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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 678/2025**
RAHUL GUPTA @ TYAGIPetitioner

Through: Mr. Vineet Jain, Advocate.

versus

STATE (GNCT OF DELHI) THROUGH SHORespondent
Through: Mr. Amit Ahlawat, APP.
Inspector Arun Kumar, P.S. Prasad
Nagar.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **16.05.2025**

1. The present application under Section 439 of the Code of Criminal Procedure, 1973,¹ read with Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023² seeks regular bail in FIR No. 210/2018, registered at P.S. Prasad Nagar for the offences under Sections 302/34 of the Indian Penal Code, 1860³ read with Sections 25/27/54/59 of the Arms Act, 1959.

2. Briefly stated, the case of the Prosecution is as follows:

2.1. A PCR call was received at P.S. Prasad Nagar *vide* DD No. 4A dated 19th July, 2018, pursuant to which SI Murari Lal, along with Constable Ramnarayan (No. 1156/C), reached the spot at Gothi Park, Pyare Lal Road, Dev Nagar, Karol Bagh, Delhi. At the location, a pool of blood was found

¹ "CrPC"

² "BNSS"

³ "IPC"



near an iron bench inside the park. It was revealed that the victim, later identified as Vishal (S/o Late Om Prakash), had been stabbed by Ashu @ Atta and others, and was taken to Lady Hardinge Medical College Hospital by his friends. Upon reaching the hospital, it was learnt that the victim had succumbed to his injuries.

2.2. In the MLC, the doctor recorded the following observations: *“A/H/O Physical Assault with stab wound over left thigh and right forearm and 3x1cmx2cm laceration over left thigh, 3x1x1cm Laceration over right forearm and 0.5x0.5cm abrasion over right side of neck, patient unconscious, nature of injuries - reserved, kind of weapon used-reserved.”*

2.3. SI Murari Lal recorded the statement of Pawan @ Hanni, (Complainant and brother of the deceased). He stated that on the night of 18th-19th July 2018, after having dinner, the deceased had gone for a walk at around 10:00 PM. At approximately 11:30 PM, the Complainant, who was at home, heard sounds of a quarrel from Gothi Park, located near his house. Since the deceased had gone to the park, the Complainant rushed there, and saw Rahul Gupta @ Tyagi (the Applicant) and an unidentified person (described as short in height, well-built, and dark-complexioned) holding the deceased near an iron bench, while Ashu @ Atta was attacking him with a knife.

2.4. The Applicant and the unidentified accused person incited Ashu @ Atta by saying, *“Today, do not leave Vishal alive”*, pursuant to which Ashu @ Atta stabbed the deceased with a knife. As the deceased attempted to save himself, he sustained injuries near the right elbow. At that time, friends of the deceased, Deepak Jha, Neeraj, Gaurav, and Sunny, were also present and tried to intervene, but Ashu @ Atta waved the knife at them. Subsequently,



Ashu @ Atta stabbed the deceased in the left thigh. The Complainant and the deceased's friends threw bricks at the accused persons in an attempt to stop them.

2.5. After injuring the deceased, all three accused persons fled the scene by crossing the railings of the park and ran towards Pyare Lal Road. The deceased fell on the spot. The Complainant chased them, but was unable to catch them. Upon returning to Goti Park, the Complainant saw Sunny and Deepak Jha taking the deceased to the hospital in a three-wheeler. The Complainant then rushed home and informed his mother. Together, they went to Lady Hardinge Hospital, where the deceased was receiving treatment. The Complainant made a call on 100 No. from his mother's mobile phone. Based on this statement, the present FIR was registered.

2.6. During the investigation, a post-mortem was conducted at MAMC Mortuary vide PM No. 252/18 dated 19th July, 2018. The cause of death was opined to be haemorrhagic shock and its complications, resulting from a stab wound to the left thigh, which was opined to be sufficient to cause death in the ordinary course of nature.

2.7. On the basis of the statements of witnesses, co-accused Ashu @ Atta was arrested on 19th July, 2018. His disclosure statement was recorded, and the weapon of offence and other exhibits were recovered at his instance. Co-accused Amar @ Kanha was arrested on 21st July, 2018, and the Applicant on 15th December, 2018.

2.8. During the course of investigation, all corroborative and linked evidence was collected. Relevant witnesses were examined, and a chargesheet against the aforementioned accused persons was filed before the competent court.



3. Counsel for the Applicant urges the following grounds, seeking grant of bail:

3.1. The Applicant has been falsely implicated and has no involvement in the alleged offence. The FIR was registered based on a false statement made by the deceased's brother. The Complainant's presence at the scene is questionable, as he neither attempted to intervene to save his brother, nor accompanied him to the hospital. The Complainant also failed to inform the police about the incident, which would have been the natural and expected course of action under such circumstances. Furthermore, the Complainant (PW-11), in his deposition before the Trial Court, did not support the Prosecution's case.

3.2. According to the Prosecution's case, the Applicant's alleged role was limited to holding the deceased, and there is no allegation that the Applicant was involved in stabbing the deceased.

3.3. The investigation stands completed, the supplementary chargesheet has been filed, and all material eyewitnesses have been examined. None of the eyewitnesses have supported the Prosecution's case. Given that the Applicant has been in custody for nearly six years and in light of the fact that the eyewitnesses have failed to corroborate the Prosecution's case, the Applicant's continued incarceration amounts to punitive detention.

4. On the other hand, Mr. Amit Ahlawat, APP for State, opposes the bail application on the following grounds:

4.1. The Applicant has been implicated in a brutal murder, which entails capital punishment or life imprisonment. Considering the gravity of the offence, the Applicant's long period of incarceration cannot serve as the sole ground for his release on bail.



4.2. The post-mortem report confirms that the cause of death was haemorrhagic shock due to a stab injury that severed the femoral vessels, thereby substantiating the case of the Prosecution.

4.3. The Applicant was specifically named in the FIR by the Complainant, and the chargesheet establishes the Applicant's role in furtherance of a common intention with the co-accused. The Applicant was present at the scene and held the deceased, along with co-accused Amar @ Kanha, while the other co-accused, Aashu @ Atta, inflicted the fatal stab wounds. Therefore, the Applicant's claim that his role is inconsequential is without merit.

4.4. The Applicant absconded following the incident and was subsequently declared a Proclaimed Offender under Section 82 Cr.P.C., before surrendering several months later. There is a possibility that, if released on bail, the Applicant may attempt to flee or evade the trial.

4.5. The eyewitness, PW-11, Pawan @ Hanny, was present at the scene. Although he did not support the Prosecution's case, there is other material on record to implicate the Applicant.

4.6. The Applicant has prior involvement in serious offences under various Sections of the IPC. His conduct in jail, as per the nominal roll, has been unsatisfactory. The release of the Applicant at this stage would undermine the integrity of the trial and could pose a risk by influencing witnesses or tampering with evidence.

5. The Court has considered the contentions of the parties. Pursuant to the directions issued by this Court, the Prosecution has examined 12 out of 44 witnesses. Considering that the examination of 32 witnesses still remains pending, the conclusion of the trial is likely to take considerable amount of



time. That being said, it is noticed that all the material eye witnesses to the alleged incident have been examined, and none of them have supported the case sought to be advanced by the Prosecution.

6. At this stage, the Court is not to conduct a mini-trial based on the evidence led by the parties, nor would it be appropriate to render findings that might prejudice either side. However, for the limited purpose of adjudicating the present bail application, it is relevant to note that PW-7 (Gaurav), PW-8 (Sunny), PW-9 (Neeraj), and PW-10 (Deepak), friends of the deceased, as well as PW-11 (Pawan), the brother of the deceased and the Complainant, who were all reportedly present at the scene of the incident, have not supported the case of the Prosecution in their respective depositions. PWs 8 to 10 have consistently stated that they have no knowledge about the incident and expressed their unwillingness to depose anything further. PW-7, after seeing the accused persons in court, deposed that he had not seen them on the day of the incident and did not witness them attacking the deceased. PWs 8 and 9 voluntarily deposed that they did not know the accused persons at any point in time, and could not, as such, identify them. Further, PW-11, the Complainant and the brother of the deceased, also did not support the Prosecution's case. He categorically deposed that he had not seen the accused persons committing the alleged offence, as they were not present at the spot. Thus, the statements made by these witnesses under Section 161 Cr.P.C. have been materially contradicted in their testimonies before the Trial Court.

7. Although the material witnesses have resiled from their previous statements, this does not *ipso facto* render their entire testimony inadmissible. The Prosecution may still rely on portions of their statements



that support its case. However, the question of the extent to which such testimony can be accepted is a matter to be adjudicated by the Trial Court during the course of the trial. At the present stage of bail, the Applicant is certainly entitled to rely upon these depositions to contend that the Prosecution's version of events is doubtful.

8. Furthermore, apart from ocular evidence, which, as noted above, has not supported the case of the Prosecution, there is no other scientific, forensic, or other substantive material implicating the Applicant in the alleged offence. No recovery has been effected from the Applicant that would connect him to the incident. In such circumstances, since there is an absence of corroborative evidence and the Prosecution's key witnesses have not supported its case, the Court is inclined to allow the Applicant's request for grant of bail.

9. The Prosecution has raised an objection regarding the Applicant's antecedents, highlighting three prior cases involving the Applicant. However, in one of these cases, FIR No. 952/2015, the Applicant has been acquitted. In another case, being FIR No. 439/2014, the offences alleged against the Applicant have been compounded. The remaining case pertains to an FIR registered under Section 411 of the IPC, in which the Applicant is presently facing trial.

10. At this juncture, it is also pertinent to note that, as per the nominal roll dated 9th March, 2025, the Applicant has remained in custody for a period of 5 years, 1 month, and 18 days. As already observed, considering the number of prosecution witnesses yet to be examined, the conclusion of the trial is likely to take considerable time. Moreover, the material eye-witnesses have already been examined, thereby negating any apprehension of the Applicant



influencing or tampering with them. Any concerns regarding the possibility of the Applicant absconding or fleeing from justice can be effectively addressed by imposing appropriate and stringent conditions while granting bail.

11. In totality of the aforesaid facts and circumstances, the Applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:

- a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;
- b. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- c. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;
- d. The Applicant shall appear before the Trial Court as and when directed;
- e. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- f. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
- g. The Applicant shall report to the concerned PS on the first Friday of every month.



12. In the event of there being any FIR/DD entry / complaint lodged against the Applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.
13. It is clarified that any observations made in the present order are for the purpose of deciding the present 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.
14. Copy of the order be supplied to the concerned Jail Superintendent for necessary information and compliance.
15. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

MAY 16, 2025
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