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

+ **BAIL APPLN. 1711/2025**

MANNU

.....Applicant

Through: Mr. Yashu Rustagi, Adv.
versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Kiran Bairwa, APP
for the State with Insp.
Rajendra Singh, PS
Narela.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **07.05.2025**

CRL.M.A. 13641/2025 (exemption from filing certified copies of the annexures)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present application is filed seeking pre-arrest bail in FIR No. 28/2025 dated 13.01.2025, registered at Police Station Narela, for offences under Sections 109(1)/3(5) of the Bharatiya Nyaya Sanhita, 2023.

4. The FIR was registered pursuant to a complaint given by one Deepak, who stated that he along with his friend Zakir, had gone to the market on 12.01.2025 at around 10:00 PM and while they were having soup, the accused Manjeet came along with his friend in a car.

5. The complainant alleged that the accused Manjeet and his friend Zakir were known to each other and had some acrimony. He alleged that the accused Manjeet had himself started fighting with Zakir. Accused persons left and came back after 5-7 minutes

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and had a physical altercation. The complainant further alleged that the accused persons took out a rod from the car and hit him and when he and his friend Zakir tried to escape, they caught hold of Zakir. It is alleged that the victim –Zakir was hit by a rod and was also stabbed.

6. The victim Zakir was then taken to the hospital, however, he was declared brought dead.

7. Subsequently, the accused Manjeet was arrested. The accused Manjeet, in his disclosure statement, stated that the applicant was the one who was accompanying him and was involved in the physical altercation with the complainant and the deceased.

8. The CCTV footage was also obtained during the course of investigation, which reveals that the applicant was driving the vehicle in which he came along with the accused Manjeet. The CCTV footage also shows the applicant and the accused Manjeet having physical altercation with the complainant and the deceased.

9. It is to be kept in mind that the considerations governing the grant of pre- arrest bail are materially different than those to be considered while adjudicating the application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation is carried out by the investigating agency.

10. It is trite law that the power to grant a pre-arrest bail under Section 482 of the of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') [erstwhile Section 438 of the Code of Criminal Procedure, 1973] is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine



manner. The Hon'ble Apex Court in the case of State of A.P. v.

Bimal Krishna Kundu : (1997) 8 SCC 104, held as under:

"8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

"5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal."

9. Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

"The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest."

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on "the career of millions of students", learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order."

11. It is settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect



who is well ensconced with a favorable order under Section 438 of the CrPC [*State v. Anil Sharma : (1997) 7 SCC 187*]. Granting pre-arrest bail to the applicant would undoubtedly impede further investigation. An order of pre-arrest bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

12. The applicant is stated to have been absconding since the time of incident.

13. The statement of the complainant and the disclosure statement of the accused – Manjeet, at this stage, indicates the involvement of the applicant along with the other accused person, in causing injuries to the victim who has died, which led to registration of the present FIR.

14. The investigation conducted thus, so far does not indicate that the applicant is sought to be falsely implicated. The material presented by the prosecution establish a *prima facie* involvement of the applicant. The investigation is at a nascent stage and the investigating agency needs to be given a fair play in the joints to investigate the matter in the manner they feel appropriate.

15. Accordingly, the present bail application under Section 482 of the BNSS is dismissed. Pending applications, if any, stands disposed of.

16. 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.

AMIT MAHAJAN, J

MAY 7, 2025 / 'KDK'

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