

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN 2548/2019 & CRL.M. (BAIL) 1772/2019**

Judgment reserved on : 22.10.2019

Date of decision : 13.12.2019

NITIN SABHARWAL

..... Petitioner

Through: Mr. Siddharth Bhatnagar, Sr.
Adv. with Ms. Malvika Trivedi,
Mr. Nipun Katyal, Mr. Anurag
Misra & Ms. Upasana Goel,
Advocates

versus

THE STATE OF NCT, DELHI

..... Respondents

Through: Mr. Kewal Singh Ahuja, APP
for State with SI Sandeep,
Crime Branch, RK Puram.
Mr. Mohit Mathur, Sr. Adv.
with Mr. Chetan Anand, Adv.
for complainant.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner Mr. Nitin Sabharwal vide the present bail application seeks grant of bail in relation to the FIR No.219/2017, PS New Friends Colony in which he has been arrested for the alleged commission of the offences punishable under Sections 302/201 r/w Section 34 of the Indian Penal Code, 1860, in relation to which he was charged vide order on charge dated 02.06.2018 for his allegedly on 05.07.2017 between 4:30 am – 6:15 am along with the co-accused

Tazim Khan and also Pritam Saini in furtherance of their common intention having committed the murder of Hemant Chawla at B-439, Ground Floor, New Friends Colony New Delhi and of having caused the disappearance of the bedding where the deceased Hemant Chawla was found murdered and the T-shirt worn by the Hemant Chawla (since deceased) i.e. in relation to the offence in question in furtherance of his common intention with the co-accused Md. Tazim Khan. The applicant as indicated by the Trial Court record which has been requisitioned and perused had pleaded not guilty to the said charge of allegations.

2. The contention raised on behalf of the applicant is to the effect that the charge of allegations has been framed on the basis of alleged circumstantial evidence collected and that there are no circumstances whatsoever that can connect the petitioner to the commission of the offences with which he has been charged. The petitioner submits that he has been in the business of real estate for several years without any criminal antecedents or any criminal history and that he has been implicated in the instant case without any direct evidence and has been incarcerated since 04.12.2017. The petitioner has submitted that the deceased and he have been very good friends since childhood and have been schoolmates and have studied together in college and thus on 04/05.07.2017 when the incident took place at his house, he, the deceased and two other people (i.e. co-accused Tazim Khan and Pritam Saini) were having a get together.

3. On behalf of the petitioner it has been submitted that Hemant Chawla (since deceased) had come to the house of the petitioner on

04.07.2017 with a bottle of wine and beer to spend some time together and that the petitioner had ordered food from the restaurant and started enjoying time together and had a few drinks and Hemant Chawla became a little unconscious/ drunk and requested the petitioner that he would sleep at the house of the petitioner itself, to which the petitioner agreed. It has been further submitted on behalf of the petitioner that he and the other accused wanted to go out of the house for a long drive and though the petitioner requested Hemant Chawla (since deceased) to accompany him, due to over eating and drinking, Hemant Chawla (since deceased) was not in a position to join the petitioner and the other friends and Hemant Chawla (since deceased) fell asleep in the petitioner's room itself. The petitioner has submitted that he could not even have imagined that the deceased would die in that particular room. The petitioner has further submitted that he learned of the incident at about 4:30 am, that the deceased was not moving and that something was wrong with him and that he went back to his house and tried to wake up Hemant Chawla (since deceased) and called the ambulance, dialed 100 to call the police and informed the family of Hemant Chawla (since deceased) and did every necessary thing which any normal/responsible citizen of the society would have done.

4. The petitioner has further submitted that he was in a state of shock and could not believe that he has lost a friend. *Inter alia* the petitioner submits that after the said incident he cooperated with the investigation conducted by the police and further submits that he had given statements and followed up with the police and even used to be at the Police Station to apprise the police officials with correct facts

and helped the police to collect the evidence. The petitioner further submitted that the registration of the FIR after 14 days of the incident is completely an afterthought and vendetta best known to the Police Officials. The petitioner further submits that he had surrendered himself by going to the police station and had requested the police for a true and fair investigation and also undertook to cooperate throughout. The petitioner further submits that he never tried to flee away from the jurisdiction of the Court nor from the investigating authority. *Inter alia* the petitioner submits that the charge sheet was filed on 26.02.2018 and that the investigation in the matter is complete and charges were framed and important witnesses have already been examined and that the petitioner is a victim of erroneous investigation. *Inter alia* the petitioner further submits that there is no need of the petitioner being incarcerated and there is no chance of his tampering with the evidence and there is no possibility of the petitioner fleeing away from the jurisdiction of the Court concerned and that he ought to be released on bail.

5. The petitioner further submits that the charge sheet that has been filed does not inspire any confidence against the petitioner for the commission of the crime and that the details of the location of the petitioner and other accused persons when they had gone out of the house for a long drive on the night intervening 04/05.07.2017 have also been annexed in the charge-sheet by the Investigating Authority. The petitioner submits that there are no eye witness in the case and the petitioner was not present at the time of the incident at the spot and there is no motive that has been brought forth by the Investigating

Agency against the petitioner whatsoever with regard to the death of the deceased. The petitioner further submits that 22 witnesses had already been examined at the time of submission of the present petition and has submitted that the witnesses that remain to be examined are

- Ms. Renu Sehgal, who is an elderly lady and the petitioner is not known to her;
- Mr. Ram Bachan, the driver of the petitioner;
- Ms. Shivani Alhuwalia, the sister of the deceased who was in London at the time of the incident and cannot be influenced by the petitioner;
- Mr. Harun Pratap, Ld. Metropolitan Magistrate who cannot be influenced by the petitioner;
- Ms. Deepti Devesh, Metropolitan Magistrate who too cannot be influenced by the petitioner;
- Constable Rakhi who received a PCR call and who is only to prove whether any PCR call was received or not;
- Constable Madan; Head Constable MHC (M);
- Inspector Mahesh all police personnel;
- Dr. Md. Shazeb i.e. the doctor who conducted MLC which report has already been submitted on the record and cannot be tampered with;
- Dr. Abhishek Yadav, Assistant Professor, Department of Forensic Medicine, AIIMS who is a senior medical expert and cannot be influenced by the petitioner in as much as the post-

mortem report has already been submitted and cannot be tampered with;

- Mr. Santosh Tripathy, SSO (Chemistry), FSL, Rohini who is only to prove FSL report no.2017/C-6531 & no.2017/C-8613 and there is no chance that the petitioner could influence the said witness;
- Dr. AK Singh, SSO-1, Forensic Psychology Division, CFSL, CBI, New Delhi, is a government doctor and has submitted his report and had conducted no polygraph test on the petitioner;
- SI George Abrahan, a police official who is only to prove the PCR form along with certificate 65B of the Evidence Act;
- SI Satish Kumar, also a police official who could not be influenced;
- HC Mahesh, another police official who also cannot be influenced;
- Nodal Officer from the Airtel company qua whom also there is no possibility of his tampering with the evidence and influencing the said witness and all the CDRs and location charts have already been submitted by the officials;
- Nodal Officer of the Vodafone company qua whom also there is no possibility of his influencing them and all the CDRs and that the location chart has already been submitted by the official;
- Nodal Officer from the Idea company similarly cannot be influenced and all the CDRs and the location chart has already been submitted;

- Inspector Sushil Kumar, the first IO who has also submitted the charge sheet and there is being no likelihood of his being influenced by the petitioner and
- Inspector Ishwar Singh, the second IO who has submitted the charge sheet and filed necessary documents and cannot be influenced.

6. The petitioner thus submits that all necessary witnesses have already been examined and cross-examined and that the 21 witnesses that remain to be examined are such that they cannot be influenced and recording of their testimonies would take time.

7. The petitioner has further submitted that he undertakes not to move beyond the jurisdiction of the learned trial Court and that it is the cardinal principle of criminal jurisprudence that bail is a right and jail is an exception and that the petitioner cannot be confined in jail as a punishment and confinement in jail is a preventive measure for the sake of a free and fair trial but in the instant case, there is no scope of the petitioner influencing or tampering with the trial in any manner or influencing any witness. The petitioner submits that he having already spent 21 months of incarceration and there being no previous adverse antecedents against him, there being no role attributed to him and he being willing to join the investigation, the Court must be mindful that continued incarceration dents his dignity and detracts from his personal liberty.

8. The petitioner submits that he is suffering from Tourette Syndrome since the age of 11 years because of which he makes repeated, quick movements or sounds which he cannot control and has

an intake of 40 medicines a day and that he is the only earning member of his family; that his mother is aged 70 years of age and is facing various medical ailments and has been suffering with Panic Attacks and she is diabetic and also facing problems such as low blood pressure and breathlessness and that his wife is a home-maker taking care of his daughter and son aged 15 years and 12 years respectively and since the time the petitioner has been in jail, his family has been suffering a money crunch and it has become difficult to give proper education to his children and it is difficult to spend on litigation without any income.

9. The petitioner submits that his continued incarceration is causing depression and harassment to his 15 year old daughter whose report card shows that her marks have fallen drastically and that she is living on medicines and psychiatric sessions. The petitioner submits that there is no clear *mens rea* brought forth in the instant case.

10. Reliance has been placed on a catena of verdicts on behalf of the petitioner to contend that there being no sufficient incriminating evidence against him and there being no scope of his evading the process of law and there being no scope of his tampering with the witnesses that remain to be examined, he is entitled to be released on bail with reliance having been placed on the verdict of the Hon'ble Supreme Court in *Kunal Alias Sanjay Behera vs. State of Orrisa (2018) 1 SCC 296* to contend that the evidence collected in the instant case fall shorts of the requirement of proving of the charge beyond reasonable doubt. **It is essential to observe that this case relied upon**

on behalf of the applicant acquits the applicant of that case in an appeal after trial and not during the pendency of the trial;

- ***Dataram Singh vs. State of UP & Anr. (2018) 3 SCC 22*** to contend that there being no apprehension that the applicant would abscond and would hamper the trial and there being no criminal antecedents against him, the applicant ought to be released on bail in as much as there is a fundamental postulate of criminal jurisprudence that of the presumption of innocence of the accused until found guilty and that a humane attitude is required to be adopted by a Judge while dealing with an application for remanding a suspect/accused person to police custody or judicial custody. It is essential to observe that vide para 6 of this verdict, it has categorically been observed by the Hon'ble Supreme Court to the effect that the observations that have been made in the said verdict ought not to be understood that bail should be granted in every case and that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately and that, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

11. Reliance has also been placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Prashant Kumar Singh vs. State of NCT of Delhi (2018) SCC Online Del 9530*** to contend that the withdrawal of the previous application of bail made by the

applicant would not be an embargo to the institution of the present bail application;

- ***Dhariwal Industries Ltd. Vs. Kishore Wadhvani & Ors. (2016) 10 SCC 378*** to contend that there being no scope of the applicant tampering with the evidence or influencing the witnesses, he ought to be released on bail;
- ***Jitender Kumar vs. Govt. of NCT of Delhi (2016) SCC Online Del 1170*** to contend to similar effect;
- ***Thomaso Bruno & Anr. Vs. State of U.P. (2015) 7 SCC 178*** to contend to the effect that the post mortem report in the instant case speaks of death due to asphyxia as a result of strangulation in the instant case and in the absence of such symptoms of strangulation militates against the case of the prosecution and where there are variations of a serious nature which destroy the substantive case stated to be proved by the prosecutrix, the same provide an advantage to the accused/applicant;
- ***Y.S. Jagan Mohan Reddy vs. CBI (2013) 7 SCC 439*** to contend to the effect that whilst considering the grant or non-grant of bail, the relevant considerations are the nature of accusation and evidence, severity of punishment which conviction entails the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused, reasonable apprehension of the witnesses being tampered with and the larger interests of the public/State;

and that in the facts and circumstances of the instant case, there being no likelihood of the applicant tampering with the evidence, he ought to be granted benefit of being released from incarceration.

12. Reliance was also placed on behalf of the petitioner on the verdicts in ***Ranjit Singh Vs. State of M.P. & Ors. (2013) 16 SCC 797***; ***Sanjay Chandra vs. CBI (2012) 1 SCC 40***; ***Vaman Narain Ghiya vs. State of Rajasthan (2009) 2 SCC 281***; ***Chaman Lal Vs. State of U.P. & Anr. (2004) 7 SCC 525***; ***Joginder Kumar vs. State of U.P. & Ors. (1994) 4 SCC 260*** to contend to similar effect.

13. On behalf of the State at the outset it was submitted that there are a total 41 witnesses that have been cited in which there are 11 public witnesses and of the 11 public witnesses, 8 have been examined and 3 public witnesses still remain to be examined. The State has further submitted that the statements under Section 164 of the Cr.PC, 1973 of two public witnesses Shri Bheem Singh and Shri Saka Panchanan have been recorded and the applicant is an influential person and if he is granted bail, he may influence the witnesses and run away to evade trial. *Inter alia* it was submitted on behalf of the State that the applicant has already withdrawn the Bail Application No.1710/2019 on 21.08.2019 when he had sought direction for expeditious recording of the prosecution evidence and submitted that the application seeking bail was thus not being pressed and that thus the learned trial Court had been directed to expedite the recording of the prosecution evidence and endeavor to conclude the same by 31.12.2019.

14. It was also submitted on behalf of the State that prior to institution of Bail Application No.1710/2019 which was withdrawn by the applicant on 21.08.2019, the applicant had filed Bail Application No.852/2018 which was dismissed by this Court on 23.05.2018 taking the merits of the prayer for grant of bail and that the present bail application cannot be even considered. As regard this contention, it is essential to observe that in as much as vide para 13 of the said order it had been observed that considering the serious allegations regarding the victim's death and the attendant circumstances it was not a case to grant bail to the petitioner **at that stage** and the said order also indicated vide para 7 thereof that **the trial was at its initial stage and the charges had till then not been framed**, taking into account the said aspect, it was considered appropriate to take up this bail application for consideration.

15. It is undoubtedly true that the petitioner was not present at the spot of the occurrence between 11:30 pm to 4:30 am on the night intervening 04/05.07.2017, the victim's death having occurred allegedly between 1:30 pm to 2:30 pm. The victim's family initially did not suspect any foul play. The post mortem examination report indicated that the trachea and larynx both were intact and without any injury or damage and nothing incriminating had been recovered from the applicant.

16. It is essential however to observe that the death of the victim took place at the residence of the applicant on the night intervening 04/05.07.2017. Ex.PW1/B, the post mortem report indicates that the body of the deceased was registered as brought dead on 05.07.2017 at

11:16 pm vide MLC No.5796/2017 and that the time since death opined was about 12 hours, the opinion given vide the said report Ex.PW1/B dated 05.07.2017 indicates that cause of death was kept pending till the viscera analysis report was made available by the IO from the SFSL/CFSL though it was opined by the doctor conducting the autopsy on injury no.1 which reads to the effect:

“1. Two numbers of contusions, measuring 0.5cmX0.4cm and 0.3cmX0.3cm, is present over the anterolateral aspect of the left side of neck, situated, 5cm and 6 cm left to midline respectively and 8 cm below the left angle of mandible. On dissection of the neck, extravasation of blood are present with the muscle layers of neck underlying the external thyrohyoid complex is intact. Trachea is normal.”

was caused as result of pressure over the neck and injuries nos.2 & 3 which read to the effect:

“2. A contusion of size 6 x 7 cm is present over lateral aspect of right arm 8 cm above the elbow.

3. Multiple contusion ranging from 1cmX0.5cm to 2cm X 2cm (three in number) is present over lateral aspect of left arm, 7 cm above the elbow.”

were caused by blunt force impact and that all the injuries were ante mortem in nature and fresh in duration.

17. The FSL result of the viscera of the deceased Ex.PW 22/A gives the result of the examination, which reads to the effect:

“On Chemical, TLC, GC-HS & GC-MS examination (i) Exhibits ‘1A’, ‘1B’ & ‘1C’ were found to contain ‘Ethyl Alcohol’.

(ii) Exhibit ‘1C’ was found to contain ‘Ethyl Alcohol’ 90.8 mg/100 ml of blood.

(iii) Exhibit '1D' gave negative tests for common poisons."

indicating thus that there was Ethyl Alcohol present in the blood of the deceased though there was no poison administered as indicated by the contents of the stomach, intestine, liver, spleen, kidney, blood sample and preservative sample of the deceased.

18. Ex.PW 22/B, the examination report dated 26.09.2017 of the FSL in relation to the viscera contents of the stomach, intestine, liver, spleen, kidney, blood sample and preservative sample of the deceased indicates that on Chemical, TLC & GO-MS examination, barbiturates, benzodiazepines, phenothiazines, amphetamines, cannabinoids, diacetylmorphine, morphine, codeine, cocaine, lysergic acid and LSD could not be detected in the same. The FSL result dated 26.09.2017 Ex.PW22/C indicates that the exhibits tested were not found to contain metallic poisons, cyanide, phosphide, pesticides, barbiturates, benzodiazepines, phenothiazines, amphetamines, cannabinoids diacetylmorphine, morphine, codeine, cocaine, lysergic acid and LSD could not be detected. As a consequence, the doctors conducting the post mortem Dr. Antara Deb Barma, Senior residents and Dr. JN Pandit, Junior Residents of the Department of Forensic Medicine and Toxicology, AIIMS sought a clarification from the scientists to conduct the analysis test to the effect:

"1. Whether the presence of narcotic drugs and psychotropic substances like opioid derivatives, morphine derivatives, cocaine, LSD etc. have been tested in the Viscera analysis.

2. Which of the drugs of Addiction have been specifically ruled out in the visceral analysis?”

19. As a consequence thereof, as indicated vide letter dated 29.09.2017 of Inspector Ishwar Singh STARS/Crime Branch, the viscera along with queries hereinabove mentioned was again deposited with the FSL on 01.09.2017 and the viscera analysis report No. FSL-2017/C- 6531, dated 26.09.2017 was received and a request was also made to HOD AIIMS on 26.09.2017 for constituting a board of doctors for giving opinion on cause of death.

20. The expert opinion of the Medical Board in reference to the final opinion on the cause of death made reference to the post mortem report wherein it was stated that the cause of death is kept pending till the viscera analysis report is made available by IO from the SFSL/CFSL and that Injury No.1 is caused as a result of pressure over the neck and Injury Nos.2 and 3 are caused by blunt force impact. The additional remarks given by the Medical Board were to the effect:

“1. The deceased viscera shows consumption of moderate amount of alcohol.

2. There are no any significant injuries other than the neck injury, present over any part of his body.”

and also showed that the photographs of the post mortem finding of injury no.1 indicated two contusions present over the anterolateral aspect of left side of neck and other two photographs of the post mortem finding of injury no.1 indicated that extravasation of Blood in

the internal neck muscle layers and underlying contusions over the left side of neck.

21. The medical board comprising of Dr. Jay Narayan Pandit, Junior Resident, Dr. Antara Deb Barma, Senior Resident, Dr. Abbishek Yadav, Assistant Professor and Dr. T. Millo, Professor vide its report dated 12.10.2017 gave its final opinion to the effect:

“Medical Board unanimously concludes and opines that the cause of death in this case is Asphyxia as a result of Manual Strangulation.”

22. Placed on record is the testimony of Dr. Antara Deb Barma Senior Resident, AIIMS who conducted the post mortem, examined as PW1 which indicates that a letter dated 16.11.2017 was further received from Inspector Ishwar Singh STARS/Crime Branch by the HOD, Department of Forensic Medicine AIIMS, New Delhi with the queries to the effect:

“1. It has been mentioned that time since death at the time of PM was about 12 hours. The PM was conducted at 02:30 pm - 03:30 pm on 5.7.17. It may kindly be opined that whether the time of death given as about 12 hours before PM is exactly 12 hours or could be in a certain range.

2. In the investigation conducted up till now it has been found that the suspects had left the place of occurrence at about 11:00 pm on the night of the incident. It may kindly be clarified whether death in this case due to manual strangulation was instantaneous or otherwise.”

which referred to the opinion given by the medical board dated 12.10.2017.

23. The expert opinion no.2 of the Medical Board pursuant to receipt of the letter dated 16.11.2017 from the IO Ex.PW1/D gave its response to the queries no.1 & 2 mentioned in the letter dated 16.11.2017 to the effect:

“Opinion: The time since death mentioned in Postmortem Report is an approximation and is affected by many environmental factors and preservation in cold chambers. The time since death mentioned in the postmortem report in this case is about 12 hours, which can vary in a range of 2-3 hours in either side of 12 hours.

Asphyxial Death in the case of Strangulation may be immediate as well as the deceased may remain in gasping stage for some hours before death.”

24. The statement of PW 4 Shri Saka Panchanan @ S. Panchu, an employee of the petitioner who was preparing food in the kitchen on the very same night prior to the incident and left for his quarters at around 11 pm as per his testimony *inter alia* states to the effect that after the other servant of the petitioner Mr. Bhim Singh who has been examined as PW 5 had called him to the spot where the deceased was found lying cold at about 5-5:30 am in the bed room of the petitioner the body of the deceased was taken away in the Ambulance and everybody left and thereafter his employer i.e. the petitioner got tied the beddings from him which he along with the driver Ram had taken and thrown it in the garbage. Though undoubtedly, this witness in cross-examination has stated that when the beddings were tied and removed, no police officials had objected to the same.

25. The statement of PW5 Bhim Singh, another employee of the petitioner has stated that the co-accused Tazim Khan had torn the vest of the deceased when he had been serving food to the petitioner and his friends inclusive of the deceased and that he heard the call bell at about 10:30 pm and had gone inside the room i.e. the room of the petitioner and his other friends/co-accused and he saw the deceased Hemant was lying on the bed and covered the body upto neck with a blanket and the sound of 'khur – khur' (snoring) was coming from the mouth of deceased and the applicant told him that they were going out and the room should be locked from outside and the keys be kept in the diba kept on the round table outside the room and the main gate used to remain open; that the applicant and the co-accused Tazim and Pritam went outside from the main gate by telling him that he should take food and go to the room and he went to his room and received a call from the applicant at around 11:28 pm who told him to sleep in his room as the deceased Hemant had consumed more/excessive liquor/wine and at 12:10 am he, Bhim Singh went inside the room where the deceased Hemant was sleeping in the bedroom of the applicant and he noticed that a sound of 'khur – khur' was coming from his mouth and he, Bhim Singh slept in one corner of the room and the deceased Hemant was also sleeping on the bedding on the floor and at about 04:36 am, he, Bhim Singh received a call from the applicant herein that he should check the deceased Hemant whether he was alright or not and he told the applicant herein on phone that the deceased Hemant was alright and he so told the applicant whilst he was sleeping (**Maine soye mai bol diya tha**) and at about 04:40 am,

he, Bhim Singh got up and removed the blanket and noticed that no sound was coming from the mouth of the deceased Hemant and he switched on the tubelight and the zero watt bulb and he, Bhim Singh immediately called back the applicant herein as there was no sound coming from the mouth of the deceased Hemant and told him to come back to the house he immediately rushed to the room of mother of the petitioner and knocked at the room and told that no sound was coming from the mouth of the deceased Hemant and both of them had come back to the room where the deceased Hemant was lying when his phone was still on and the mother of the applicant talked to the applicant and told him to come back forthwith and the applicant came back within 10 minutes and went to the room where the deceased Hemant was lying and there was no movement in the body of the deceased Hemant and the applicant asked him to call Punchu and Yashoda (his wife) and Punchu came and checked the deceased and told after checking him that he was no more.

26. This witness has also stated during his examination that the accused Tazim Khan also rushed there and the accused Tazim took the scissors from the kitchen and cut the vest of the deceased Hemant which he was wearing and threw it in the dustbin. This witness also stated that the applicant asked Punchu to pack the bedding and kept it in vehicle and thereafter it was thrown in the dustbin and he was asked by the applicant to clean the room and he cleaned the room as per the instructions of the applicant. This witness has also stated during his cross examination conducted on behalf of the applicant that he had not told the local police that he had seen the accused Tazim tearing the

vest of the deceased Hemant and volunteered that the applicant Nitin had directed him not to tell this fact and denied that he had introduced this fact for the first time by volunteering the same during his cross examination under pressure from the IO.

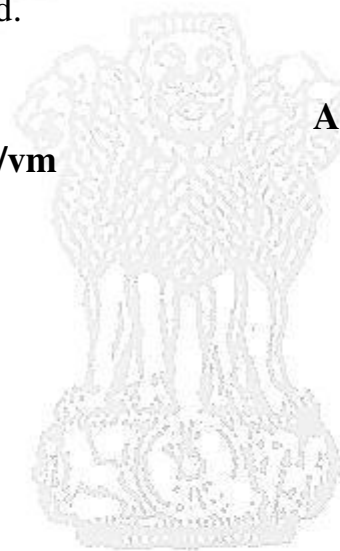
27. It is essential to observe as has already been observed vide order dated 23.05.2018 by this Court in Bail Appl. No.852/2018 that even after coming to know of the victim's death from Bhim Singh on his mobile at around 04.41 a.m., there was a delay in informing the victim's family members by the applicant and the victim was not taken immediately to any hospital and that only when the victim's mother after learning of the incident at around 06.06 a.m. in USA insisted the applicant and his family members to take the victim to the hospital; that an ambulance was called and there are allegations that the T-shirt which the victim was allegedly wearing was allegedly removed and thrown away and the factum of an unnatural death of the victim in the applicant's house at odd hours with the applicant and his associates having been in the company of the deceased admittedly soon before he expired, coupled with the opinion in the report dated 16.11.2017 in the expert opinion no.2 of the Medical Board that the time since death mentioned in the post mortem report being 12 hours could vary in a range to 2-3 hours either side of 12 hours and that the death in the case of strangulation may be immediate or that the deceased may also remain in a gasping stage for some time before death are aspects which need necessarily to be considered in the totality of the circumstances of the case at the final conclusion of the trial and cannot be presently pre-judged.

28. Without any observations on the merits or demerits of the trial that is in progress, it is essential to observe that the circumstances so far prima facie indicated to have been brought forth on the record during the trial and the investigation make the role of the applicant in the entire incident wholly circumspect and taking the gravity of the offence into account, negate the grant of bail to the applicant during trial.

29. The Bail Application 2548/2019 and CRL.M. (BAIL) 1772/2019 are dismissed.

ANU MALHOTRA, J.

DECEMBER 13, 2019/vm



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