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

+ **CRL.A. 498/2024 & CRL.M.(BAIL) 1772/2024**

INDER KUMAR @ TITUAppellant
Through: Mr. Ashwin Vaish and Mr.
Rohan Nair, Advs.
versus
STATE NCT OF DELHIRespondent
Through: Mr. Manoj Pant, APP for
the State with SI Anil, PS
Seemapuri.

+ **CRL.A. 518/2024 & CRL.M.(BAIL) 1773/2024**

NARENDER KUMARAppellant
Through: Mr. Ashwin Vaish and Mr.
Rohan Nair, Advs.
versus
STATE NCT OF DELHIRespondents
Through: Mr. Manoj Pant, APP for
the State with SI Anil, PS
Seemapuri.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
26.11.2024

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1. By the present appeals, the appellants challenge the judgment of conviction dated 13.03.2024 and order on sentence dated 08.05.2024, passed by the learned Trial Court, in SC No. 44669/15 arising out of FIR No. 302/2011, registered at Police Station Seema Puri.
2. By the judgment of conviction dated 13.03.2024, the appellants were convicted for offences under Sections 323/304(II)/308/34 of the Indian Penal Code, 1860 ('IPC').
3. By the order on sentence dated 08.05.2024, the appellants

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were directed to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹50,000/- for offence under Sections 304(II)/34 of the IPD and in default of payment, to further undergo simple imprisonment of six months; to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹20,000/- for offence under Sections 308/34 of the IPC and in default of payment, to further undergo simple imprisonment of three months; and to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹1,000/- for offence under Sections 323/34 of the IPC, and in default of payment, to further undergo simple imprisonment for one month. All the sentences were directed to run concurrently.

4. The learned counsel for the appellants submits that this Court by common judgment dated 11.11.2024, in CRL.A. 471/2024 and CRL.A. 611/2024, has allowed the appeals preferred by co-accused Vijay and Raju. This Court had set aside the impugned judgment of conviction dated 13.03.2024 and had remanded the matter back to the learned Trial Court for proceeding afresh from the stage of recording statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 ('CrPC').

5. This Court, by judgment dated 11.11.2024, noted that PW-1 and PW-2 were re-examined after the recording of statement of the accused persons under Section 313 of the CrPC and the said evidence were not put to the accused persons.

6. It was held that when an important incriminating circumstance is not put to the accused during examination under Section 313 of the CrPC, the prosecution cannot place reliance on that piece of evidence.



7. Noting that there was an improvement in the statement given by PW-1 in his re-examination, it was held that the same has caused prejudice to the accused persons when not put to them under Section 313 of the CrPC.

8. The appellants are co-accused persons and it cannot be said that no prejudice was caused to the appellants on the re-examination of the witnesses not being put to them under Section 313 of the CrPC and they not being given opportunity to explain the evidence against them.

9. In view of the above, considering that the impugned judgment of conviction dated 13.03.2024 has been set aside and the learned Trial Court is directed to proceed with the matter afresh from the stage of recording of statement of the accused under Section 313 of the CrPC, the present appeals are allowed.

10. The appellants are also stated to be on bail during the course of trial.

11. In view of the above, the appellants are admitted on bail on furnishing personal bonds of ₹25,000/- each with one surety of the like amount subject to the satisfaction of the learned Trial Court, on the following conditions :

- a. The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The appellants shall under no circumstance leave the boundaries of the country without the permission of the learned Trial Court;
- c. The appellants shall appear before the learned



Trial Court as and when directed;

- d. The appellants shall provide the address(es) where they would be residing after their release and shall not change the address(es) without informing the concerned IO/ SHO;
- e. The appellants shall, upon their release, give their mobile numbers to the concerned IO/SHO and shall keep their mobile phone switched on at all times.

12. The present appeals are allowed in the aforesaid terms.

Pending application(s) also stand disposed of.

13. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

NOVEMBER 26, 2024

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