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

+ **BAIL APPLN. 1674/2018**

SATPAL TYAGI @ SATTE TYAGI

..... Petitioner

Represented by: Mr. Amit Sharma, Mr. Ahmad Ziad,
Mr. Pramod Kr. Tyagi, Mr. Abhay
Mani Tripathi, Advs.

versus

STATE (N.C.T. OF DELHI)

..... Respondent

Represented by: Ms. Rajni Gupta, APP with Mr.
Narender Kr. PS Khajuri Khas.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

13.02.2019

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1. By this petition the petitioner seeks bail in case FIR No. 228/2016 under Sections 302/364/201/120B/34 IPC registered at PS Khajuri Khas.
2. Learned counsel for the petitioner submits that the petitioner is in custody since 5th March, 2016 and till date the evidence is not complete as one of the witnesses namely Jasbir Singh is not available and thus not appearing before the Trial Court. Statement of Jasbir Singh is not relevant to the role of the petitioner as he was only a witness to the recovery made at the instance of the co-accused. The alleged recovery made at the instance of the petitioner i.e. a big stone weighing 9-10 Kgs is also not connected with the offence and the FSL report does not opine that the blood on the said

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stone belongs to that of the deceased. He states that out of 35 witnesses of the prosecution 28 have been examined, however for the last few dates no progress is taking place.

3. Learned APP for the State on the other hand contends that the petitioner was arrested after two co-accused were arrested and on their disclosure the dead body was recovered. Pursuant to the arrest of the petitioner he led the Police party to the place where the huge stone weighing around 10 Kgs was lying which was recovered at his instance. Further Sajid Ali (PW-8) is the witness who was accompanying the deceased when a call was received from the petitioner calling him to Chauhan Patti. The dead body of the deceased and the stone were recovered from near Chauhan Patti.

4. The above-noted FIR was initially registered under Section 365 IPC after a complaint was given by Mohd. Mustkeem regarding missing of his father Mohd. Idrish aged 50 years on 29th February, 2016. When despite enquiries whereabouts of Mohd. Idrish were not found, the FIR in question was registered. During investigation Manoj and Mahak Singh were interrogated who are stated to have admitted their offence and the place where the dead body and motor-cycle was concealed which was got recovered at their instance. The name of the petitioner cropped in the statements of the co-accused Manoj and Mahak Singh. At the instance of the petitioner a stone weighing 9-10 Kgs was recovered from near the place where the dead body of Mohd. Idrish was recovered.

5. Though an opinion has been received by the post-mortem doctor that the injury is possible by the said stone, however no positive report qua the blood on the said weapon could be received. The petitioner has been in

custody since 5th March, 2016. Out of approximately 33 prosecution witnesses 28 have been examined.

6. This Court had also called a report from the learned Additional Sessions Judge with regard to availability of Jasbir Singh for deposing during the course of trial. A report has been received from the learned Additional Sessions Judge stating that permanent address of Jasbir Singh is not available and thus efforts are being made to trace him.

7. Be that as it may, learned counsel for the petitioner contends that Jasbir Singh is not a witness qua the petitioner. Considering the fact that the conviction of the petitioner if at all would be based on circumstantial evidence and that the petitioner has been in custody for now nearly three years, Jasbir Singh the witness of the prosecution is still not traceable, 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 this Court by way of an affidavit.

8. Petition is disposed of. Order dasti.

MUKTA GUPTA, J.

FEBRUARY 13, 2019
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