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

+ **BAIL APPLN. 563/2025 & CRL.M.A. 4019/2025**

PAWAN@PRAKASH

.....Petitioner

Through: Ms. Dolly Sharma, Advocate

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for State

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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10.03.2025

1. The present application has been filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) read with Section 528 of the BNSS seeking grant of regular bail in FIR No. 572/2019 registered under Sections 302/34 of the Indian Penal Code, 1860 (IPC) and Sections 25/27/54/59 of the Arms Act, 1959 (Arms Act) at Police Station (P.S.) Sagarpur.

Brief Facts

2. As per the case of prosecution as set out in the Status Report, on 21.12.2019 at 7:52 PM information was received which was lodged as DD No. 37A at PS Sagarpur. It is stated that in the said information it was stated that at House No. RZ-1, Gali No. 2A, Durga Park, South West, Delhi a person living in front of the house of the caller has shot the sister-in-law of the caller. It is stated that the caller, mentioned the said sister-in-law had died and the person who had shot has run away.



2.1. It is stated that SI Kalam Singh reached the spot and found the blood lying on the stairs of the said house and found one *led* (bullet) lying on the floor near the stairs. It is stated that on enquiry it was informed that the injured has been taken to the Bhagat Chandra Hospital.

2.2. It is stated that during the investigation the statement of eye-witness Sandeep was recorded, wherein he stated that on 21.12.2019 at about 11 AM on asking rent from tenants Krishna¹ and Pawan² (i.e., the Applicant herein) they refused to give the rent and started abusing Sandeep. It is stated that on hearing the sound of quarrel mother³ of Sandeep came out and asked the reason for quarrel. It is stated that said Krishna started misbehaving with the mother of Sandeep. It is stated that the mother of Sandeep slapped Krishna for his mischief and asked him to arrange the rent for the month of December, 2019.

2.3. It is stated that both Krishna and Pawan threatened the mother of Sandeep of dire consequences and went away. It is stated that at about 5 PM on the same day four (4) persons Krishna, Applicant herein, Chintu⁴ and one Ashutosh came to the house and were threatening the mother of Sandeep. It is stated that Chintu and Ashutosh were friends of Krishna who used to visit him.

2.4. It is stated that on reaching the spot Sandeep saw that co-accused Krishna and co-accused Ashutosh were holding both the hands of the victim⁵ and Chintu was holding her hair. It is stated that Applicant herein was standing on the stairs and was exhorting the accused persons to 'kill her'. It

¹ Krishna Mishra.

² Pawan alias Prakash.

³ Vijendri Devi (victim).

⁴ Chintu alias Bangali alias Yash.

⁵ Mother of Sandeep i.e., Vijendri Devi



is stated that co-accused Chintu fired a single shot on the victim with *Desi Katta (Country Pistol)* which hit on her neck. It is stated that after the shot was fired all the four accused ran away from the spot. It is stated that Sandeep ran behind them but could not apprehend any of them.

2.5. It is stated that the Applicant herein was arrested on 02.01.2020 near Dasrathpuri Metro Station, New Delhi. It is stated that the disclosure statement of the Applicant was recorded, who stated that on 21.12.2019, co-accused persons Ashutosh and Krishna got hold of the hand of the deceased and Chintu fired on her with *Desi Katta (Country Pistol)* and after that all of them had ran away.

2.6. It is stated that on 28.01.2020 co-accused Ashutosh was arrested from Nasserpur Mandi Area. It is stated that co-accused Krishna surrendered before the Court and was thereafter formally arrested.

2.7. It is stated that accused Chintu was declared PO and was thereafter arrested on 04.08.2022.

Arguments of Applicant/Petitioner and the prosecution

3. Learned counsel for the Applicant states that the Applicant has already undergone incarceration of 5 Years, 1 Months and 13 Days as on 25.02.2025. She states that 12 witnesses have been examined and 22 witnesses remained to be examined. She states that the Applicant has no criminal antecedents and the trial is likely to take a long time.

3.1. She states that the Applicant had moved an application before the Trial Court which was dismissed vide order dated 04.02.2025.

3.2. She states that investigation is complete, chargesheet and supplementary charge-sheet has been filed and therefore, the custody of the



Applicant is not required. She states that public witnesses already stand examined and therefore there is no threat of tampering of evidence.

3.3. She states that as per the case of the prosecution the victim/deceased was shot by the co-accused Chintu. She states that the only role ascribed to the Applicant is that he was exhorting the co-accused to kill the victim. She states that the Applicant has been charged by invoking Section 34 IPC.

3.4. She states that the Applicant was granted interim bail by the Trial Court vide order dated 30.03.2022 and the Applicant has not misused the liberty granted.

3.5. She states that as per the Nominal Roll dated 25.02.2025 the conduct of the Applicant in jail has been satisfactory.

4. In reply, Mr. Khanna, learned APP states that the Applicant was present at the spot when the crime was committed and also ran away from the spot of crime.

4.1. He states that the Applicant was arrested on 02.01.2020 and since then he has been in jail.

4.2. He states that the case is pending trial before the Patiala House Courts, New Delhi. He states that there are a total of 32 witnesses and as on date a total of 12 witnesses have been examined. He states that the next date of hearing before the Trial Court is 07.04.2025.

4.3. He states that the Applicant herein has committed a heinous crime and he may be a threat for society is enlarged on bail.

Findings

5. This Court has heard the learned counsel for the parties and perused the record.



6. Before advertng to the facts of the present case, it would be apposite to refer to the factors which are to be taken into consideration for granting bail to an accused. A co-ordinate bench of this Court in the case of **Ashok Sagar v. State**⁶ has further summarized the principle for granting bail in matter which involve serious/heinous offences. The relevant paragraph of the said judgment reads as under:

“35. Authorities on bail, and the jurisprudence relating thereto, are in overabundance, and it is hardly necessary to multiply references thereto. The principles governing exercise of judicial discretion in such cases, appear, however, to be well-settled. The following principles may immediately be discerned, from the aforementioned authorities:

(i) Incarceration, during trial, is not punitive, but to secure the presence of the accused. ...

(ii) While examining the issue, courts are **not to presume** that the accused would flee justice, were he to be released, and search for evidence indicating to the contrary. Logistically, every accused, who is released during trial, has the potentiality of fleeing. Were this potentiality to be allowed to influence the mind of the court, no accused would be entitled to bail.

(iii) While examining applications for bail, the court has to be duly sensitized to the mandate of Article 21 of the Constitution of India, which guarantees freedom to every citizen of India save and except by procedure prescribed by law. Curtailment of personal liberty during trial, has, therefore, to be limited to those cases in **which it is absolutely essential**, and in which, in the absence of such curtailment, the process of trial is likely to be hampered by the accused, whether by vanishing or by unduly influencing the trial process, by intimidating the witnesses, or otherwise. If no such apprehension can legitimately be expressed, there can be no reasonable ground to keep the accused incarcerated, as incarceration would then assume a punitive avatar.

(iv) **Given this legal position, the nature of the offence committed necessarily has a limited role to play, while examining the merits of an application for bail.** This is for a simple reason that the application being examined by the court is

⁶ 2018 SCC OnLine Del 9548.



not for suspension of sentence, but for release during trial. If the court were to allow itself to be unduly influenced by the nature of the charges against the accused, and the seriousness of the crime alleged to have been committed by him, it would result in obliterating the distinction between grant of bail and suspension of sentence. Inasmuch as the applicant, in a bail application, has yet to be found guilty of the offence with which he is charged, the significance of the nature of the offence stand substantially reduced, while examining the application for bail. Courts have to be alive to the legal position - underscored in the very first paragraph of Dataram Singh (supra) - that every accused is presumed to be innocent until proved guilty.
.....”

(Emphasis supplied)

7. The Supreme Court in the case of **Praveen Rathore v. State of Rajasthan**⁷, while granting bail to an accused of murder, noted the importance of personal liberty and right to speedy trial and observed as under:

“5. It is not in dispute that the Applicant, by now, has undergone more than four and a half years of sentence. The prosecution intends to examine 76 witnesses, out of whom 53 have already deposed. All the crucial witnesses have already been examined. The instant case was adjourned on few occasions to enable the prosecution to examine Chauthmal Kashyap and Manohar Rathore, who were stated to be the vital witnesses. Their deposition is also complete.

....

7. Taking into consideration the period already spent by the Applicant in custody coupled with the fact that conclusion of trial will take some reasonable time however, without expressing any views on the merits of the case, we are inclined to release him on bail.”

(Emphasis supplied)

8. Prosecution in the chargesheet has ascribed role of exhortation to the Applicant, whilst he was standing on the stairs and the shot as per the

⁷ 2023 SCC OnLine SC 1268.



chargesheet was fired by the other co-accused Chintu because of which the deceased died. The Applicant has been charged by invoking Section 34 of the IPC and the extent of the role of the Applicant will be examined by the Trial Court after the evidence is lead.

9. The chargesheet in the present matter has been filed and only 12 out of 22 witnesses have been examined till date. The public witnesses stand examined and only official witnesses remained. As per the Nominal Roll the Applicant is 28 years old and has been in jail for 5 Years, 1 Month and 13 Days as on 25.02.2025. The Applicant was granted bail by the Trial Court from 30.03.2022 till 11.04.2022 and he had duly surrendered on 11.04.2022. Further the Nominal Roll also reflects that the conduct of the Applicant has been satisfactory in jail. The Applicant admittedly has no criminal priors

10. In the considered opinion of this Court the conclusion of Trial cannot be foreseen in near future as still 10 witnesses are to be examined and the FIR dates back to 2019.

11. In view of the foregoing, considering the role ascribed to the Applicant by the prosecution, his young age and the fact that he has undergone long incarceration; has no criminal priors and the trial is not likely to be concluded any time soon, this Court deems it to be a suitable case for the Applicant's release on bail. As a result, the Applicant is directed to be released on bail upon providing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, and further subject to the following conditions:

- (i) Applicant will not leave the country without prior permission of the Court.



- (ii) Applicant shall provide permanent address to the Trial Court. The Applicant shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
 - (iii) Applicant shall appear before the Court as and when the matter is taken up for hearing.
 - (iv) Applicant shall join investigation as and when called by the IO concerned.
 - (v) Applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
 - (vi) Applicant will report to the jurisdictional SHO where the Applicant shall reside, every 2nd and 4th Monday of every month, at 4:00 PM, and will not be kept waiting for more than an hour. The IO shall inform the jurisdictional SHO about the passing of the present order.
 - (vii) Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.
12. In the event of there being any FIR/DD-entry/Complaint lodged against the Applicant during the period of bail, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.
13. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.



14. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

15. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

16. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

MARCH 10, 2025/sk/hp