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

+ **BAIL APPLN. 2019/2020**

SUDHIR KUMAR

..... Petitioner

Through Mr. Tanuj Dogra and Mr. Abhay
Gupta, Advs.

versus

THE STATE

..... Respondent

Through Mr. Amit Chadha, APP for the State
with Insp. Bishambar Meena, PS
Mundka

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% **25.08.2020**

The hearing has been conducted through video conferencing.

1. The present petition has been filed by the petitioner under Section 439 Cr.P.C. for grant of bail in case FIR No.356/2019 dated 29.09.2019 registered at PS Mundka, Delhi.
2. Notice issued.
3. Learned APP for the State accepts notice.
4. With the consent of the counsel for the parties, the present petition has been taken up for final disposal.
5. The present petition has been filed on the ground that the Trial Court failed to consider that in case of a sudden death or an uneven death there is a mandatory requirement for the Investigating officer to make an Inquest Report u/s 174 Cr.P.C. "Inquest" means inquiry into a death, the cause of which is unknown. Inquest can be held by an Officer-in-Charge of a Police

Station or some other police officer specially empowered in that behalf. Inquest Report u/s 174 Cr.P.C. should contain all details of the body under the scene of the offence. The inquest report is an important document in ascertaining the cause of death and the circumstances under which it took place. The witness examined at the inquest are bound to answer truly all questions other than those the answer to which have a tendency to expose them to a criminal charge or to a penalty or forfeiture.

6. Learned counsel for the petitioner submits that the language of the aforesaid statutory provision is plain and simple and there is no ambiguity therein. An investigation under Section 174 is limited in scope and is confined to the ascertainment of the apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. The prosecution has failed on these aspects. The Investigating Officer for improving the version of the prosecution and for arresting the present applicant/accused otherwise, recorded statement under Section 161 Cr.P.C. of the accused and the co-accused. If the Investigating Officer is taking statements of the accused u/s 161 Cr.P.C. and proving them against the accused it may be termed as confession and confession is a voluntary admission of guilt by the accused which has to be recorded u/s 164 Cr.P.C. before the Magistrate.

7. To strengthen his arguments, the learned counsel for the petitioner has cited the case as was observed by Sir Lawrence Jenkins in ***Emperor v. Lalit Mohan Chuckerbutty***, a confession can only be used to lend assurance to other evidence against a co-accused. Further in ***Bhuboni Sahu v. King*** the

Privy Council has expressed the same view. The Supreme Court in a recent judgment in the case of ***Devi Lal v. State of Rajasthan*** has emphasized on admissibility of extra-judicial confession, the Supreme Court in the said judgment observed that an extra judicial confession is used against its maker but as a matter of caution, advisable for the Court to look for a corroboration with the other evidence on record.

8. On the other hand, on the intervening night of 28-29.09.2019, a PCR call vide DD No. 57A dated 28.09.2019 was received at PS Mundka regarding firing on uncle of the caller at House No.277, Village Hiran Kudna, Mundka, Delhi. On reaching the said spot i.e. fish pond, near Village Hiran Kudna, Delhi, it was found that some unknown person fired on one Manjeet Singh and he sustained gunshot injury on forehead due to which he was declared brought dead at Swastik Hospital, Najafgarh. Accordingly, above mentioned case was registered on the statement of *Chowkidar* Jai Narayan who was also present at the spot with deceased Manjeet Singh. In his statement complainant Jai Narayan stated, that on 28.09.2019 at about 9:00 PM after having dinner, he and deceased Manjeet Singh were sleeping on their *Charpai* and at about 11:00 PM, one white colour car came there, took a U-turn from some distance and stopped near their *Charpai*. The complainant further stated that there were two boys inside the car and one of them came out and pulled the bed-sheet from Jai Narayan and by putting a pistol on his forehead asked about Manjeet. Thereafter, he indicated towards the other bed (*Charpai*) on which Manjeet was sleeping. The said boy went towards the bed of Manjeet and by pulling off his bed sheet and pointing the pistol on his forehead, he asked about son of Balle and shot his forehead and ran away with his associates in the same

car. Thereafter, he informed the family members of the deceased who made a PCR call.

9. Learned APP for the State submits that during investigation efforts were made to trace accused persons and statements of the witnesses were recorded. Firstly, family members of the deceased were examined and it was found that about 5-6 days before the occurrence of the alleged incident, some quarrel took place between Baljit @ Balle (brother of the deceased) and family members of the petitioner/accused Sudhir due to some monetary dispute. Smt. Jyoti, wife of petitioner, lodged a case FIR No. 346/19 dated 23.09.2019 for the offences punishable under Sections 323/354(B)/451/506/509/34 IPC at PS Mundka against Baljit @ Balle and his two sons and one of the accused Numit S/o Baljit was arrested. On 28.09.2019, he was granted interim bail by the Court. His surety was one Narender @ Buntty, who is cousin of Numit. On that day, Smt. Jyoti was also present in the court room along with her sister-in-law, Savita and brother-in-law Pradeep. They were angry because Numit was granted bail and took photo of surety Narender @ Buntty and sent it to her husband Sudhir (petitioner herein) and his friend Harish through WhatsApp also informing him that Narender @ Buntty had given surety for Numit. So they decided to take revenge from Narender @ Buntty as well as from all family members of Baljit @ Balle. Accordingly, on the same day in the evening, petitioner and his associates Harish and Devender @ Bablu made efforts by calling witness Narender @ Buntty on mobile phone to know about his location and his cousin Numit's location, however, they could not succeed. Therefore, the accused threatened and abused witness Narender @ Buntty on phone. It was suspected that deceased was murdered by petitioner/accused who acted in criminal

conspiracy with his associates Harish and Devender @ Bablu. It is also evident from the facts that they all were trying to know about the location of the witnesses and also the accused person who fired on deceased asked Manjeet about son of Balle before firing. Moreover, all three accused persons had absconded from their house immediately after the alleged incident in suspicious condition.

10. Learned APP further submits that during investigation one live cartridge of 7.65 MM and one fired bullet case was recovered from the spot and during post-mortem of the deceased one fired bullet led was recovered from the head of the deceased by the doctors and cause of death opined as due to gunshot injury. During further investigation, two more witnesses, namely, Satpal and Jatin who are family members of accused Devender @ Bablu also examined and they stated that on the intervening night of 28-29.09.2019, accused Devender @ Bablu came to their house late night and he was looking afriad. On asking him the reason, he confessed before them that petitioner and Harish took him towards fish pond, where Manjeet was sleeping, on the pretext of returning money which was borrowed by petitioner. However, instead of returning money, accused Harish fired upon Manjeet by using pistol of petitioner and ran away from there.

11. Learned APP further submits that according to facts and circumstances found from the statement of the witnesses and extra-judicial confession of accused Devender @ Bablu before his cousin Satpal and nephew Jatin, petitioner and his associate Devender @ Bablu were arrested on 05.10.2019 on secret information and vehicle used in offence, i.e. Car No.DL8C-AR-9726, Wagon-R, Silver colour, was also seized from the possession of the petitioner. Both accused confessed about the conspiracy with their associate

Harish and committing of murder of deceased Manjeet to take revenge from Baljit @Balle (brother of deceased) and his sons. The weapon of offence was provided by another accused i.e Pradeep Kumar to the petitioner. Accordingly, accused Pradeep Kumar also found involved in the conspiracy of taking revenge from the family members of Baljit @ Balle. He was also following the bail matter of Baljit's son, Numit, in Tis Hazari Court on 28.09.2019 with his wife and sister-in-law Smt. Jyoti and he himself took photos of surety Narender @ Bunty in court room and sent them to petitioner and Harish. Accordingly, he was also arrested in this case on 07.10.2019. As per mobile phone CDRs of all accused it was also found that on the day of incident all accused persons were in constant touch with each other and their mobile phones' location were found in the area where the alleged incident took place and at the time the said incident took place. But immediately after the incident, their mobile phones were found to be switched off.

12. Learned APP has informed this Court that after completion of investigation, main charge-sheet has been filed against petitioner, Devender @ Bablu and Pradeep Kumar and the case is pending trial. However, the fourth accused Harish was arrested on 15.02.2019 and he is running in judicial custody. He refused to undergo TIP and supplementary charge-sheet against him has also been filed on 18.05.2020 in the concerned Court. Further, two mobile phones which were used during conspiracy of alleged offence have also been sent to FSL Rohini and the report is awaited.

13. Keeping in view the serious allegations against the petitioner who is the main conspirator in the commission of the offence, I am not inclined to grant bail to the petitioner.

14. Accordingly, the present petition is dismissed.

15. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

SURESH KUMAR KAIT, J

AUGUST 25, 2020/rk