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

+ **BAIL APPLN. 1599/2024**
FAHEEM

.....Petitioner

Through: Mr. Saurabh Singh with Mr. Rahul,
Advocates.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Ms. Manjeet Arya, APP for the State.
Mr. Sumit Kr. Mishra, Advocate for
the complainant.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

06.03.2025

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By way of the present petition filed under section 439 read with section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No. 0028/2022 dated 08.01.2022 registered under sections 395/34 of the Indian Penal Code, 1860 ('IPC') at P.S.: Burari, Delhi.

2. Notice on this petition was issued *vide* order dated 07.05.2024, pursuant to which Status Report dated 27.10.2024 has been filed on behalf of the State.
3. Nominal Roll dated 01.07.2024 has also been received from the concerned Jail Superintendent.
4. The court has heard Mr. Saurabh Singh, learned counsel appearing on behalf of the petitioner; Ms. Manjeet Arya, learned APP appearing on behalf of the State; as well as Mr. Sumit Kr. Mishra, learned counsel appearing on behalf of the complainant at considerable length.



5. Mr. Singh explains, that the allegations in the subject FIR are that the petitioner along with co-accused persons robbed the complainant/victim of Rs. 15,000/-; and that during the course of robbery, they also beat the complainant with a stick.
6. Learned counsel argues, that allegations in the subject FIR are false and fabricated; and, in this behalf, Mr. Singh submits that *prima-facie* the ingredients of the offence of dacoity are not made-out. It is submitted that the prosecution case is mis-conceived, and the incident is simply a case of a street fight between the accused persons and the complaint, which should at the most attract only the offence under section 323 of the IPC.
7. Mr. Singh submits, that no weapon has been recovered from the petitioner; and even the CCTV footage recovered during the course of the investigation shows the imagery of a street fight having broken-out, with the petitioner supposedly giving beatings to the complainant with his bare hands.
8. *De-hors* the above, counsel submits that even going by the prosecution case, the petitioner's role is limited only to having given beatings to the complainant; and the kingpin of the alleged conspiracy is co-accused – Naushad. To support this submission, Mr. Singh draws attention to the last para on page 2 of the status report filed on behalf of the State.
9. Keeping the afore-said in the mind, Mr. Singh submits, that as can be seen the petitioner's nominal roll, he has suffered custody of over 18 months as an undertrial, with the trial nowhere near completion since



not even 01 of the 09 prosecution witnesses has completed their deposition before the learned trial court.

10. In light of the above submission, learned counsel prays that the petitioner be admitted to regular bail pending trial.
11. Opposing the grant of bail, learned APP submits, that while it is correct that no weapon was recovered from the petitioner, however Rs. 2,000/- of the Rs. 15,000/- robbed from the complainant/victim was recovered from him.
12. Ms. Arya submits, that while the petitioner may not have been the kingpin of the alleged offence, his role was definitely central to the commission of the crime since it was he who gave beatings to the complainant, which facts stands corroborated by the CCTV footage recovered during the course of investigation.
13. Furthermore, learned APP submits, that the petitioner was declared a 'proclaimed offender' *vide* order 26.09.2022 passed by the learned trial court; and he appeared before the learned trial court only on being arrested on 04.08.2023. It is argued that therefore, there is every possibility that the petitioner would mis-use his liberty if admitted to regular bail.
14. Mr. Mishra, learned counsel for the complainant, while opposing the grant of regular bail, has adopted the submissions made by learned APP.
15. Rebutting the State's contention, learned counsel for the petitioner submits, that the petitioner is an un-educated, scrap- dealer; and had been evading proceedings only because he was scared of the police.



16. On being queried by the court, learned APP fairly submits, that the nature of the injury suffered by the complainant in the incident was 'simple' in nature; and that the complainant was discharged from hospital after administering first-aid. In this behalf, Ms. Arya has handed-up a copy of the police file which contains the MLC. The court has perused the same. The above submission is borne-out from the contents of the police file.
17. Upon a conspectus of the facts and circumstances obtaining in the matter; and having heard learned counsel appearing on behalf of the parties, the considerations that weigh with the court at this stage are the following :
 - 17.1. That though the allegations against the petitioner are that as one of the co-accused persons who had robbed the complainant of Rs.15,000/-, he had also beaten the complainant with a stick, the MLC of the complainant shows that the injury sustained by him was 'simple' and that the complainant was discharged from hospital after administering first-aid;
 - 17.2. That the allegation against the petitioner is that he received his *share* of Rs.2,000/- from the Rs.15,000/- that was robbed from the complainant;
 - 17.3. That though it is alleged that the petitioner had absconded after the incident and that he was declared a 'proclaimed offender' *vide* order dated 26.09.2022 and was subsequently arrested on 04.08.2023, Mr. Singh has explained that the petitioner is an un-educated, scrap-dealer and was evading the police only because he was scared;



- 17.4. That the petitioner's nominal roll shows that he has suffered judicial custody of about 18 months as an undertrial; that his jail conduct has been 'satisfactory'; and that he has no other criminal involvement; and
- 17.5. That of the 09 prosecution witnesses cited in the chargesheet, no witness has deposed before the learned trial court as of date. Evidently therefore, trial in the matter will take significant time to conclude.
18. As a sequitur to the above, especially considering that the allegation in the subject FIR is of robbery of Rs.15,000/- from the complainant, of which the petitioner is alleged to have received Rs.2,000/-; and that the complainant had received a 'simple' injury, this court is persuaded to grant to the petitioner – ***Fahim s/o Yasin*** – *regular bail* pending trial, subject to the following conditions :
- 18.1. The petitioner shall furnish a personal bond in the sum of Rs.15,000/- (Rs. Fifteen Thousand Only) with 01 surety in the like amount from a family member, to the satisfaction of the learned trial court;
- 18.2. The petitioner shall furnish to the Investigating Officer ('I.O.'), a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 18.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;



- 18.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and
- 18.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
19. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.
20. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
21. A copy of this order be sent to the concerned Jail Superintendent *forthwith*, for information and compliance.
22. The petition stands disposed-of in the above terms.
23. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MARCH 6, 2025

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