

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

**SUBJECT : CODE OF CRIMINAL PROCEDURE**

Date of Decision: December 1st, 2008

BAIL APPLN.No. 2122/2008 and CRL.M.A.No. 12322/2008

MAHESH CHOUDHARY

Petitioner  
Through : Mr. Sanjay Jha, Advocate.

Versus

STATE OF NCT

Respondent  
Through : Mr. Navin Sharma, APP for State.

Veena Birbal, J. (ORAL)

Present is an application under Section 438 of Cr.P.C. for grant of anticipatory bail. Counsel for petitioner has submitted that petitioner is falsely implicated in the present case. Petitioner is the owner of godown where the alleged incident has occurred. Petitioner was not present in Delhi on the day of occurrence. He was at Bihar in his native place and was getting treatment there. It is prayed that petitioner be granted anticipatory bail in the aforesaid FIR. On the other hand, learned APP for State has opposed the bail application strongly. It is contended that FIR of the present case is registered on the statement of complaint of wife of deceased wherein petitioner is specifically named. It is further submitted that Tabiz worn by deceased was also recovered from the godown owned by the petitioner where the alleged incident had taken place. I have considered the submissions made and perused the record. As per post-mortem report, cause of death has been opined as shock and respiratory distress as a result of multiple injuries. Perusal of statement of wife of deceased on the basis of which FIR is registered shows that on 21.8.2008 at about 3.30 p.m., deceased had returned home in mud ridden condition. His wife helped him in taking bath and washing his clothes and on being asked, deceased had told that Mahesh Lakdi Godown Wala i.e. present petitioner and others had beaten him thinking him to be a thief. She also noticed scratches on his body and thereafter he slept and next day he was found dead. As per prosecution case, there is also a recovery of Tabiz worn by the deceased from the godown of petitioner where the alleged incident had taken place. Considering the totality, present is not a fit case for grant of anticipatory bail. Application is rejected.

DECEMBER 1, 2008

Sd./-  
VEENA BIRBAL, J.