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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 5400/2018 and CrI.M.A.34784/2018
SATYA DEV SHARMA Petitioner

Through: Mr. R.P. Luthra, Advocate with
Mr. S. Luthra, Adv.

versus

STATE & ANR. Respondents
Through: Mr. Sanjeev Sabharwal, APP for the
State with Insp. Virendra Kumar,
ATO/Timarpur.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **25.10.2018**

The second respondent is one of the several accused persons who are facing trial in the case arising out of FIR No.335/2017 of Police Station Timar Pur involving offences punishable under Sections 307/120-B/34 IPC and 25/27/54/59 of the Arms Act. In the charge sheet dated 23.10.2017 reference, *inter alia*, was made to the corroborative evidence in the nature of call detail records (CDRs) also of the mobile phone of second respondent confirming his presence at the scene of incident at the relevant point of time, though it was indicated that the certified copies thereof were being collected and would be filed later. The court of Sessions allowed the bail application No.164/2018 (63/18) of the second respondent by order dated 18.01.2018, *inter alia*, observing that the record of mobile phone of the said accused had not been placed on record in spite of completion of investigation.

The grievance of the petitioner, he being the victim of the offence, seeking cancellation of bail under Section 439(2) Cr.P.C. has been that

crucial evidence in the nature of CDR was not looked into and thus, the Sessions court was misled.

The Additional Public Prosecutor on instructions confirms that supplementary charge sheet was later filed on 27.02.2018 wherein CDRs were placed on record of the trial court.

The petitioner had earlier moved application for cancellation of bail on the above ground which has been dismissed by the court of Sessions by its order dated 11.07.2018, only noting that in the order dated 18.01.2018 there is no specific mention that CDR was shown to the court at the time bail application was argued. The learned Additional Sessions Judge has not examined the import and effect of the said material while dealing with the application for cancellation of bail.

Feeling aggrieved, the petitioner has come up to this court under Section 439(2) read with Section 482 Cr.P.C. assailing the order dated 11.07.2018. As is now requested and is deemed proper, the order dated 11.07.2018 is set aside and the matter arising out of the prayer of the petitioner for cancellation of bail of the second respondent under Section 439(2) Cr.P.C. is remitted to the court of Sessions for fresh consideration after hearing not only the petitioner and prosecution, but also the second respondent, taking into account the material placed before the trial court in entirety.

The petition and the application filed therewith stand disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 25, 2018/vk

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