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

+ BAIL APPLN. 1702/2017

AJAY RAWAT

..... Petitioner

Through: Mr.R.K.Sahni with Mr.Prateek
Mehta, Advs.

versus

STATE

..... Respondent

Through: Mr.Arun Kr.Sharma, APP.
SI Anand Pratap, P.S.Madhu Vihar.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **20.09.2017**

The petitioner seeks bail in connection with FIR No.295/2016 dated 13.05.2016 (P.S. Madhu Vihar) which was instituted initially for offences under Sections 323, 341 and 34 of the IPC. Later, with the death of the deceased, Section 304 of the IPC was added.

The averments in the FIR reveals that the deceased had come late to his home and was found by his wife to be drunk. Since there was an injury on the face of the deceased, the wife enquired from him the reason for such an injury but no answer was given by the deceased. Later in the night when the deceased complained of pain in his stomach, he was taken to hospital. Before he was taken to a hospital, the deceased is said to have disclosed before his wife that he had consumed alcohol along with the petitioner and one Sachin in the evening in the children's park. Later, while the deceased

was leaving the place, the petitioner and Sachin assaulted him by means of fists, slaps and kicks in stomach.

The deceased was taken to a local clinic on 12.05.2016 by his wife, where it was advised that the deceased be taken to a Government hospital. The deceased was thereafter brought to LBS Hospital and after remaining in ICU for some days, the deceased died.

The post mortem report reveals that there are as many as 21 injuries on the person of the deceased. However, on a closer scrutiny of the nature of injuries, it is found that injury Nos.1 to 18 are injuries which have partially healed and they are in the nature of scabs/abrasions but not on the stomach. From the nature of the injuries Nos.1 to 18, it can safely be stated, it has been argued on behalf of the petitioner, that those injuries were not related to the assault perpetrated on the deceased by the petitioner and another. It further appears, as has been argued, that the Laprotomy and Ileostomy was conducted on the body of the deceased which perhaps could have caused the mixing of mucopurulent discharge mixed with the blood present in the cavity. The post mortem report clearly reveals that about 1 litre of mucopurulent discharge was found to be mixed with blood present in the cavity.

It has been argued that because of the surgical intervention, the deceased has died and the death has got nothing to do with the assault perpetrated on him by the accused persons including the petitioner. Had the accused persons including the petitioner intended to kill the deceased, the deceased would have suffered other ante mortem injuries on the body. That the deceased did not talk about it to his wife in the evening when he reached home is also good enough evidence to conclude that if at all there was a

scuffle between the petitioner and another with the deceased, it was of a minor nature and that there was no intention to kill him.

The petitioner is said to be in custody since 14.05.2016.

Taking into account the aforesaid facts namely the nature of accusation and the period of custody of the petitioner, this Court is inclined to grant bail to the petitioner.

The petitioner is directed to 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.

Needless to state that the petitioner shall participate in the trial and in case the petitioner absents himself from the trial proceedings on two consecutive occasions without necessary permission from the Trial Court, it would be open for the State to take steps for cancellation of his bail.

The application is disposed of.

Dasti.

ASHUTOSH KUMAR, J

SEPTEMBER 20, 2017

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