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

+ **BAIL APPLN. 1033/2025**

ABHISHEK BALMIKI @ MOTA

.....Petitioner

Through: Mr. Pawan Mehta, Mr. Dushyant
Bhargava and Mr. Manav Sharma,
Advocates.

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for the State.
SI Gajal Chugh, PS: Krishna Nagar.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **13.05.2025**

1. This is the second bail application, filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023¹ (erstwhile Section 439 of the Criminal Procedure Code, 1973²) read with Section 528 of BNSS (erstwhile Section 482 of CrPC), seeking regular bail in proceedings arising from FIR No. 145/2023 dated 5th March, 2023, registered under Sections 398, 307 and 34 of the Indian Penal Code, 1860³ and Sections 25 and 27 of the Arms Act, 1959⁴, at P.S. Krishna Nagar. Subsequently, a chargesheet was filed *qua* the Applicant under Sections 393, 394, 398, 307, 482 and 34 of IPC as well as Sections 25 and 27 of the Arms Act. First bail application was dismissed as withdrawn on 24th July, 2024.

2. In brief, the case of the prosecution is as follows:

¹ "BNSS"

² "CrPC"

³ "IPC"

⁴ "Arms Act"



2.1. On 5th March, 2023, acting upon a PCR call recorded *vide* DD No. 47A, ASI Sikander of Police Station Krishna Nagar, accompanied by Head Constable Sachin, proceeded to the reported location of the incident, i.e., Bank Road, near Ashok Nursing Home, Raja Chat, Krishna Nagar, Delhi. They were informed by beat officers that three unknown persons, travelling on a motorcycle, had attempted to snatch a chain at gunpoint from one Ms. Divya Aggarwal, a 37-year-old resident of Geeta Colony. It is alleged that one of the three miscreants fired upon Mr. Jasvinder Singh, aged 40, a bystander who tried to intervene. Mr. Singh sustained a gunshot wound and was admitted to GTB Hospital. His MLC (No. B-2668/17/23) records a firearm injury.

2.2. In his statement, Mr. Singh stated that while on his way to Lal Quarter market on his scooty, he witnessed an attempt to snatch a chain from a woman across the road. When he tried to intervene, one of the assailants shot at him. The perpetrators then fled the scene on a motorcycle. FIR No. 145/2023 was registered on the basis of this complaint.

2.3. The scene was inspected, and the Complainant's scooty was seized. Statements of eye witnesses, Deepak Aggarwal, Mehak Kundra, and Gurpreet Singh, were recorded. The bullet retrieved from the Complainant, along with his bloodstained clothes, was seized and deposited. CCTV footage from Gate No. 9 of the PWD Office, B-Block, Dilshad Garden, captured three persons on a motorcycle bearing registration No. DL 3S EJ 9114. This plate was later found to be false.

2.4. On 17th March, 2023, acting on a tip-off, the police arrested one Atul @ Vinit. During interrogation, he disclosed the names of his accomplices—Abhishek Balmiki @ Mota (the Applicant) and Abhishek Gupta @ Janu



Kelevala. A country-made pistol was recovered from him. Police custody was sought for recovery and to trace the remaining accused.

2.5. Subsequently, it was found that the Applicant and co-accused Abhishek Gupta had already been arrested in FIR Nos. 97/2023 and 112/2023, registered at P.S. Phase 3, Noida, Gautam Budh Nagar, involving similar offences. During their custodial interrogation in those cases, they disclosed their involvement in the present incident. Three days' PC remand was taken to recover the motorcycle and weapon used.

2.6. On 19th March, 2023, a mobile phone was recovered at the instance of co-accused Atul @ Vinit. On 23rd March, 2023, a country-made pistol was recovered from co-accused Abhishek Gupta. Further investigation revealed that the trio had stayed at Shivam Guest House, Bypass Road, Ghusaiganj, Kannauj (U.P.) from 6th to 8th March, 2023.

2.7. The victim, Ms. Divya Aggarwal, recorded her statement on 24th March, 2023, confirming that three individuals had attempted to snatch her chain at gunpoint.

2.8. On 26th March, 2023, based on information received, the motorcycle used in the incident (Apache, grey colour, No. MP 04 NZ 9746) was recovered from one Daya Shankar, an acquaintance of co-accused Abhishek Gupta. A false number plate (DL 3S EJ 9114) affixed to it was also seized. The following day, the registered owner of the motorcycle, Mr. Anshul Sharma, confirmed in his statement that the vehicle had been stolen on 10th January, 2023, and an E-FIR was lodged at P.S. Lajpat Nagar.

2.9. Upon conclusion of the investigation, all three accused were charge sheeted under Sections 393, 394, 398, 307, 482, and 34 IPC and Sections 25 and 27 of the Arms Act. However, charges framed against the present



Applicant were under Sections 393, 482, 307, and 34 IPC.

3. Counsel for the Applicant urges the following grounds in support of the prayer for regular bail:

3.1. The Applicant has been falsely implicated and has no prior criminal antecedents. The Complainant (PW-2), the sole eye witness to the incident, has already been examined before the Trial Court and has not supported the prosecution's case. He categorically stated that he could not identify the accused in the CCTV footage. Likewise, the victim (PW-1) has failed to identify or attribute any specific role to the Applicant. It is further submitted that PW-5 Anshul Sharma, the registered owner of the recovered motorcycle, and PW-6 have also not corroborated the prosecution's case in any material respect.

3.2. The allegation against the Applicant of riding the motorcycle used in the alleged offence has also not been substantiated as no recovery has been effected from him, and he is not the registered owner of the motorcycle recovered.

3.3. The Applicant has been in judicial custody for over two years. The investigation *qua* him stands concluded, and the chargesheet and supplementary chargesheet have been filed. The key prosecution witnesses, including those on whose testimony the case largely rests, have already been examined. As such, there remains no apprehension of tampering with evidence or influencing witnesses. In these circumstances, continued incarceration would amount to punitive pre-trial detention rather than serving any legitimate purpose of justice.

4. On the other hand, Mr. Amit Ahlawat, APP for the State, opposes the application and advances the following submissions:



4.1. The allegations against the Applicant are of a grave and serious nature. He is accused of being part of an armed robbery attempt, during which a firearm was discharged in a public area, resulting in gunshot injuries to the Complainant (PW-2), as confirmed by the MLC. The charges framed include offences under the IPC as well as the Arms Act.

4.2. The Applicant was not a passive bystander but an active participant in the offence. He rode the motorcycle used during the incident, thereby facilitating the escape of the other co-accused after the gun was fired. The incident was captured on CCTV footage, which links the Applicant to the crime scene and establishes his involvement.

4.3. The State submits that mere prolonged incarceration cannot be a basis for bail, particularly in cases involving heinous offences. The delay in trial, it is submitted, is attributable in part to certain witnesses turning hostile and to the complexity of the case, which involves multiple eyewitnesses and several pending examinations. There remains a significant risk of the Applicant influencing or intimidating witnesses, especially given that he is an undertrial in more than 15 other criminal cases. His release, would therefore, pose a threat to the integrity of the trial.

5. The Court has carefully considered the submissions advanced on behalf of the parties and perused the material on record. At this stage, the Court cannot conduct a mini-trial but only assess the evidence on a *prima facie* basis. The role ascribed to the Applicant is not that of a passive bystander but as an active co-participant in the commission of a serious offence involving the use of a firearm. As per the prosecution, the Applicant was allegedly riding the motorcycle which was used both during the attempted robbery and in facilitating the escape of the co-accused after the



gun was fired at a civilian. The incident occurred in broad daylight, in a public space, and involved a firearm injury to the Complainant, as corroborated by the MLC.

6. While it is correct that the Complainant (PW-2) and certain other prosecution witnesses have not supported the prosecution's case in their depositions so far, this by itself cannot be the sole basis for grant of bail at this stage. The prosecution has placed reliance on CCTV footage which, according to them clearly captures the involvement of the Applicant. The evidentiary value and admissibility of the said footage are matters that will be evaluated during trial.

7. Further, it has been pointed out that only 6 out of 52 witnesses have been examined to date. In such circumstances, the possibility of further witness attrition or intimidation cannot be ruled out if the Applicant is released on bail at this stage, especially when key witnesses are yet to be examined.

8. What also weighs heavily against the Applicant is his multiple prior involvements. As per the Status Report dated 14th April, 2025, he is implicated in more than 15 other criminal cases, including offences under Sections 392, 397, 307 IPC, and provisions of the Arms Act. Though it is true that he does not have a conviction as of now, a consistent pattern of reoffending while on bail emerges from the record. Of particular concern is FIR No. 160/2019 registered at P.S. Patparganj Industrial Area, in which the Applicant jumped bail, as well as FIR No. 97/2023 registered at P.S. Phase 3, Noida, which pertains to a similar offence committed just five days after the present incident. Given the demonstrated tendency to reoffend while on bail, the Court finds itself constrained from extending the benefit of bail to



the Applicant, notwithstanding the other factors.

9. The nature and gravity of the offence in the present case, attempted armed robbery in a public area, resulting in gunshot injury, raises serious concerns of public safety and law and order. The allegations involve not only premeditation but also the use of a stolen vehicle with a false number plate, and abscondence after the incident. These are not routine allegations but reflect a coordinated and violent criminal act in a public space. The potential for repetition of such conduct is not illusory, especially in light of the Applicant's antecedents.

10. The settled position of law, reiterated in the Supreme Court in various judgments, is that while deciding a bail application, the courts must consider factors such as the seriousness of the charge, the likelihood of the accused fleeing justice, the possibility of tampering with evidence or threatening witnesses, and the antecedents of the accused. All these factors weigh against the Applicant in the present case. The argument of prolonged incarceration, while not irrelevant, cannot override these more pressing concerns at this stage, particularly when the trial is ongoing and several material witnesses remain to be examined.

11. Accordingly, this Court is of the view that the Applicant has not made out a case for the grant of regular bail. The application is, therefore, dismissed.

12. Considering the overall facts and circumstances of the case, the Court is not inclined to grant bail.

13. Dismissed.

SANJEEV NARULA, J

MAY 13, 2025/d.negj