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

+ **BAIL APPLN. 2500/2017 & Crl.M(Bail) 2166/2017**

RAVI GANGWAL

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. with Mr.
Mr. Atul Gupta, & Mr. Rohit
Bhardwaj, Advocates.

versus

STATE

..... Respondent

Through: Mr. Ashish Dutta, APP for the State
with SI Raj Kumar, PS Neb Sarai.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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05.07.2018

The applicant is facing trial in two sessions cases (SC 45/15 and 46/15) titled State vs. Chote Lal & ors. arising out of report under Section 173 Cr.P.C. submitted by the police after investigation into two connected FIRs they being no. 147/2014 and 148/2014 under Sections 452/325/323/506 IPC and 307/302/147/148/34 IPC respectively read with Section 25 Arms Act, 1959 both of police station Neb Sarai. The applicant is one of the several accused persons who were sent for trial. He was admitted to bail in both the said cases by the court of sessions by order dated 07.04.2017 primarily against the backdrop that the material witnesses had already been examined. The case had reached the stage of evidence for prosecution in the course of which one Aas Mohd. (PW-11) was examined

and discharged on 06.07.2017, the proceedings recorded on the said date indicate only that fact. However, by order recorded on 10.07.2017 (a Monday), the Sessions Judge presiding over the trial recorded an order on his own motion, to the effect that PW-11 while going out of control room after his testimony had been recorded on 06.07.2017 had informed him in whispers that the other eye witnesses who were members of his family had not deposed against the accused because of the threats that had been given to them. Having recorded this information given orally by the said witness, he proceeded to issue show cause notices to all the accused persons and also directed inquiry through the police. Eventually, on the basis of response received and the report of the police, by order dated 18.08.2017 he cancelled the bail order in favour of the applicant in case FIR No. 148/2014, noticeably not touching the similar order in the old FIR No. 147/2014, and dropping at the same time the show cause notice for cancellation of bail against the other accused persons. In this action, he, *inter alia*, recorded that he had been misled by submission that all the material witnesses had already been examined leading to the bail order being granted.

The order dated 18.08.2017 carries an inherent contradiction, in that the trial judge declined to recall any of the witnesses who allegedly had been threatened and consequently had resiled from their previous statements so as to turn into hostile witnesses observing that “nothing turns in the inquiry into that aspect”. Pertinent to add, the statement of PW-11 as to the basis of his information about the threats was not even formally recorded by the trial judge. The police during inquiry into this aspect was unable to dig out any specific material so as to pin down any individual with threats if any

extended to any of the witnesses for prosecution.

In these circumstances, the order dated 18.08.2017 selectively cancelling the bail order in favour of the applicant was neither just nor fair. The said order is hereby set aside. The natural consequence would be that the bail order whereunder he was earlier released on bail shall stand revived and restored and that the petitioner will have to furnish fresh bail bond.

The petition and the application stand disposed of.

Dasti.

Trial court record be returned forthwith.

R.K.GAUBA, J.

JULY 05, 2018

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