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

+ **BAIL APPLN. 1954/2023**

RAHUL KUMAR

.....Applicant

Through: Mr. Ravindra Narayan,
Mr. Madhav Narayan and
Mr. Raghav Narayan,
Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP
for the State with Insp.
Jaspal, PS Burari and SI
Heera Lal, PS Wazirabad.
Mr. Umesh Sharma, Mr.
Peeyush Kaushik, Mr.
Siddharth Kaushik and Mr.
Ritesh Kaushik, Advs. for
the victim.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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07.08.2025

1. The present application is filed seeking regular bail in FIR No. 1360/2015 dated 01.11.2015, registered at Police Station Burari, for offences under Sections 365/34 of the Indian Penal Code, 1860 ('IPC'). Chargesheet has been filed in the present case for offences under Sections 365/302/201/120B of the IPC and Sections 25/27/54/59 of the Arms Act, 1959.

2. The brief facts of the present cases are as follows:

2.1. On 29.10.2015, a missing report was lodged by one Sh. Indraj for the deceased Pawan Kumar. On 01.11.2015, the complainant namely– Sh. Rinku, gave a statement that on 28.10.2015, his elder brother Pawan Kumar was leaving home,

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for some money related work, after he had received a call from one of the accused persons namely– Jitender @ Happy. He alleged that since then, the deceased Pawan Kumar did not return home. He raised suspicion that Jitender @ Happy and his brother Narender @ Pappan had kidnapped his brother, as there had been some money related dispute between them.

2.2. On 01.11.2015, an unidentified dead body was recovered in the area of Police Station Tronica City, and was identified as the deceased Pawan Kumar. The Post Mortem of the dead body was conducted wherein the doctor mentioned the external injuries as “Lacerated wound in area 20*20 cm in all skull bone and cause of death as “*shock and hemorrhage due to ante mortem injury*”.

2.3. During the course of investigation, accused Jitender @ Happy was arrested on 03.11.2015, who disclosed that he along with his associates including the applicant herein and two more persons namely Aman Sharma @ Jitender Sharma and Rahul Bainsla, had murdered the deceased near Tronica City on 28.10.2015. He stated that he and his brother Narender @ Pappan had arranged the weapons of offence being a Desi Katta and Pistol from accused Mohd. Shakib and Rahul Bainsla.

2.4. The second Post Mortem of the body of the deceased was conducted on 04.11.2015, at the request of family members of the deceased. The cause of death in the second Post Mortem Report reveals that Injury No. 4 and 5 are caused by projectile of firearm.

2.5. The accused Aman Sharm @ Jitender Sharma and the applicant were arrested from their house on 04.11.2015. Accused



Aman Sharm @ Jitender Sharma disclosed that on 28.10.2015 one Uber cab was booked by Jitender @ Happy, from Karawal Nagar to Tronica City. He stated that he travelled in the said cab with the accused Jitender @ Happy and the deceased Pawan Kumar.

2.6. The Uber driver namely–Prem Chand Rahelia, was made an eye-witness in the present case and was examined. In his testimony, he deposed that on 28.10.2015, his cab was booked by Jitender @ Happy, and he had driven the three people including accused Aman Sharm @ Jitender Sharma, Jitender @ Happy as well as the deceased, when he was asked to stop the cab at Pushta of Chaman Vihar. He has stated that after waiting for a while he saw two persons, who were identified by him as the applicant and Rahul Bainsla, arrived at the spot. He stated that all five persons boarded the cab. He stated that when they reached at the scheduled destination, which was in the middle of the fields, the accused persons offered him to have dinner with them. He stated that they also had a bottle of liquor with them. He deposed that after eating dinner, the accused persons Jitender @ Happy, Aman Sharm @ Jitender Sharma, Rahul Bainsla along with the applicant got up and stood behind the deceased, and started firing at the deceased. He stated that thereafter, when he ran to his taxi, he was chased by the accused persons, however he somehow managed to escape. He deposed that the accused persons were causing injuries on the face of the deceased with stones, in order to spoil his identity, whereafter they threw his body in the nearby nala.

2.7. Rahul Bainsla was arrested on 07.11.2015, at the instance



of accused Jitender @ Happy, Aman Sharma @ Jitender Sharma and the applicant Rahul Kumar.

3. The learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. He submits that the prosecution has based the entire case on the eye-witness namely–Prem Chand Rahelia who was planted by them, and the same is evident from the numerous discrepancies and improvements in his statements.

4. He submits that there are contradictions in the two Post Mortem Reports filed by the State, which raises suspicion upon the case of the prosecution.

5. He submits that the applicant was arrested in the present case on 04.11.2015. He submits that the applicant has been in custody since then apart from the period when he was granted interim bail under the HPC guidelines, whereafter he had duly surrendered on 13.04.2023.

6. He submits that the applicant has never violated any conditions imposed upon him while he was on interim bail and had also surrendered on time.

7. He submits that the investigation is complete in the present case and since no recovery was made at the instance of the applicant, he is entitled to be released on bail in the present case.

8. *Per contra*, the learned Additional Public Prosecutor ('APP') for the State and the learned counsel for the victim vehemently oppose the present bail application.

9. They submit that the allegations levelled against the applicant are heinous in nature and in such circumstances, no relief should be granted to him.



10. They further submit that the complainant, Sh. Rinku has reported threats received by him to withdraw the present case, which has led to the registration of FIR No. 213/2024 under Sections 195A/506/34 of the IPC, against Jitender @ Happy and his two unknown associates.

11. I have heard the learned counsels for the parties and perused the record.

12. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, the period of incarceration is also a relevant factor that is to be considered.

13. The allegations in the present cases are grave and heinous in nature. It is the prosecution's case that the accused persons murdered the deceased with the use of firearms and disposed of his body. It is alleged that the clothes which were worn on the day of the alleged incident as well as the weapon of offence, that is, a country made pistol was recovered from the house of the applicant Rahul Kumar.

14. It is argued that there are two Post Mortem Reports in the present case, one dated 01.11.2015 and one having been conducted on 04.11.2015 which are contradictory in as much as the bullet wound was not found in the first Post Mortem Report



wherein the cause of death was found to be sock and haemorrhage. In contrast, the second post-mortem report records the cause of death as two bullet wounds. Such a material contradiction casts a serious doubt on the prosecution version, particularly as to how the alleged bullet injuries could have been entirely omitted in the first post-mortem examination.

15. The motive alleged by the brother of the deceased namely—Sh. Rinku, reveals that the co-accused persons Jitender @ Happy and his brother Narender @ Pappan were involved in some monetary dispute with the deceased. No motive has been established at this stage to link the applicant to the present offence.

16. The entire case is based on circumstantial evidence apart from the alleged recovery and the evidence given by the eye-witness Prem Chand Rahelia. The learned counsel for the applicant argues that the said eye-witness has been planted by the police in connivance with the complainant. It is submitted that there are several improvements in the testimony of Prem Chand Rahelia which diminish his genuineness as an eye-witness.

17. The prosecution alleged that co-accused Rahul Bainsla was arrested on 07.11.2015 pursuant to the disclosure statement of the other accused persons whereas the sole alleged eye-witness Prem Chand Rahelia, during his cross-examination, stated that on 05/06.11.2015 when he visited the Police Station, he had seen co-accused Rahul Bainsla there. It is stated that the alleged eye-witness did not come and complain to the Police immediately after the incident but was called after the arrest of the applicant.

18. While the veracity of the eye-witness's evidence would be



finally determined after the entire evidence is led, however, it cannot be denied at this stage, that doubt has been created in regard to the manner in which the prosecution claims to have taken the co-accused in custody in the present case.

19. It is settled law that in the event of there being even some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to bail. [Ref : **Ram Govind Upadhyay v. Sudarshan Singh : (2002) 3 SCC598**]

20. The Nominal Roll of the applicant reveals that the applicant has been in custody for over 7 years over. Despite more than seven years having elapsed, the trial is at the stage of examination of prosecution witnesses. It is pointed out that only around 30 out of the 81 listed prosecution witnesses have been examined in the present case.

21. The Hon'ble Apex Court in the case of **Union of India v. K.A. Najeeb : AIR 2021 SC 712** held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

22. While it cannot be denied that the offences alleged against the applicant are heinous in nature, the Hon'ble Apex Court in the case of **Javed Gulam Nabi Shaikh v. State of Maharashtra and Another : Crl.A.2787/2024** has observed as under:

“19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.



20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”

23. The continued incarceration of the applicant will result in the denial of his fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India, when the trial is not likely to conclude in near future.

24. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

25. It is not denied that the complaint regarding threats have been registered against the accused Jitender @ Happy and not the present applicant. The applicant has been granted interim bail on different occasions and is stated to have duly surrendered on time. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

26. Furthermore, perusal of the latest Status Report reveals that as per the enquiry conducted by the Special Cell, no specific threat has been received by the complainant since 2019.

27. In view of the above, the applicant is directed to be released on bail on furnishing personal bonds for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a) He 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 cases, in any manner whatsoever;

- b) He shall under no circumstance leave the boundaries of the country without the permission of the Trial Court;
- c) He shall appear before the learned Trial Court as and when directed;
- d) He shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e) He shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

28. 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.

29. 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.

30. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

AUGUST 7, 2025