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

+ **BAIL APPLN. 652/2025**

AFZAL @ TAMMI

.....Applicant

Through: Mr. Ajay Verma and Ms.
Bhoomika Uppal, Advs.

versus

STATE (GOVT OF NCT, DELHI)

.....Respondent

Through: Ms. Richa Dhawan, APP
for the State with SI
Virender, PS Kamla
Market.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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20.05.2025

1. The present application is filed seeking regular bail in FIR No. 244/2020 dated 08.10.2020 registered at Police Station Kamla Market for offences under Sections 302/147/149/34 of the Indian Penal Code, 1860 ('IPC').

2. The FIR was registered on a statement given by Vakil Mehto (hereafter 'the deceased') who was a taxi driver. It is alleged that the deceased had enmity with one Munna @ Aaltay who ran a travel agency. It is alleged that on 07.10.2020 at about 5 pm when the deceased was on his way home, and had stopped his vehicle near Minto Road, he was attacked by co-accused Munna and Sammi with *lathi* and *danda*. It is alleged that when the deceased attempted to save himself three more persons namely –Sammi, Aariya and Vicky came out of a Scorpio and gave beatings to the deceased. Thereafter, the accused persons fled from the spot. Pursuant to the incident, the deceased was



taken to the hospital by his son.

3. In his supplementary statement, the deceased named the applicant as one of the assailants. During the course of the investigation, co-accused persons – Asif @ Sammi, Arif and the applicant were arrested on 09.10.2020, and at their instance blood-stained broken bamboo sticks were recovered. The FSL report obtained showed that the blood present on the broken *lathi* matched with the blood of the deceased.

4. The FIR was initially registered under Sections 307/34 of the IPC. However, since the deceased succumbed to his injuries on 13.10.2020, Sections 302/147/149/34 of the IPC were added.

5. The learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. He submits that the applicant was not named as one of the assailants in the statement given by the deceased which led to the registration of the FIR, and was only named in the subsequent statement recorded by the Investigating Officer. He submits that the applicant has been languishing in jail for the last more than 4 years, and prays that the applicant be enlarged on bail on account of delay in trial.

6. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. She submits that the allegations against the applicant are serious in nature. She submits that at the instance of the applicant and other co-accused persons, blood-stained broken bamboo sticks were recovered, and that the FSL report manifests that the blood on the broken *lathis* and *dandas* matches with the blood of the deceased. She submits that the deceased, prior to his



death, had specifically named the applicant as one of the assailants, and prays that considering the nature and gravity of the offence, the present application be dismissed.

7. I have heard the counsels and perused the material on record.

8. The Hon'ble Apex Court in catena of judgments has consistently emphasised the factors to be taken into account when considering bail application, which include: (i) the nature or gravity of the offense; (ii) the character of the evidence and circumstances unique to the accused; (iii) the likelihood of the accused evading justice; (iv) the potential impact of the release on prosecution witnesses and its societal repercussions; and (v) the probability of the accused engaging in tampering.

9. At the outset, it is noted that the offence charged against the applicant is heinous and grave. It is the case of the prosecution that the applicant along with the co-accused brutally murdered the deceased due to some prior enmity between them.

10. The learned counsel for the applicant contends that the applicant was only named in the supplementary statement recorded by the Investigating Officer, and not in the initial statement that led to the registration of the FIR. He contends that the benefit of such inconsistency should be afforded to the applicant.

11. It is pertinent to note that while considering an application of the accused seeking bail, the Court would not be justified in going into evidence on record at such depth so as to ascertain the probability of conviction of the accused by appreciating hyper technical arguments as the same is a matter of trial.



12. The grant of bail should not be arbitrary or whimsical. Being conscious of the fact that individual liberty holds immense significance, it is incumbent upon the Courts to examine and evaluate, albeit briefly, factors such as the *prima facie* case, the nature and severity of the crime and the accused's likelihood to tamper with evidence, among other considerations as noted above.

13. From a bare perusal of the material on record, it is *prima facie* evident that prior to his death, the deceased had specifically named the applicant to be one of the assailants. It is further the case of the prosecution that at the instance of the applicant and other co-accused persons, blood-stained broken bamboo sticks were recovered, and the FSL report showed that the blood on the broken *lathis* and *dandas* matched with the blood of the deceased. Whether such discrepancy as has been pointed out by the learned counsel for the applicant would aid the case of the applicant or not would be tested during the course of the trial and would be considered at the time of final arguments. The same cannot be made a ground to enlarge the applicant on bail at this stage when the deceased in his last statement before death which would be in the nature of dying declaration has specifically named applicant as one of the assailants. Whether such statement could ultimately lead to conviction would be subject matter of trial but cannot be ignored at this stage.

14. The learned counsel for the applicant further contends that the applicant has been languishing in custody for the last more than 4 years, and that the trial is not likely to conclude in a timely manner. On being pointedly asked, it is informed that 17 out of



32 witnesses have been examined.

15. While the applicant has spent a considerable period of time in custody, however, it cannot be ignored that the applicant has also been charged for an offence under Section 302 of the IPC. The applicant, if convicted, would be sentenced to imprisonment for life. For this reason, long period of incarceration alone cannot be a ground to grant bail to the applicant at this stage.

16. At this stage, it is also pointed out that the bail application preferred by co-accused Asif@Sammi has been dismissed by a Co-ordinate Bench of this Court. The role attributed to the applicant is similar to that of the co-accused Asif@Sammi.

17. It is pertinent to mention that while deciding the question of bail, the Court must carefully balance the individual's right to liberty with the interests of justice. While the presumption of innocence and the right to liberty are fundamental principles of law, they must be considered in conjunction with the gravity of the offence and its impact on society.

18. Accordingly, taking into account the submissions made by the learned counsel for the parties, and material available on record, this Court is of the considered opinion that *prima facie*, there are serious allegations against the applicant which at this stage cannot be said to be without any material.

19. Considering the facts and circumstances of this case, this Court is not inclined to grant bail to the applicant at this juncture.

20. It is made clear that the observations made in the present case are only for the purpose of considering the bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.



21. In view of the above, the present bail application is dismissed.

AMIT MAHAJAN, J

MAY 20, 2025