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

+ **BAIL APPLN. 2245/2018**

GAJENDER KAUSHIK

... Petitioner

Represented by: Mr.Pradeep Gupta with Mr.Parinav
Gupta and Ms.Mansi Gupta,
Advocates

versus

STATE GOVT. OF NCT OF DELHI

... Respondent

Represented by: Ms.Rajni Gupta, APP for the State

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

04.12.2018

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By this petition the petitioner seeks bail in case FIR No.162/2014 under Section 302 IPC registered at PS Narela. Learned counsel for the petitioner submits that all material witnesses have been examined and the petitioner has been in custody now for more than 4½ years. There are contradictions in the testimonies of the witnesses who have deposed under the pressure of the police as is evident from the depositions.

The above noted FIR was registered after a PCR call was received at PS Narela vide DD No.16 A informing that a dead body was lying in the jungle of Bhorgarh at Phase II Industrial Area and a motorcycle No.HR 5AX 7895 Discover was also found near the dead body. The dead body was found to be that of Pradeep, son of Harkesh, duly identified by his cousin

Vikas. On personal search of the deceased one mobile phone, one purse containing ₹9,200/-, one Election Card, Pocket Diary, R.C. of Motor Cycle No.HR 51X 7895 were recovered. The death was opined due to cranio-cerebral damage consequent upon head injury.

To press its case against the petitioner, the prosecution has examined two witnesses namely Pyare Lal and Vinod Kumar who last saw the deceased with the petitioner on 6th February, 2014 at about 7.00 p.m. Statement of Vikas Sharma, cousin of deceased was also recorded who deposed about the property dispute between the deceased and accused Gajender.

The witnesses of last seen have been examined in Court and during their cross-examination, they have vacillated to the extent whether the deceased was last seen with the petitioner. The prosecution also relies upon recovery of the weapon of offence namely *sambhal* at the pointing out of the petitioner, blood stained clothes etc. The weapon of offence was not blood stained. However, opinion has been rendered by the autopsy surgeon that the injury could be possible by the said weapon or the weapon of a similar type. The prosecution also presses the location of the phones through a chart to show the proximity of the deceased as well as the petitioner.

Be that as it may, in view of the vacillating stand of the witnesses of the last seen and the fact that the petitioner has now been in custody for more than 4½ years and four witnesses of the prosecution are yet to be examined, this Court deems it fit to grant bail to the petitioner. It is therefore, directed that the petitioner be released on bail on his furnishing a personal bond in the sum of ₹25,000/- with one surety bond of the like

amount to the satisfaction of the learned Trial Court, further subject to the condition that in case of change of residential address the same will be intimated to the Court concerned by way of an affidavit.

Petition is disposed of. Order dasti.

MUKTA GUPTA, J.

DECEMBER 04, 2018
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