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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 122/2024 & CRL.M.A. 5256/2024**
AQDASPetitioner

Through: Mr. G.M. Farooqui, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI)Respondent

Through: Mr. Tarang Srivastva, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

04.03.2025

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By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973, the petitioner seeks regular bail in case FIR No. 693/2022 dated 13.10.2022 registered under sections 308/34 of the Indian Penal Code, 1860 ('IPC') at P.S.: Ranjit Nagar, New Delhi. Consequent upon filing of chargesheet, charges have been framed *inter-alia* against the petitioner *vide* order dated 22.11.2023 passed by learned Additional Sessions Judge, Tis Hazari Courts, Delhi, under sections 304(I)/308/34 IPC.

2. Notice on this petition was issued on 11.01.2024. Status Report dated 14.02.2024 has been filed in the matter. Nominal Roll dated 01.03.2025 has also been received from the concerned Jail Superintendent.
3. Further to what was recorded in last order dated 03.03.2025, Mr. Tarang Srivastva, learned APP appearing for the State has handed-up a copy of communication dated 01.03.2025 received from the Jail Superintendent, enclosing therewith the updated nominal roll as well as the medical status report in respect of the petitioner.



4. Mr. Srivastva points-out, that as narrated in the medical status report, contrary to what was claimed by the petitioner on the last date, the petitioner is *not* suffering from tuberculosis.
5. In this behalf, Mr. G.M. Farooqui, learned counsel appearing for the petitioner submits, that as would be seen from Prescription dated 12.10.2022 issued by Sir Ganga Ram Hospital, New Delhi, the petitioner was under treatment for tuberculosis at that hospital at the relevant time.
6. Be that as it may, Mr. Farooqui presses for regular bail on merits, submitting that the prescription shows that the petitioner was not in the best of health around the time when the offence was committed, *i.e.* on 12.10.2022.
7. Mr. Farooqui submits, that the limited role ascribed to the petitioner in the incident of the intervening night of 12/13.10.2022 has been noted by the learned Sessions Court in the order on charge, the relevant portion of which reads as follows :

“... ..The complainant Alok also specified that accused Mohd. Aqdas was having watchful eye over the passersby at the spot during the incident. However, in view of applicability of joint liability u/s 34 of IPC, against accused no.1 to 5 for committing chargesheeted offences in question at the spot, the individual act of a particular accused may not be material in determining his culpability in terms of Section 34 of IPC. It is also noticeable that accused Mohd. Aqdas was also riding on the same motorcycle along with the other two co-accused persons namely Adnan and Huzaiifa Rehman at the relevant time at the spot.”

(emphasis supplied)

8. Mr. Farooqui argues, that the order on charge also narrates that from the material on record, it is clear that there was no ‘pre-meditated’



plan on the part of the accused persons to kill the deceased; and the incident happened because a sudden quarrel broke-out among the accused persons and the deceased over abusing and blowing of horn of the motorcycle. Counsel points-out, that the learned Sessions Court has also noticed that there was no mention by the complainant of the accused persons carrying or using any inherently dangerous/lethal weapons.

9. Mr. Farooqui submits, that all else apart, the petitioner was a young boy about 21 years of age when the incident took place; that he was arrested on 18.10.2022; and that he has been in judicial custody as an undertrial for about 02 years and 4 months.
10. In the circumstances it is prayed that the petitioner be enlarged on regular bail.
11. On the other hand, opposing the grant of bail, Mr. Srivastva submits, that petitioner was 01 of the 03 boys who were riding the motorcycle when the quarrel broke-out with the deceased, whereafter other persons were also called to the spot. Learned APP submits, that though the order on charge only records that the petitioner was keeping a watch over the passersby, the fact is the petitioner has nevertheless participated in the entire crime.
12. Mr. Srivastva submits, that after the order on charge was passed, in his court deposition recorded on 13.02.2024, PW-1/Alok Dubey has testified that the petitioner was also involved in beating the deceased. The relevant portion of the testimony reads as follows :

“Three accused persons namely Adnan, Huzaiifa and Akdas were beating Nitesh by brick and broken sillis. Accused persons



namely Hamza and Afzal gave beatings to me by brick at the back of my head and near my eye. When my friend Monti, who was at a distance of 10 feet from us, came to us and tried to save us, accused persons Hamza and Afzal also gave beatings to him. Blood started oozing out from my head and I sat on the ground and all the five accused persons have taken Nitesh to a nearby isolated gali and gave beatings to him with bricks and sillis. All the aforesaid accused persons gave beatings to Nitesh, till he became unconscious and then all the accused persons ran away from there.”

(emphasis supplied)

13. Upon a conspectus of the facts and circumstances of the case, the following considerations weigh with the court at this stage :

13.1. The role ascribed to the petitioner in the order on charge dated 22.11.2023, is that as per the complainant/Alok Dubey, the petitioner Aqdas “... ..was *having watchful eye over the passerby at the spot during the incident... ..*”. Even though in his deposition record on 13.02.2024, PW-1 has ascribed to the petitioner the role of beating the deceased with bricks and *sillis jointly* with 02 other co-accused persons *viz.* Adnan and Huzaifa, the order on charge observes, that based on the evidence that has come on record, it is clear that there was *no pre-mediated plan* on the part of the accused persons to kill the deceased; and the incident was a result of a quarrel that broke-out amongst some of the accused persons in relation to abusing and blowing of the motorcycle horn, after which the accused persons called some other friends, who are also now co-accused in the case. The petitioner was one of the boys who was on the motorcycle when the quarrel broke-out.



- 13.2. The injured complainant/Alok Dubey and the eye-witness/Monti have both concluded their deposition before the learned trial court as PW-1 & PW-2 and have been discharged.
- 13.3. The prosecution has cited 33 witnesses in the case but only 02 of them, namely PW-1 & PW-2 referred to above, have so far been examined. In the meantime however, as is seen from Nominal Roll dated 01.03.2025, the petitioner has suffered about 2½ years in judicial custody as an undertrial; his jail conduct has been ‘satisfactory’; and he has no other criminal involvements. Needless to add that the trial will take a long time to conclude, and it would not be in consonance with the petitioner’s right to liberty and speedy trial enshrined under Article 21 of the Constitution of India if he is detained in judicial custody as an undertrial any further.
- 13.4. The petitioner is stated to be about 23 years of age; and was a student until 2021, after which he is stated to have discontinued his studies by reason of illness.
14. As a sequitur to the above considerations, this court is persuaded to grant to the petitioner – ***Mohd. Aqdas s/o Naseem*** –regular bail pending trial, subject to the following conditions :
- 14.1. The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Rs. Twenty-five Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;
- 14.2. The petitioner shall furnish to the Investigating Officer/S.H.O a cellphone number on which the petitioner may be contacted at



any time and shall ensure that the number is kept active and switched-on at all times;

- 14.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 14.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and
- 14.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
15. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.
16. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
17. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
18. The petition stands disposed-of in the above terms.
19. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

MARCH 4, 2025/V.Rawat