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

+ **BAIL APPLN. 750/2025**

VIVEK KUMAR

.....Petitioner

Through: Mr. Mayank Chauhan and Mr. Suraj
Prakash, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Amit Ahlawat, APP for State.
Mr. Mukesh Sharma, Ms. Vishakha
and Mr. Abhishek Chaudhary,
Advocates for Complainant.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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23.05.2025

1. The present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (corresponding to Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in FIR No. 49/2024 under Section 365 and 34 of the Indian Penal Code, 1860³ registered at P.S. Chhawala, Dwarka, Delhi. Subsequently, a chargesheet was filed in the case whereby the offences *qua* the Applicant are under Sections 365, 34, 302, 201 and 120B of IPC.

2. The case of the prosecution are as follows:

2.1. On 1st February, 2024, the Complainant – Mr. Rahul Pundhir

¹ “BNSS”

² “Cr.P.C.”



approached P.S. Chhawala and reported that his younger brother, Akash Pundhir (aged about 25 years), had left home the previous evening around 6:00 PM to go to the gym, but did not return. A missing person report was lodged *vide* DD No. 63A on 01st February, 2024.

2.2. On the following day, i.e., 2nd February, 2024, the Complainant informed the police that after reviewing CCTV footage from nearby locations, it was revealed that around 7:00 PM on 31st January, 2024, a group of individuals forcibly abducted his brother by pushing him into a car. Based on this development, the FIR was registered and investigation commenced.

2.3. During the course of investigation, an unidentified burnt body was recovered on 3rd February, 2024, within the jurisdiction of P.S. Kakod, District Bulandshahr, Uttar Pradesh. The body was later identified by the family members as that of the missing person, Akash Pundhir.

2.4. CCTV footage revealed that three persons: Tarun Singh, Vijayveer Singh, and Rajender, were seen forcefully abducting the deceased in an Maruti ALTO Car. A fourth person, identified as Sani, was also seen assisting in lifting the victim and placing him inside the vehicle. The Complainant confirmed the identity of the accused persons, who are stated to be related to the victim. Subsequently, videographic profiling of the accused persons was carried out by a team from the Forensic Science Laboratory, with the objective of comparing their physical features with those captured in the video.

2.5. Tarun Singh, Vijayveer Singh and Shani Kumar Solanki were arrested on 08th February, 2024 and the Maruti ALTO Car allegedly used in the

³ “IPC”



abduction of the victim was recovered at their instance. Accused Rajender was arrested 15th February, 2024 and one motorcycle, which was also used in the crime, was recovered at his instance.

2.6 In their custodial interrogation, all the abovementioned accused persons accepted their involvement. Co-accused Tarun Singh allegedly disclosed the Applicant's role, stating that the Applicant was also party to the criminal conspiracy. He stated that since the Applicant knew how to drive, he was tasked with following the deceased to the gym in the ALTO Car and then later, on the instructions of the co-accused persons, he also took the co-accused's motorcycle, which was used earlier to follow the deceased, to Faridabad. On the strength of this disclosure, the Applicant was arrested on 23rd February, 2024. The Call Detail Records⁴ of the Applicant's mobile phone revealed his location near the abduction site, Prem Nagar, Najafgarh, Delhi, at the relevant time. It is also the prosecution's case that he was in frequent contact with the other co-accused in the hours leading up to the incident.

2.7 On the basis of the material gathered during investigation, the prosecution alleges that all five accused persons were part of a premeditated conspiracy to abduct and murder the deceased, and to destroy evidence by subsequently burning his body. A chargesheet has since been filed against all of them under Sections 365, 302, 201, 120B, and 34 IPC, and the matter is presently pending trial.

3. Counsel for the Applicant seeks bail on the following grounds:

3.1. The Applicant has been falsely implicated and there is no direct or substantive evidence connecting him to the commission of the alleged



offence. The entire case, insofar as it concerns the Applicant, rests upon the doctrine of criminal conspiracy. The prosecution has failed to place on record any cogent or credible material that would satisfy the legal threshold required to establish a *prima facie* case of conspiracy under law. Instead, the allegations against the Applicant appear to hinge solely upon the disclosure statement of a co-accused, namely Tarun, which, by itself, is inadmissible in evidence and lacks independent corroboration.

3.2 There is no recovery of any incriminating article or material from the possession or instance of the Applicant. Notably, even the mobile phone purportedly used by the Applicant, relied upon by the prosecution to determine location and communication, was never recovered during the course of investigation.

3.3 The essential ingredients of a criminal conspiracy, namely the existence of an agreement to commit an unlawful act and some overt act in pursuance thereof, are conspicuously absent in the present case as far as the Applicant is concerned. No specific role has been assigned to him, nor is there any attributed motive linking him to the crime. On the contrary, the alleged motive appears to be directed against one of the co-accused, who is the Applicant's maternal uncle, thereby further distancing the Applicant from the core of the alleged conspiracy.

4. Opposing the present bail application, Mr. Amit Ahlawat, APP for the State, along with Ms. Vishakha, counsel for the Complainant (brother of the deceased), contend that the material on record clearly implicates the Applicant in the commission of the offence. The prosecution case against the Applicant is not based solely on the disclosure statement of co-accused,

⁴ "CDRs"



and instead it is buttressed by corroborative circumstantial evidence. In particular, the Applicant's mobile phone location, as per the CDR analysis, places him at or near the scene of the abduction at the relevant time, and establishes that he was in telephonic contact with other co-accused shortly prior to the incident.

4.1. Supplementing the State's case, Ms. Vishakha highlights that the CDRs reveal a specific telephonic communication between the Applicant and co-accused Vijay Veer Singh at 6:51 PM on the date of the incident, coinciding with the time of abduction. Furthermore, the location data of the Applicant's mobile places him in the immediate vicinity of the Gym from where the deceased was forcibly taken. While only three individuals are visible in the CCTV footage, identified as Tarun Singh, Vijay Veer, and Rajender, yet all the four individuals were involved in the abduction. Given that the role of three identified co-accused has been established, the surrounding circumstances, including the CDR and location data, are relied upon to implicate the Applicant as well.

4.2. The applicant is implicated in a grave and heinous offence executed in furtherance of a premeditated criminal conspiracy. It is not a spontaneous act of violence, but a carefully orchestrated sequence of events, beginning with the tracking of the deceased from his residence to the Gym, followed by his abduction, and culminating in his murder and the subsequent burning of his body in another jurisdiction to conceal his identity.

4.3. The post-incident conduct of the Applicant lends credence to his involvement. The Applicant's failure to report the abduction, despite being at the location, as indicated by the CDRs, raises suspicion and is indicative of guilty knowledge.



4.4. In view of the nature and seriousness of the offence, the role attributed to the Applicant, is not a fit case for the grant of bail. If released on bail, the Applicant may pose a risk to the fair conduct of the trial, particularly by way of possible intimidation of witnesses or tampering with evidence.

Analysis

5. The Court has considered the aforementioned contentions. The present case arises from a brutal and premeditated murder of a 25-year-old man, allegedly orchestrated by his own distant relatives. The nature of the offence is undoubtedly grave and reflects a degree of planning that cannot be ignored. However, the Court is mindful that the grant or denial of bail must be based not solely on the seriousness of the charge, but on a holistic assessment of the legal and factual matrix surrounding the particular accused. It is a well-established principle that while considering a bail application, the Court must keep in mind several factors relating to the case, such as – whether there is any *prima facie* reasonable ground to believe that the accused has committed the offence, the nature and gravity of the accusation, severity of potential punishment, risk of the accused absconding or fleeing if released on bail, the likelihood of the offence being repeated, etc⁵.

6. It is equally well settled that at the stage of considering bail, the Court is not required to weigh evidence with the rigour reserved for a trial which would make the bail proceedings akin to a mini-trial⁶.

7. Insofar as the present Applicant is concerned, the case of the

⁵ *Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr.* (2010) 14 SCC 496

⁶ See also: *Brijmani Devi v. Pappu Kumar & Anr.*, (2022) 4 SCC 497 and *Mahipal v. Rajesh Kumar @*



prosecution hinges entirely on circumstantial evidence. There is no eye-witness account placing him at the scene of the abduction or murder. The material relied upon includes the CDRs allegedly showing his presence near the spot where the deceased was abducted, and certain telephonic exchanges between him and co-accused shortly before the incident. The prosecution also relies on the disclosure statement of co-accused Tarun Singh, which implicates the Applicant.

8. However, it is a matter of settled law that the disclosure statement of a co-accused, without corroboration, is not substantive evidence and cannot form the sole basis for conviction or denial of bail.⁷ The probative value of such a disclosure statement would have to be analysed during trial. In the present case, apart from the disclosure, the only material against the Applicant is the CDR analysis, which, at best, suggests his proximity to the location of the abduction.

9. Significantly, the CCTV footage relied upon by the prosecution does not feature the Applicant. Of the four persons seen abducting the deceased in the footage, three have been positively identified as co-accused Tarun, Vijayveer, and Rajender. The identity of the fourth individual is not visually corroborated, in fact, as per the chargesheet the fourth person has been identified as Sunny and not the Applicant herein. As per the disclosure statement of co-accused Tarun, the Applicant was sent to Faridabad with the motorcycle of his uncle. On a pointed query of the Court, it has been confirmed that the location of the Applicant's mobile phone was not traced to Bulandshahr, U.P., where the deceased was allegedly murdered and his

Polia, 2020 (2) SCC 118

⁷ *Pancho v. State of Haryana*, (2011) 10 SCC 165, See also: *Kashmira Singh v. State of M.P.* (1952) 1



body set ablaze. This break in the chain of events *prima facie* dilutes the allegation of common intention or participation in the homicidal act.

10. The prosecution's case rests primarily on the doctrine of criminal conspiracy. At this stage, *prima facie* there is no material reflecting any overt act by the Applicant or any indication of his role in the planning or execution of the murder. The nature and content of the calls relied upon have not been analysed to demonstrate any incriminating nexus. Whether these interactions were in furtherance of a criminal design is a matter that must be tested at trial. The evidentiary chain, as it presently stands, falls short of meeting the threshold of compelling *prima facie* involvement.

11. The Applicant has been in custody since 23rd February, 2024, and has completed over a year of incarceration. The investigation is complete, and the chargesheet has been filed. While charges have recently been framed, the trial is yet to commence. There are no allegations of the Applicant having attempted to influence witnesses or impede the investigation during the pendency of the proceedings.

12. Therefore, in light of the above discussion, in the opinion of the Court, the continued custody of the Applicant will be punitive and unnecessary. Accordingly, the Applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty Metropolitan Magistrate/ Jail Superintendent, on the following conditions:

a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;

SCC 275 and *Haricharan Kurmi v. State of Bihar* AIR 1964 SC 1184



- 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.
13. 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.
14. 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 should also not be taken as an expression of opinion on the merits of the case.
15. The bail application is allowed and disposed of in the afore-mentioned terms.

SANJEEV NARULA, J

MAY 23, 2025

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