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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1292/2025**
CCL APetitioner

Through: Mr. Kushal Raj Gupta and Ms.
Muskan Mahajan, Advocates.

versus

THE STATE OF NCT OF DELHIRespondent
Through: Mr. Mukesh Kumar, APP.
SI Paramjit Singh and Inspector
Satbir Singh.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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02.05.2025

1. This is the second bail application filed by the Applicant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 439 of the Code of Criminal Procedure, 1973²) seeking regular bail in proceedings emanating from FIR No. 265/2017 registered under Sections 302/363/201/120-B/34 of the Indian Penal Code, 1860³ and Sections 24/54/59 of the Arms Act, 1959. The Applicant also assails order dated 17th December, 2024 passed by the ASJ-01(West), Children's Court, Tis Hazari Courts dismissing the Applicant's third bail application.

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

2.1. On 9th May, 2017, the present FIR was registered on a complaint made by Sunita Devi, who stated that her son, namely Chirag, aged 17 years had been missing since 2nd May, 2017. The investigation of the case was

¹ "BNSS"

² "Cr.P.C."



marked to SI Jasbir Malik.

2.2. During the investigation, wireless messages were circulated to all SSPs and DCPs across India, the missing person's information was uploaded on ZIP Net, and a Hue and Cry notice was issued. Alerts were also sent to SCRB, NCRB, and CBI. A request was made to Doordarshan for public broadcast. Despite these measures, Chirag could not be traced.

2.3. The Complainant expressed suspicion on the Applicant 'A', Amit and Ravi.

2.4. The CDR of Chirag's mobile number was analyzed and it was found that last call was received from the mobile number which was found to be registered on the name of one Parveen.

2.5. Upon interrogation, Parveen stated that it was the Applicant who had called Chirag from his (Parveen's) mobile, and that Amit and Ravi were present with him at the time. He also identified all three accused persons. Despite being interrogated, none of them disclosed any information regarding Chirag's whereabouts.

2.6. On 12th/13th June, 2017, an unidentified dead body similar to the missing person was found in the area of P.S. Samaypur Badli on 5th May, 2017. The photographs of the unidentified dead body, clothes, tattoo mark and other particulars were shown to the Complainant and she identified the unidentified dead body as her missing son Chirag.

2.7. On 14th June, 2017, the Applicant, Amit, and Ravi were apprehended and interrogated by IO Satvir Singh. They disclosed that a quarrel had taken place between them and the deceased. Thereafter, Amit, along with the co-accused, including the Applicant, Ravi, and Rohit Dahiya, conspired to

³ "IPC"



murder Chirag. To execute the plan, Amit and Ravi procured two *desi kattas* and three live cartridges. On 2nd May, 2017, they lured Chirag under the pretext of consuming alcohol and travelled in Chirag's car to Bakkarwala Village, where they picked up Rohit Dahiya. Rohit drove the car with Chirag in the front passenger seat and the other accused in the back. They reached a secluded area near Bawana Canal, where the Applicant allegedly took a *desi katta* from Amit and shot Chirag in the head. The body was then disposed of in the canal by Rohit with the assistance of the others. Subsequently, Rohit returned home, while the Applicant, Amit, and Ravi proceeded to Haridwar. All three were arrested on 14th June, 2017.

2.8. The weapons used in the offence, two *desi kattas* and two live cartridges, were recovered at the instance of the Applicant, Amit, and Ravi from behind Nagpal Industry, Bakkarwala, Delhi.

2.9. The vehicle used in the offence was recovered at the instance of co-accused Amit and its FSL examination was conducted. The car was registered in the name of Chirag's friend Rahul and had been collected from a mechanic by Ashish and Chirag.

2.10. Co-accused Rohit Dahiya initially absconded and was later arrested in FIR No. 784/2017 under Section 25 of the Arms Act, 1959 at P.S. Ranhola. He was formally arrested in the present FIR on 10th November, 2017.

2.11. Chargesheet has been filed and the Trial Court framed the charges against the accused persons under Sections 364/302/201/120B of IPC.

3. Counsel for the Applicant urges that that the Applicant has been falsely implicated and submits the following in support of his request:

3.1. The Applicant has been in custody since 14th June, 2017 and has spent nearly 8 years in custody. In the Applicant's case, only 10 out of 31



witnesses have been examined and therefore, there is no likelihood that the trial will be concluded in the near future.

3.2. The prosecution's case hinges on circumstantial evidence; there is no direct eyewitness account. The sole circumstance relied upon is the "last seen" theory based on the statements of witnesses Abhishek (PW-6) and Parveen (PW-7), recorded under Section 161 Cr.P.C. Both witnesses have turned hostile during cross-examination and have not supported the prosecution's case.

3.3. On grounds of parity, the Applicant seeks bail as similarly placed co-accused Amit and Ravi have been granted bail by the Sessions Court on 16th July, 2019 and 31st January, 2024, respectively. Additionally, Rohit Dahiya has been granted bail by this Court on 24th November, 2023 in BAIL APPLN. 3410/2023.

3.4. The Trial Court rejected the bail application primarily because the testimony of public witnesses Rahul (PW-2) and Parveen (PW-7) was pending. Since then, PW-7 has been examined and has turned hostile. PW-2 was discharged unexamined on the previous hearing date, and the matter (SC No. 564/2017) is now listed for 29th May, 2025.

4. The Applicant was released on interim bail during the COVID-19 pandemic pursuant to recommendations of the High-Powered Committee and did not misuse the liberty granted. As regards the 7 other cases reflected against the Applicant on the SCRB portal, it is submitted that he has already been acquitted in two cases and convicted in one, the sentence for which he has already undergone. For the remaining cases, the portal indicates that the matters stand disposed of.

5. *Per contra*, Mr. Mukesh Kumar, APP for the State strongly opposes



the bail application and submits that the allegations against the Applicant are serious in nature. He asserts that the Applicant fired at the deceased using an illegal firearm and disposed of the body in the canal. He also draws attention to the Applicant's poor conduct in custody, including punishment awarded to him for misbehaviour. Furthermore, during his interim bail period, the Applicant was remanded to judicial custody in multiple other cases. He also points out that the Applicant had previously withdrawn his bail plea filed before this Court in BAIL APPLN. 1634/2024 by order dated 13th August, 2024.

6. The Court has considered the afore-noted facts and contentions and has perused the material on record. It is not disputed that the sole incriminating circumstance relied upon by the prosecution to implicate the present Applicant is the "last seen" theory, premised on the statements of witnesses Abhishek (PW-6) and Praveen (PW-7). However, a perusal of their testimonies reveals that both witnesses have resiled from their earlier statements and have not supported the prosecution's version during their examination in Court. They were, accordingly, declared hostile — a fact not denied by the State.

7. Further, it is pointed out that the submission made to the Court as noted in the order dated 13th August, 2024 is incorrect. It has been clarified that the said statement pertained to a separate case involving co-accused persons being tried as adults. Insofar as the Applicant is concerned, only 10 out of the total 31 witnesses have been examined thus far. This indicates that conclusion is likely to take a significant amount of time.

8. The Court also finds merit in the submissions advanced by counsel for the Applicant insofar as the doctrine of parity is concerned. *A prima facie*



comparison of the role attributed to the Applicant vis-à-vis the said co-accused persons reveals no material distinction that would justify differential treatment. Notably, the grant of bail to Rohit Dahiya was predicated on the very same ground – that the prosecution’s last-stage witness, considered crucial, had not supported the prosecution’s case during deposition. Thus, the present Applicant, standing on identical footing, is equally entitled to the benefit of bail under the doctrine of parity.

9. As regards the Applicant’s involvement in other cases registered against him, the Nominal Roll indicates that he has already been released on bail in FIR Nos. 281/2020, 282/2020, and 919/2021 registered at P.S. Mundka, and FIR No. 206/2020 registered at P.S. Special Cell. In this context, reliance may be placed on the judgment of the Hon’ble Supreme Court in ***Prabhakar Tewari v. State of U.P.***,⁴ wherein it was observed that mere pendency of several criminal cases against the accused, while can be a factor to be considered, cannot itself be the basis for refusal of bail.

10. Thus, in view of the foregoing, the Court is inclined to enlarge the Applicant on bail. The prosecution’s apprehensions that the Applicant may abscond can be allayed by imposing strict conditions on the Applicant.

11. The Applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty MM/ Jail Superintendent, on the following conditions:

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

⁴ (2020) SCC OnLine 75



- 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 P.S. on the first Monday 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. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

MAY 2, 2025/as