

SC No.7703/16
FIR No.420/16
PS:Malviya Nagar
State vs. Mumtaj etc.

15.05.2018

Present: Mr. Rakesh Mehta, Addl. Public Prosecutor for State.
Accused Mumtaj and Hafizullah are produced from JC.
Accused Abdulla @ Haji Basir is present on bail.
Mr. L.K. Verma, Ld. Counsel for accused Mumtaj.
Ms. Seema Mishra, Ld. LAC for accused Hafizullah.
IO of the case, in person.

Witness JC Shaukat Ali and Inspector Mukesh Kumar present. They have been examined, cross examined as PW3 & PW4 and discharged.

Witness ASI Shyam Lal is absent despite service. Hence, issue B/Ws in the sum of Rs.5000/- against the said witness, for the next date of hearing.

Witness Ct. Kishan Lal is present. However, he is discharged unexamined as he is not feeling well. Let he be summoned again for the next date of hearing.

Witness Dalip Kashikar is not present despite service. However, an exemption application has been moved on his behalf on the ground that he is a diabetic as well as a heart patient and he has recently got operated his both eyes and presently, he is in Pune. Therefore, he is unable to attend this case at Delhi. Medical certificate of doctor is also enclosed alongwith application. In view thereof, exemption application stands allowed. He is exempted from his personal appearance for today.

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Considering his medical condition, Ahlmad is directed to issue summons to said witness only after examination of other material witnesses.

Let IO ASI Ram Lal be summoned for the next date of hearing.

As per record, bail application u/s 439 Cr.P.C. moved on behalf of accused Mumtaj is pending consideration.

Arguments heard on said application.

Counsel for accused Mumtaj submits that the accused is in JC since 01.04.2016 and material witnesses of the prosecution case have already been examined. It is further stated that complainant Shafiq Ahmad is the most material witness of the prosecution case as he is the eye witness of the offence but, he has turned hostile qua the role of the applicant Mumtaj and did not support the prosecution case even in the cross examination by Ld. Addl. PP. He has drawn my attention to the cross-examination of PW1 by Ld. PP wherein he denied the suggestion that when he had tried to save his friend from the assailants, both the assailants started running or that he had chased them and apprehended one of them whose name was later revealed as Mumtaj. Counsel says that there is no other eye witness of the offence nor there is any other circumstantial evidence which could connect the accused with the alleged offence.

On the other hand, Ld. Addl. PP vehemently opposed the bail application saying that the accused/applicant is facing

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trial for a heinous offence of murder and the family of the deceased is continuously getting threats for not pursuing the present case and it appears that even the eye witness turned hostile under the influence and intimidation of the applicant's family.

It is further argued by Ld. Addl. PP that as per the charge sheet, present applicant was apprehended from the spot by the complainant himself, who handed over him to the police personnels who were on duty in that area. It is further stated that though PW1 has resiled from his previous statement with regard to the role attributed to present applicant but, he has not denied the presence of the applicant at the spot with the other co-accused Hafizullah qua whom he has fully supported the case. It is further stated that two police personnels to whom the applicant was handed over after being apprehended by the complainant, have also stated in their statements u/s 161 Cr.P.C. that they had seen two boys running from the spot while one boy (complainant) was chasing them and he (complainant) was able to apprehend one boy namely Mumtaz i.e. applicant while the other one succeeded to escape. Ld. Addl. PP says that out of two police personnel, only one namely HC Shaukat Ali has been examined as PW3 while the other is yet to be examined in the matter. It is further stated that HC Shaukat Ali in his examination in chief has deposed on the lines of his statement u/s 161 Cr.P.C. and he has also deposed that complainant had apprehended the applicant while he was trying to run away from the spot.

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As per charge sheet, prosecution has cited 27 witnesses out of whom only four witnesses have been examined so far. One is the eye witness Shafiq Ahmad, second is Dastagir (the brother of deceased) who identified his dead body, the third one is HC Shaukat Ali and fourth is the Draftsman, Mukesh Kumar from crime team. Though, there is no other eye witness cited by the prosecution and the sole eye witness Shafiq Ahmed who has been examined as PW1 has not fully supported the prosecution case but, at this stage his deposition cannot be critically examined by the court so as to ascertain implication of his hostile version especially when out of 27 witnesses only 4 witnesses have been examined so far by the prosecution.

Keeping into view the fact that many other material witnesses are yet to be examined in the matter and the accused is facing accusation of heinous offence of murder, I do not find the case fit for grant of bail at this stage especially in the wake of allegations of threats raised by the deceased's family. In this regard, photocopy of complaints made by deceased's brother to SHO PS Malviya Nagar on 06.10.2016, 19.04.2017 and 22.04.2017 have also been filed on record.

In view of above facts and circumstances, the application stands dismissed.

Put up for PE on **05.07.2018.**

(Sunena Sharma)
Additional Sessions Judge-03 (South)
Saket Courts/New Delhi/15.05.2018