



\$~8

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

+ **BAIL APPLN. 1343/2025, CRL.M.A. 10481/2025**

MOHD SALEEM

.....Petitioner

Through: Mr. Arshan Ahmad, Advocate.

versus

THE STATE (GNCT OF DELHI)

.....Respondent

Through: Mr. Mukesh Kumar, APP for State
with Mr. Awadhesh Narayan, SI, PS-
Chandni Mahal.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **30.04.2025**

1. The present application, filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (earlier Section 439 of the Code of Criminal Procedure, 1973²) seeks grant of regular bail in the proceedings arising from FIR No. 49/2021, registered at P.S. Chandni Mahal under Sections 323/304/34 of the Indian Penal Code, 1860.³

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

2.1 On 9th March, 2021, a PCR call was received at P.S. Chandni Mahal, regarding a quarrel at House No. 864, Haveli Azam Khan, Chitli Qabar, Daryaganj, Delhi. The call was assigned to SI Harsh Kumar, who reached the spot along with Constable Vivek Kumar. A crowd had gathered, but initially, no complainant came forward, except one Mr. Imran, who stated

¹ "BNSS"

² "Cr.P.C."

³ "IPC"



that he had sustained injuries during the quarrel.

2.2 SI Harsh Kumar, along with Constable Vivek Kumar, escorted Imran to Lok Nayak Hospital, where it emerged that another injured person, Mohd. Shakeel (aged 60 years) had also been admitted. His son, Mohd. Aasd (the Complainant), was likewise admitted for treatment. Soon thereafter, Mohd. Shakeel succumbed to his injuries.

2.3 The Complainant, who is also an eyewitness to the incident, having been declared medically fit, provided a statement to the police. He stated that his father had purchased the fourth floor of Property No. 864 approximately three years prior, and had since been residing and working from that address. According to the Complainant, a longstanding dispute had existed between his father and other residents of the building namely, Mohd. Saleem (the present Applicant), his son Salman Khan, and two others, Mushtaq Hussain and Mukhtar Hussain, over the functioning of the elevator and access to the rooftop. Though a lift was installed in the building, the accused persons allegedly sought to dismantle it and occupy the space. This harassment had taken a toll on the deceased, who had previously suffered a paralytic stroke and remained physically frail despite treatment.

2.4 On 9th March, 2021, the accused persons dismantled the lift covering the ground and first floors, which led to an argument with the deceased that quickly escalated into violence. The Complainant, who had just returned from the market, witnessed the accused aggressively confronting and abusing his father. Concerned for his father's fragile health, the Complainant warned them not to cause harm, but the accused instead turned on him and began assaulting him. While the deceased pleaded for mercy, he was violently pushed by the accused persons, leading to a rapid deterioration in



his condition. The Complainant, who also sustained internal injuries, rushed his father to the hospital, where he later succumbed to his injuries. This led to registration of the subject FIR.

2.5 The scene was inspected by the mobile crime team, photographs were taken, and a site plan was prepared, based on the Complainant's version. No CCTV cameras or bloodstains were discovered at the scene, however, the elevator gate on the ground and first floors was missing.

2.6 The MLC of the eye-witness, Imran, was prepared, which recorded his injuries as simple. He was examined and his statement corroborated the Complainant's version. Imran confirmed the ongoing dispute over the lift and alleged that all four accused had assaulted both the Complainant and the deceased. He stated that Mustakh Hussain held the Complainant's legs, the Applicant sat on his back, Mukhtar Hussain pulled his hair, and Salman beat the deceased by throwing him down. When Imran attempted to intervene, he was also assaulted by Salman, though his father managed to shield him.

2.7 Based on these accounts, Salman was arrested near JLN Marg at the instance of the Complainant. The remaining co-accused were apprehended subsequently. All four were interrogated and are said to have confessed during custodial interrogation. They were later remanded to judicial custody.

2.8 Post-mortem of the deceased was conducted at Maulana Azad Medical College. Tissue samples and viscera were preserved and sent for forensic examination. The post-mortem report revealed multiple fractures of ribs covering the chest.

2.9 Further investigation revealed that the accused persons were opposed to the functioning of the lift and were preventing the deceased from accessing the rooftop. They even circulated posters in the neighbourhood,



warning that anyone purchasing the property from the deceased would face legal action. During the investigation, a pen drive and a mobile phone containing video footage were seized and sent to the FSL, Rohini. The FSL report confirmed the presence of three video clips. In one, Mukhtar is seen pulling the Complainant's hair, while the deceased, visibly struggling to breathe, attempts to intervene. In another clip, Salman is seen assaulting Imran, the eyewitness. These videos clearly demonstrate the involvement of the accused persons in the alleged incident, thereby bolstering the case of the Prosecution.

3. The Counsel for the Applicant seeks grant of regular bail on the following grounds:

3.1 The Applicant has been in custody for nearly three years. Investigation in the matter stands concluded and the chargesheet has already been filed. Out of ten cited public witnesses, only six have been examined thus far, and the deposition of the Complainant remains incomplete. The delay in trial, cannot be attributed to the Applicant. In these circumstances, continued incarceration serves no purpose beyond punitive pre-conviction detention, particularly when the trial is proceeding at a measured pace and is unlikely to conclude in the immediate future.

3.2 The Applicant is a senior citizen, aged over 64 years, and is a heart patient. Further, the Applicant that he has no involvement in the present matter, as he was not present at the scene at the time of the alleged incident.

3.3 During the COVID-19 pandemic, the Applicant was granted interim bail, which he did not misuse; he neither approached nor influenced any prosecution witness during that period and surrendered before the Jail Superintendent on the expiry of his bail term. These facts demonstrate the



Applicant's willingness to comply with the conditions imposed by the Court and belie any apprehension of flight risk.

3.4 While the Prosecution has relied upon three video clips in support of its case, the footage primarily depicts the involvement of the other co-accused in the alleged incident. Pertinently, the Applicant is not visibly present or seen participating in the alleged assault in any of the said video clips relied upon by the Prosecution.

3.5 The post-mortem report of the deceased records multiple rib fractures on either side of the chest and attributes the cause of death to cardiac arrhythmia resulting from blunt force trauma. However, it does not identify the source, nor does it attribute any specific act of assault to the Applicant.

3.6 The Prosecution has failed to produce any direct or incriminating evidence demonstrating the existence of a criminal conspiracy involving the Applicant and the co-accused. The case rests entirely on circumstantial evidence, which falls short of the standard required to deny bail at this stage. In the absence of cogent and credible material pointing to the Applicant's individual culpability, continued incarceration is neither justified nor necessary.

4. The bail is strongly opposed by Mr. Amit Ahlawat, APP for the State. He points to the presence of direct ocular evidence from multiple eyewitnesses who have categorically implicated the Applicant in the assault. The Applicant, it is contended, resides in close proximity to the material witnesses, raising a credible apprehension that he may attempt to influence or intimidate them if enlarged on bail.

5. The Court has considered the aforementioned contentions. The allegations against the Applicant pertain to the commission of an offence under Section



304 IPC, involving the culpable homicide of a senior citizen, *i.e.*, the father of the Complainant, arising out of a violent confrontation. It is also relevant to note that the deceased was a 65-year-old individual with a known history of medical fragility, including a prior paralytic episode. The allegations *prima facie* suggest that the Applicant and his co-accused were fully aware of his condition at the time of the incident. The post-mortem report of the deceased records multiple bilateral rib fractures and attributes the cause of death to cardiac arrhythmia consequent to blunt force trauma to the chest. This medical opinion, on a *prima facie* basis, establishes a causal link between the assault and the death of the victim.

6. The case of the Prosecution is substantiated by the accounts of several eye-witnesses, including the Complainant, Imran, Abid, and Mohd. Ilyas, whose statements under Section 161 Cr.P.C. are consistent in implicating the Applicant as an active participant in the assault. Although it is contended that the Applicant is not visible in the video footage relied upon by the Prosecution, it is pertinent to emphasize that the Complainant, who is also the son of the deceased, along with other injured eyewitnesses, has specifically named the Applicant in connection with the incident. It is further noted that the Complainant's testimony has been only partially recorded and his cross-examination is still pending. Statements of other eyewitnesses have yet to be adduced. In this backdrop, the apprehension expressed by the State regarding the likelihood of witness intimidation carries weight, particularly since the Applicant resides in the same locality as the prosecution witnesses.

7. In view of the totality of circumstances, the contention regarding delay in trial, though not insignificant, does not tilt the balance in favour of



the Applicant. While it is a matter of concern that the trial has been ongoing for four years and only six out of ten prosecution witnesses have been examined, the possibility of influencing the remaining material witnesses cannot be ignored. Therefore, in the considered opinion of this Court, enlarging the Applicant on bail would pose a significant risk of prejudicing the ongoing trial. However, the Court is conscious of the protracted nature of the proceedings, and accordingly, deems it appropriate to direct the Trial Court to expedite the trial, ensuring that undue delay is avoided.

8. With the above directions, the present petition is dismissed along with pending application(s).

SANJEEV NARULA, J

APRIL 30, 2025

d.negi