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

+ **CRL.A. 323/2022**

NEERAJ

..... Appellant

Through: Mr. Amit Chadha with Mr. Jitender Singh, Ms. Smriti Shrivastava and Ms. Ashana Singh, Advocates.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Ms. Manjeet Arya, APP with SI Suresh Kumar, PS Usman Pur.
Mr. Adeeb Ahmad, Advocate for Mr. Harsh Prabhakar, Amicus Curiae for R-2.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

ORDER

% **07.03.2024**

CRL.M.(BAIL) 1043/2023

1. Present petition has been filed by the petitioner seeking following prayer:-

“a) to allow the present application seeking suspension of sentence during the pendency of the above-mentioned appeal, in the interest of justice and to maintain balance of equity.”

2. Though, the connected appeals have already been listed for final hearing on 24.04.2024 along with the appeal filed by co-convict, learned counsel for the applicant/appellant submits that conviction is based on

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assumption that he was part of conspiracy which was never proved. Therefore, the sentence of applicant/appellant is liable to be suspended.

3. It is not in dispute that applicant/appellant, herein is brother-in-law (Sala) of Sanjay Tomar, co-convict.

4. PW-12 and 13 are reportedly the witnesses who claimed in the statements recorded under Section 161 Cr.P.C that they heard the accused including the applicant/appellant herein, hatching the conspiracy of murder in question. However, it is not in dispute that said PWs have not supported the case when they deposed before the Court. Despite cross-examination done by the prosecutor, nothing came out against them.

5. It is also not in dispute that the surviving allegation against the appellant is that after the incident, he merely provided two sim-cards to co-convicts to facilitate them to avoid arrest. Even the prosecution admits such fact.

6. The learned Trial Court has observed as under in Para 79, 80 and 80.10 of impugned judgment which read as under:-

“79. So far as accused Neeraj, Ram Bharosey and Smt. Mithlesh are concerned, though they were not directly involved in the murder of Krishan Kuamr, yet prosecution has cited and examined PW12 Renu Chaudhary @ Raj Kumar to prove their involvement to this criminal conspiracy, but he has turned hostile. PW13 Navneet Mohan Singhal, PW16 Devender Sharma and PW17 Raju Tomar were also cited to prove the logistic support to the accused persons after this incident, but again they have also not properly supported the prosecution despite their cross examination by Ld. APP for State. As such, there is no direct evidence against accused persons to prove that their direct involvement to this criminal conspiracy.

80. However, I have already observed that conspiracy is hatched in secrecy and may be proved just on the basis of circumstances against the accused. No doubt, incriminating circumstances against accused must be proved beyond doubt and should be established firmly. Charges against accused Neeraj, Ram Bharosey and Smt. Mithlesh are also pertaining to the criminal conspiracy due to incriminating circumstances should be proved against



each of them firmly. From the testimonies of PW s as well as material available on record, the following circumstances are available against accused persons as under:

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80.10 Another circumstance against all accused is their disclosure statements. Disclosure statements of accused persons have also proved their involvement to this incident. Their disclosure statements are well admissible against each other to corroborate the circumstances in view of section 30 of Evidence Act. Section 30 of Evidence Act came into interpretation before the Hon'ble Supreme Court of India in a land mark judgment titled **Kashmira Singh v. State Of Madhya Pradesh, 1952 AIR SC 159** and has held as under:

*“The confession of an accused person against a co-accused is not evidence in the ordinary sense of the term. It does not come within the meaning of evidence contained in sec. 3 of the Indian Evidence Act in as much as it is not required to be given on oath, nor in the presence of the accused and cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver which is not subject to any of these infirmities. **Such a confession can only be used to tend assurance to other evidence against a co-accused.** The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. **In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept**”*

In view of the above said facts, disclosure statements of co-accused Sanjay Tomar which is Ex.PW1/E, Neeraj which is Ex.PW1/J, Pradeep Tomar which are Ex.PW35/M and Ex.PW10/C, Kuldeep Tomar which is Ex.PW21/C, Mithlesh which is Ex.PW36/C and statement of Ram Bharose which are PW26/C and Ex.PW23/ A, have duly proved that all the accused persons have acknowledged this conspiracy and they were part and parcel of it. The disclosure statements of above said accused persons are admissible against each other and may be utilized for corroboration of the other circumstances of this case against accused.”



1. The applicant/appellant has already undergone incarceration for a period of 4 ½ years and was reportedly on bail during the trial.
2. Keeping in view the aforesaid facts and without observing anything further on the merits of the case, we hereby suspend the sentence of the appellant during the pendency of the appeal. The appellant be released on bail, on his furnishing a bail bond of Rs.25,000/- with one surety of like amount, subject to the satisfaction of the learned Trial Court concerned.
3. Copy of order be transmitted to the learned Trial Court and to the concerned jail authorities for due compliance.
4. Application stands disposed of.

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5. List on the date already fixed i.e. 24.04.2024

SURESH KUMAR KAIT, J

MANOJ JAIN, J

MARCH 7, 2024/sw



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