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

+ **BAIL APPLN. 137/2025**

VIKAS BHARTI

.....Petitioner

Through: Mr. Akshay Bhandari, Mr. Kushal Kumar, Mr. Anmol Sachdeva, Ms. Megha Saroa and Mr. Janak Raj Ambawat, Advocates

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for State with Inspr. Neeraj Kumar, PS Shahdara

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

12.03.2025

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1. The present petition has been filed seeking regular bail in connection with FIR No. 140/2018 under Sections 302/394/120B IPC and Sections 25/27 of the Arms Act registered at Police Station Shahdara, Delhi.
2. The case of the prosecution according to the FIR is that the accused persons had noticed that one businessman namely, Rakesh Jain (victim/deceased) is running business of exchange of old and soiled currency in Chandni Chowk and he used to return to his house daily with huge cash. The present petitioner/applicant along with his associates, then hatched a criminal conspiracy to rob and kill the said businessman.
3. On the date of incident, the co-accused Ajay @ Kalia tried to rob the scooty of the victim/deceased as the bag containing cash was in the said scooty. On being resisted by the deceased, co-accused Ajay @ Kalia fired a



pistol shot at victim – Rakesh Jain, who died.

4. It is further the case of the prosecution that the petitioner, who was present at the spot kept waiting for co-accused Ajay @ kalia on his motorcycle in a start position, thereafter, they fled from the spot on that motorcycle.

5. Mr. Akshay Bhandari, learned counsel appearing on behalf of the petitioner submits that the incriminating evidence pressed against the present petitioner is – (i) TIP; (ii) CCTV footage; (iii) CDRs; and (iv) Location.

6. He submits that the witness who had identified the petitioner and was witness *qua* the TIP had passed away before his deposition could be recorded by the court and in the absence of testimony of the said witness, his statement under Section 161 Cr. P.C. would not be admissible in evidence. In support of his submission, Mr. Bhandari has relied upon the decision of the Hon'ble Supreme Court in ***Vinod @ Nasmulla Vs. The State of Chhattisgarh, (2025) SCC OnLine SC 323.***

7. He submits that in so far as the CDRs are concerned, the same can only be used as corroborative evidence and is not a substantive piece of evidence. Further, the location of the present petitioner at the place of incident is 1½ hours prior to the time of incident.

8. With reference to the CCTV footage, Mr. Bhandari's submission is that the concerned witness, namely – Shwet Goel who was examined as PW4 for proving said CCTV footage, has not identified the petitioner from the CCTV footage.

9. He further contends that the petitioner is already in custody for the past 6½ years and the prosecution has cited 43 witnesses, of which only 13 witnesses have been examined till date.



10. Further contention of Mr. Bhandari is that though there are previous involvements of the petitioner but the same cannot be sole ground for rejecting the bail of the petitioner.

11. He further submits that co-accused Mohd. Taj and Mohd. Shavej have already been granted regular bail, on account of demise of the TIP witness prior to recording of his testimony. To buttress his contention he has drawn attention of the Court to the bail orders of co-accused Mohd. Taj and Mohd. Shavej. He submits that since co-accused have been granted bail, due to the non-availability of the TIP witness, the benefit of parity may be extended to the present petitioner.

12. *Per contra*, learned APP has argued on the lines of the status report. He submits that whether the TIP in the absence of testimony of TIP witness is admissible or not cannot be gone to at this stage. He submits that during the TIP not only the witness had identified the present petitioner but had assigned to him a specific role.

13. He submits that there was no occasion for the police to show the present petitioner or his photograph to the TIP witness, in as much as the petitioner at the relevant time was in judicial custody.

14. He further submits that the benefit of parity of the bail order of co-accused Mohd. Taj and Mohd. Shavej cannot be extended to the present petitioner, since the role of the present petitioner is different from the said accused persons. Elaborating further, he submits that it is not the case of the prosecution that the said two co-accused had proceeded to the place of incident unlike the petitioner who was driving the motorcycle which was also ridden by the co-accused Ajay @ Kalia as pillion, who fired the pistol shot.

15. I have heard the learned counsel for the petitioner as well as the learned



APP for the State and have perused the record.

16. It is not in dispute that the witness of TIP has passed away prior to recording of his testimony. However, the probative value of the statement under Section 161 Cr. P.C. of the said witness will be considered by the learned trial court at the stage of trial, but, the very fact that one of the major incriminating circumstance pressed against the present petitioner is the TIP, therefore, the non-availability of such witness will, of course, enure to the benefit of the present petitioner while considering his bail plea.

17. It is also not in controversy that the present petitioner is in custody for the last 6½ years and the prosecution has cited as many as 43 witnesses, of which only 13 witnesses have been examined. Thus, the conclusion of trial is likely to take long time and the circumstances of the present case do not warrant keeping the petitioner incarcerated to await the outcome of trial.

18. In so far as other involvements of the present petitioner are concerned, it is not the case of the prosecution that the petitioner is in custody in any of the said cases. Even otherwise, the involvement in other cases cannot be the sole criteria for rejecting the bail application of the petitioner.

19. As regards CDRs, suffice it to say that the same are not substantive piece of evidence and can only be used for corroboration.

20. There is also some substance in the submission of Mr. Bhandari that location chart does not conclusively establish petitioner's presence at the place of incident at the time of incident.

21. Considering the aforesaid circumstances in entirety, this court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to bail subject to his furnishing a Personal Bond in the sum of Rs.25,000/- and one Surety Bond of the like



amount to the satisfaction of the Trial Court/JMFC/Duty JM, further subject to the following conditions:

- (a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- (b) Petitioner shall not change his address without prior intimation to the Investigating Officer concerned.
- (c) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- (d) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the victim or witnesses directly or indirectly.

22. The petition stands disposed of.

23. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on merits of the case.

24. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

25. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

MARCH 12, 2025

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