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

+ **BAIL APPLN. 1669/2019**

DILSHAD @ DILLA

..... Petitioner

Through

Mr. Shreeyash Uday Lalit with Mr.
Aamir Chaudhary Mandeep, Advs.

versus

STATE

..... Respondent

Through

Mr. Panna Lal Sharma, APP for State
SI Ved Praksh, PS Sarita Vihar, SI
Kamlesh, PS Kalkaji and Insp.
Mukesh, Draghtsman

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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13.12.2019

Vide the present petition, the petitioner seeks bail in FIR No. 165/2018 registered at Police Station Sarita Vihar, South East, Delhi.

The present petition is filed under Section 439 Cr.P.C. whereby it is stated that the petitioner is a small business man who runs a parking stand for his living. He shared a normal friendship with the main accused in this case, Sh. Shahzad, as they lived in the same town. Eventually, their relationship became sour.

To the shock and surprise of the petitioner, on 30.06.2018, the petitioner was apprehended by the police and thereafter only he came to know that he has been falsely implicated in the present case. Accordingly, he was arrested from his house by the police in connection with the murder

of the deceased person.

Case of the petitioner is that he did not plan anything in collusion with the other accused. The petitioner did not visit Delhi anytime between the dates of the alleged offence. The charges were farmed against petitioner u/s 302/201/34/120B IPC on 11.02.2019 and the petitioner was absolved from section 365 IPC, thereby clearly demonstrating that the case of the police is that the accused Dilshad (petitioner) was not present in Delhi, when the deceased person was abducted and taken away by the accused persons, namely Sh. Shahzad and Sh. Arif.

Learned counsel appearing on behalf of petitioner submits that on 03.06.2019, the petitioner filed a bail application before learned ASJ and the same was declined by stating that the "*the allegations levelled against the petitioner are serious in nature and due to the gravity of offence, bail cannot be granted*". However, there is no analysis of the clinching evidence on record which is in favour of the petitioner.

Learned counsel further submits that there is no evidence to suggest that the petitioner was present at the spot of the alleged crime scene, when deceased was killed. There was no specific complaint against the petitioner and his name never came up in the FIR nor any material witnesses took the name of the petitioner as a suspect. His name was only disclosed by the main accused Shahzad in his disclosure statement in the police custody on 27.06.2018. The accused Shahzad disclosed name of the petitioner only in order to settle a personal score with the petitioner. The whole story was cooked up by the accused person Shahzad to teach petitioner a lesson since he would persistently object to the accused Shahzad's approach towards the petitioner's sister-in-law.

It is also submitted that the '*purse*' of the deceased person was recovered by the police on the petitioner's instance, was already disclosed by the co-accused Shahzad on 27.06.2018 in his disclosure statement. However, the police chose to effect the recovery from petitioner on 30.06.2018. However, no independent witnesses were involved during the recovery of the purse which renders the police investigation suspect, thus the recovery of the purse was planted.

It is also submitted that the actual site plan of the crime was prepared on the instance of accused Shahzad and Arif on 27.06.2018 which reveals that the investigation agency visited the crime scene on 27.06.2018 and prepared the memo. However, the investigating agency did not recover the purse of the deceased, disclosed by the accused Shahzad which was lying within 10 mtrs from where the body was thrown into the canal.

However, the purse of the deceased was deliberately not recovered on the instance of co-accused, only so that it could be recovered on the disclosure of petitioner, in order to justify his arrest.

On the other hand, learned APP appearing on behalf of State submits that the petitioner is involved in a conspiracy and his phone location was found where the murder has taken place. When this Court put a specific query to Ld. APP that what is the location of the other co-accused, he replied that they were making whatsapp calls during that period and if anyone is using whatsapp, location could not be established, whereas the petitioner was calling from his normal phone number. However, it is fairly conceded that there is no call from the petitioner to other accused persons or vice versa during the commission of offence.

Had the petitioner been in conspiracy with co accused in the

commission of offence, then in that case certainly when the co-accused was using whatsapp calls, the petitioner would have also used whatapp to make calls with the co-accused

Moreover, it is clear that the purse was disclosed by the accused Shahzad in his statement on 27.06.2018 that "it was thrown in the bushes after taking money out of it" but no efforts were made to recover the purse on 27.06.2018 by the investigating agency from the spot where the body was thrown into the canal, despite it was just meters away from the spot.

Undisputedly, no money was recovered from the possession of the petitioner or at his instance as alleged by the co-accused in his disclosure statement. There is no evidence on record to suggest that the petitioner was at the alleged spot of offence at the time of murder.

Moreover, no evidence on record to suggest that the petitioner was contacted by the other co-accused to meet him at the shop or at any other place. No weapon of offence was recovered from the possession or at the instance of the petitioner. Moreover, the petitioner has already been in J.C. since 30.06.2018.

In view of the facts and circumstances mentioned above, however, without commenting upon merits and demerits of the prosecution case, I am of the considered opinion that the present case is fit or bail.

Therefore, the applicant shall be released on bail on his furnishing personal bond in the sum of ₹25,000/- with one surety of the like amount to the satisfaction of the Trial Court/Link Magistrate.

The Trial Court shall not get influenced by any observation made while passing this order.

The application is allowed and disposed of.

Order *dasti* under the signatures of Court Master.

Copy of this order be transmitted to the Jail Superintendent and the Trial Court concerned for compliance.

SURESH KUMAR KAIT, J

DECEMBER 13, 2019

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