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

+ **BAIL APPLN. 567/2025, CRL.M.A. 4119/2025**

SUFIYAN KHAN

.....Petitioner

Through: Mr. Mohit Mathur, Senior Advocate
with Mr. Irfan Firdous, Mr. Monish
Ali Khan, Ms. Aleena, Mr. Vignesh,
Mr. Harsh Gautam, Mr. Ojaswa Dev
Jha, Mr. Vyom Jain and Mr. Ali
Muzaffar, Advocates.

versus

STATE GOVT. NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for State
with Mr. Mahender Kumar Yadav, SI,
Spl. Cell, Lodhi Colony.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

11.02.2025

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1. The present application filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (erstwhile Section 438 of the Code of Criminal Procedure, 1973²) seeks grant of pre-arrest bail in proceedings arising from FIR No. 544/2024 registered under Sections 25/27 of the Arms Act, 1959³ at P.S. Special Cell.
2. A copy of the reply on behalf of the State has been handed over and is taken on record.

¹ "BNSS"

² "Cr.P.C."

³ "the Arms Act"



3. Briefly, the case of the prosecution is as follows:

3.1. On 29th November, 2024, one Mr. Irfan was apprehended from Taimur Nagar Extension Area, based on information received from an informant. Upon conducting his search, the authorities recovered one .32 bore loaded pistol and 4 live cartridges. Consequently, the present FIR was registered and Mr. Irfan was arrested.

3.2. During the course of the investigation, Mr. Irfan admitted to being part of an extortion racket that operated in coordination with jailed gangsters and associates of the Lawrence Bishnoi gang, who were hiding abroad. He disclosed that his role involved identifying potential extortion targets and sharing their profiles and mobile numbers with incarcerated gang members. These targets were subsequently contacted by Mr. Rohit Godara, a known associate of the Lawrence Bishnoi gang, to carry out the extortion. In connection with these revelations, FIR No. 273/2024 was also registered, alleging that Mr. Irfan actively provided information on potential victims to the gang members. Upon completion of investigation, the chargesheet against Mr. Irfan was filed before the Trial Court on 25th January, 2025.

3.3. As regards the role of the present Applicant, the Prosecution states that during interrogation, Mr. Irfan had disclosed that he provided one .30 bore pistol and its ammunitions to the Applicant.

3.4. Upon visiting the residence of the Applicant, his house was found locked and the Applicant was found to be absconding after the arrest of Mr. Irfan. Further investigation revealed that the Applicant is a known criminal and involved in several cases including cases of murder, robbery and offences under the Arms Act. Since the Applicant was absconding, a search warrant was obtained from the Court and a search was conducted at his



house in the presence of independent witness, who was the neighbour of the Applicant. Resultantly, one .32 bore pistol made by Ordnance Factory, Kolkata and 12 live cartridges made in the Czech Republic were recovered from his house. It was also found that the recovered pistol and cartridges were different from the pistol and cartridges given by Mr. Irfan to the Applicant. The Applicant had erased Ordnance Factory number by rubbing the number inscribed on the pistol, however, upon opening the barrel, the digits 10689 were found to be inscribed at the inner part of barrel.

3.5. Eventually, proceedings under Section 84 BNSS against the Applicant were instituted by the Trial Court.

3.6. The Applicant had filed an application for surrender before the Trial Court, however, eventually he did not surrender. However, on an application seeking issuance of Non-Bailable Warrants against the Applicant on 23rd December, 2024, summons were issued against the Applicant. Subsequently, on 3rd January, 2025, Non-Bailable Warrants were issued by the Trial Court through order dated 3rd January, 2025.

4. In the above background, Mr. Mohit Mathur, Senior Counsel appearing for the Applicant states that the Applicant has been falsely implicated in the present case. In support of his request for grant of bail, Mr. Mathur urges the following:

4.1. The main accused i.e., Mr. Irfan has been arrested and the investigation is substantially complete. The chargesheet against Mr. Irfan has already been filed.

4.2. In the FIR, the Complainant has not delineated the involvement of the Applicant. In absence of any ocular witness testimony substantiating the connection of the Applicant with the alleged offence, his liberty ought not be



compromised.

4.3. The Special Cell had conducted the search in the residence of the Applicant without any prior intimation or knowledge at around 3:30 AM. None of family members was present in the house at the time of the raid. In fact, the police forcibly gained entry after breaking lock of the main door. In this regard, on 14th December, 2024, the Applicant had also filed a complaint to the DCP, North East, Seelampur, complaining about the illegal raid conducted at his residence

4.4. The alleged recovery of the firearm has not been effected from the possession of the Applicant but allegedly from his residence. This illegality of the procedure adopted, although shall be addressed before the Trial Court, however, is sufficient in itself to demonstrate that the Applicant has been falsely implicated.

4.5. As regards the involvement of the Applicant in cases disclosed in the status report filed by the Prosecution before the Trial Court, it is stated that the Applicant has been acquitted in all cases except for proceedings emanating from FIR No. 502/2016 registered at P.S. Kotwali.

4.6. There is no material on record to implicate the Applicant as the proceedings against him have been initiated solely on the basis of the alleged disclosure of Mr. Irfan and as such, there is no CDR or telephone conversation relied upon by the Prosecution to link the alleged recovery from the Applicant's residence to the disclosure statement made by Mr. Irfan.

4.7. In the instant case, since there was non-compliance of Section 41A of Cr.P.C. (now known as Section 35 of BNSS), in light of the decision of the



Supreme Court in *Satender Kumar Antil v. CBI & Anr.*⁴ the Applicant's is entitled for pre-arrest bail.

4.8. The Applicant is and has always been willing to join investigation and it is not a case that custodial interrogation is necessary.

5. Mr. Amit Ahlawat, APP for the State, strongly opposes the Applicant's request for grant pre-arrest bail. He places reliance on the disclosure statement of Mr. Irfan, wherein it has been categorically revealed that he had provided the Applicant with a .30 bore pistol along with its ammunition. This disclosure, he contends, is a crucial piece of evidence linking the Applicant to the unlawful possession and possible trafficking of firearms.

6. Additionally, Mr. Ahlawat highlights that the Applicant's extensive criminal history, pointing out that there are five FIRs already registered against him, the details whereof are as follows:

S.No.	FIR No & U/s	Police Station	Status of case
1.	368/07 U/s 394/397/186/353/307/34 IPC and 25 Arms Act	Seelampur	Convicted 7 years and Fine Rs. 20,000/-
2	377/17 U/s 186/353/307/34 IPC and 25/27 Arms Act	Seelampur	Acquitted
3.	59/2011 U/s 25 Arms Act	Karol Bagh	Acquitted on 11.01.2019
4.	502/16 U/s 392/397/307/411 IPS & 27 Arms Act	Kotwali Delhi	Pending Trial
5.	161/22 U/s 120B,147,148,149,302/34 IPC	PS Ghulwati	Acquitted

⁴ (2022) 10 SCC 51



7. Further, he submits that the search conducted at the Applicant's residence led to the recovery of unlicensed firearms, reinforcing the allegations against him. The investigation has revealed that the Applicant is actively engaged in the illegal trade of high-end firearms and ammunition, supplying them to criminals. In light of the nature of the recovery, the provisions of Section 25(1)(a) of the Arms Act are squarely attracted in this case. At this stage, the custodial interrogation of the Applicant is imperative to trace the source of the recovered firearms and to uncover the broader supply chain facilitating their distribution.

8. The Court has considered the afore-noted contentions. The Applicant is evidently involved in several criminal cases. In fact, the Applicant has been convicted for 7 years in FIR No. 368/2007 registered under Sections 394/397/186/353/307/34 of IPC and Section 25 of the Arms Act at P.S. Seelampur. Thus, criminal antecedents of the Applicant are clearly established.

9. As regards the contention raised by Mr. Mathur regarding non-compliance of Section 41A of Cr.P.C., the Court observes that the said provision applies to offences where the prescribed punishment does not exceed 7 years of imprisonment. However, in the present case, the Prosecution has invoked Section 25(1)(a) of the Arms Act, which stipulates a minimum punishment of 7 years, extendable to life imprisonment.

10. Mr. Mathur argues that the invocation of Section 25(1)(a) of the Arms Act is erroneous and the alleged offence, if any, would fall under Section 25(1B)(a) of the Arms Act, which provides that a person in possession or carries any firearm in contravention of Section 3 of the Act shall be



punishable with imprisonment for a term which shall not be less than two years but may extend to five years. In advancing this argument, he categorically denies any involvement in the sale of arms or ammunition, emphasizing that the alleged recovery was made from his residence. While this argument raises a legal issue that may require further deliberation at the appropriate stage, the Court must, at this moment, confine itself to examining the *prima facie* case as presented by the prosecution.

11. The Prosecution's case rests on the alleged recovery of a firearm from the Applicant's possession. They asserted that the firearm was not merely held for personal possession but was intended for further sale and transfer, thereby violating Section 5 of the Arms Act. The nature of the allegations, therefore, suggests an offence of a more serious degree, reinforcing the prosecution's reliance on Section 25(1)(a) rather than Section 25(1B)(a). In such circumstances, the Court does not find merit in the Applicant's argument regarding non-compliance with Section 41A of Cr.P.C.

12. The Court must also take note of the fact that the Applicant had filed an application under Section 480 of BNSS, seeking permission to surrender before the Trial Court. The said application was taken up for consideration on 16th December, 2024 and the matter was scheduled for the appearance of the Applicant on 23rd December, 2024. However, despite having moved the surrender application, the Applicant failed to appear before the Court on the said date.

13. In parallel, on an application filed by the Investigating Officer seeking issuance of Non-Bailable Warrants against the Applicant, on 23rd December, 2024, summons were issued against the Applicant. However, when the matter was taken up for consideration on the next date of hearing i.e. on 3rd



January, 2025, the Court noted that the summons had not been served upon the Applicant. In light of the continued non-service of summons and the Applicant's evasive conduct, the Trial Court proceeded to issue the Non-Bailable Warrants. For ease of reference, order dated 3rd January, 2025 reads as follows:

"This is an application for issuance of NBWs against accused Sufiyan S/o Umar Ali Khan marked to the undersigned being Duty JM, by the Ld CJM, New Delhi PHC.

IO submits that summons against the accused were issued on 23.11.2024 and for execution of the same HC Arif visited the house of the accused i.e. A 65, Gali No 01, 5th Floor, Kabir Nagar, Delhi.

On query about the service of the same, it is submitted by the IO by flagging DD entry nos. 25A and DD entry 64 A Dated 01.01.2025, that he visited the address of the accused and on search, he was not found at the address. The IO further submits that the summons were served to the wife of the accused namely Shimmi who had also signed on the copy of the same. The same has been shown to the court. He also submits that the entire family of the accused resides at the same address. No other whereabouts of the accused were given by the family members of the accused.

Submissions heard. Record perused.

It appears that the accused is evading the process and his presence can only be obtained by resorting to coercive measures keeping in mind the smooth investigation of the case.

Let NBWs be issued against the accused and in case of non-availability of the accused at the said address, process server is directed to visit atleast three times to execute the process before filing his report. Application disposed of. Copy dasti.

Put up for before the concerned court on 16.01.2025."

14. On this aspect, Mr. Mathur, has vehemently contended that the procedure adopted by the Prosecution for obtaining the Non-Bailable Warrants was contrary to the established principles of criminal jurisprudence and provisions of BNSS and Cr.P.C. While these submissions merit consideration at the appropriate stage, the core issue before this Court remains the necessity of custodial interrogation.

15. The Court cannot lose sight of the fact that an illegal firearm and



ammunition have been recovered from the premises of the Applicant. The nature of the recovery necessitates an in-depth investigation into the source and supply chain of the illicit weapon. It is imperative to identify the supplier, the intermediaries, if any, involved, and the ultimate recipients of the recovered firearm, particularly in light of its potential implications for public safety. Moreover, considering the Applicant's previous criminal antecedents, coupled with his apparent reluctance to submit to judicial proceedings, the Court is of the opinion that no case is made out for the grant of anticipatory bail.

16. For the foregoing reasons, the present bail application, along with pending application, is dismissed.

SANJEEV NARULA, J

FEBRUARY 11, 2025

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