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

+ **BAIL APPLN. 3135/2019**

DEEPAK @ KARTIK

..... Petitioner

Through: Mr. Kapil Payla, Mr. Dushyant
Nayak, Mr. Latesh Kumar, Mr. Vijay
Gahtori, Ms. Manisha Rawat and
Ms. Anamika, Advs.

versus

STATE

..... Respondent

Through: Mr. Hirein Sharma, APP for State
with Insp. Anant Kiran, PS – Model
Town

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

04.02.2020

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1. The present petition is filed under Section 439 read with Section 482 Cr.P.C. in FIR No. 195/2017 dated 07.08.2017 registered at Police Station – Sabzi Mandi, Delhi.
2. Notice.
3. Learned APP accepts notice on behalf of the State.
4. As per the charge-sheet, police official got knowledge of involvement of all the accused on disclosure statement given by Mohammad Abid, who is cited as public witness in the charge-sheet and has been examined as PW-7 before the Ld. Trial court. It is pertinent to mention here that statement given by PW 7 i.e. Mohd Abid under section 161 Code of Criminal Procedure

stated that he has listened to all three accused talking to each other about commission of offence of murder of deceased, namely, Ganju.

5. Thereafter, police arrested accused namely Mohsin, Deepak (applicant herein) and Anil. As per charge-sheet, Mohsin @ Total was the first accused arrested by the police who allegedly disclosed that he along with other co-accused persons, committed the offence of murder with help of baseball bat and knife. Later, on his instance the alleged baseball bat was recovered which bears sign of the PW-7 Abid as witness and scooty was also recovered on the instance of the Mohsin. Thereafter, the arrest of Deepak and Anil was made and their arrest memo were prepared by the police and both of arrest memo bear signature of the Abid as witness. It is pertinent to mention here that nothing was recovered from the possession of petitioner herein /Deepak. The arrest of the Yasin @ Gilli was made five days later as alleged by the police in their charge-sheet on disclosure of whom the alleged knife was recovered.

6. It is submitted that just a day before the arrest of the applicant/petitioner, the another person, namely, Vishal appeared before the police as a witness whose statement was recorded. He stated before the police U/S 161 Cr.P.C. that since last one month he plies the TSR No. UP14FT 2799 on rent in lieu of which the owner of the TSR gives him Rs. 270 daily and he plies the same from 7 PM to 7 AM. He also said that on the intervening night of 06.08.2017 and 07.08.2017, around 1.30 am, three accused namely Yasin, Deepak and Anil along with deceased took ride in his auto and at the same time Mohsin was following them on his scooty.

7. It is further submitted that case of prosecution was entirely based

upon the statement of PW 2 i.e. Vishal and PW 7 i.e. Abid. It won't be wrong to say that the statement of these two witnesses are foundation of the entire prosecution story. However, during evidence of PW-2 Vishal, he stated that on the intervening night of 06-07.08.12, he met with only two accused, namely, Deepak and Anil who booked the auto of PW-2 for going to St. Stephen Hospital. After reaching there, PW-2 purchased *Bidi-Machis* and thereafter all three of them returned to 'auto stand' of HRH hospital. He also stated that they didn't meet anyone on the way back to HRH Hospital. He left the place after picking the passengers. He also stated that he was called by the police to Police Station - Subji Mandi where he narrated all the facts to police.

8. PW-2 was cross-examined by the learned APP, where he deposed that he did not make any statement which is marked as Ex.PW2/A. PW-5, who was the brother of the deceased deposed before the Ld. Trial court that his brother had no enmity with anyone. PW-7 during evidence deposed that he hadn't even seen anyone (any of the accused) at the intervening night of 06-07.08.2017 as alleged by the prosecution in their charge-sheet and also deposed that statement given under Section 164 was given at the instance of the police officials.

9. Learned APP for State strongly opposes the present petition and submits that the petitioner has played the key role in commission of offence and there are serious allegations against the petitioner. Therefore, at this stage, the present petition may be dismissed.

10. Keeping in view the aforesaid fact and the fact that the petitioner is in judicial custody since 23.08.2017 and trial will take substantial time, I am of

the opinion that the petitioner deserves bail.

11. Accordingly, the petitioner shall be released on bail on his furnishing personal bond in the sum of ₹15,000/- with one surety of the like amount to the satisfaction of the Trial Court.

12. The application is allowed and disposed of.

13. Order *dasti* under the signatures of Court Master.

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

SURESH KUMAR KAIT, J

FEBRUARY 04, 2020

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