There are also stated to be material contradiction in his alleged Tehrir that the said PW-4 has categorically stated that he is working in MTNL but in his examination before this court he has denied the fact. The fact that the version of PW-4 and that of investigating agency on the point that PW-4 had met with the police officials for the first time. The said version of PW-4 is also stated to be contradiction with PW-7, who was the first police official to arrive at the spot. On the contrary, Ld. Counsel for the complainant and Id. Addl. PP for the State has submitted that the two star witnesses namely PW-2 & PW-3 have been won over by the accused persons, still there is PW-4, who is the father of the deceased, who is also a star witness and who has supported the case of the prosecution. It is also submitted by the Id. Addl. PP for the State that this is not the stage of appreciation of the evidence”

Learned APP for the State and learned counsel for the respondent No.1 submit that they have no objection if the order dated 7th April, 2015 is modified to the aforesaid extent only.

In view of the submissions made by learned counsel for the parties, it is ordered that the order dated 7th April, 2015 is modified to the extent that the observations made in the order dated 7th April, 2015 at page 10-11, para-2, i.e. discussion on the statements of the witnesses, would not affect

the merits of the case at the time of final judgment.

The present petition is allowed and stands disposed of and the impugned order dated 7th April, 2015 is modified to the aforesaid extent only.

Copy of this order be given *dasti* to the parties, as prayed.

I.S.MEHTA, J

MAY 03, 2017
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