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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 2027/2025 & CRL.M.A. 16436/2025,
CRL.M.A. 16437/2025

MANISH KUMAR @ NAMIAApplicant
Through: Mr. Bhupendra Singh
Chowdhary, Adv. (through
VC)

versus

STATE NCT OF DELHIRespondent
Through: Mr. Ritesh Kumar Bahri,
APP for the State with SI
Mahender Koli, PS B.H.
Dairy.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **14.08.2025**

1. The present application has been filed by the applicant seeking pre-arrest bail in FIR No. 900/2024 dated 10.11.2024, registered at Police Station Bhalswa Dairy for the offence under Sections 109(1)/3(5) of the Bharatiya Nyaya Sanhita, 2023 ('BNS') and Section 27 of the Arms Act, 1959.
2. Briefly stated, information was received by the police that two patients with gun shots injury had been admitted at Babu Jagjivan Ram Memorial Hospital, whereafter, they were referred to Lok Nayak Jaya Prakash Hospital.
3. Thereafter, statement of victim Golu was recorded, wherein, he alleged that victim Arvind had a quarrel with co-accused Shivshankar @ Gela with whom he had previous enmity.
4. It is alleged that, thereafter, both the victims went towards

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their home. It is alleged that while they were sitting at a shop co-accused Deepak Bihari, Shiv @ Akash @ Chota Pandit, Nitesh @ Toofan and Raju came at the said shop and allegedly started firing on both the victims with the intention of killing them.

5. Pursuant to the statement of the victims the present FIR was registered.

6. It is alleged that during the course of investigation, co-accused Shiv @ Akash @ Chota Pandit got arrested, whereafter, at his instance co-accused Nitesh @ Toofan and Raju were arrested.

7. It is alleged that a Desi Katta was recovered at the time of arrest of co-accused Nitesh, who disclosed that the applicant had provided him with the said weapon.

8. Further, NBW's were issued by the learned Trial Court against the remaining co-accused persons including the present applicant as they were evading their arrest.

9. Pursuant to which co-accused Shivshankar @ Gela and Deepak Bihar were arrested. Co-accused Shivshankar @ Gela in his disclosure statement stated that he had acquired the weapon used in the crime from the present applicant.

10. The learned counsel for the applicant submits that the applicant has not been named in the present FIR nor any allegations have been made against him.

11. He submits that there is nothing against the applicant other than the disclosure statement of the co-accused persons.

12. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the present applicant.

13. He submits that the applicant is a habitual offender and has



four more cases pending against him being FIR No. 628/2019 under Sections 307/34 of the Indian Penal Code, 1860 ('IPC'), FIR No. 110/2020 under Sections 25/54/59 of the Arms Act, 1959, FIR No. 376/2023 under Sections 307/506/34 of the IPC and FIR No. 97/2023 under Sections 186/353 of the IPC and 25/27 of the Arms Act, 1959.

14. He consequently prays that the present application be dismissed.

15. I have heard the learned counsel for the parties and perused the record.

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

17. It is trite law that the power to grant a pre-arrest bail 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, advertent to its previous precedents, has discussed the parameters to be considered while considering pre-arrest bail applications, in the case of ***State of A.P. v. Bimal Krishna Kundu : (1997) 8 SCC 104***, has 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.”

18. It is the case of the prosecution that the applicant has supplied the weapon to the co-accused persons with which the alleged crime was committed.

19. In the present case, co-accused Nitesh @ Toofan and Shivshankar @ Gela in their disclosure statement named the applicant and stated that they had acquired the alleged weapon from the present applicant.

20. Undisputedly, the disclosure statement of the co-accused is not admissible evidence without further corroboration. However, when a specific role has been attributed to the applicant, the same



cannot be ignored and needs to be further investigated.

21. Further, supplying the weapon with which the alleged crime was committed cannot by any stretch be called a minor offence. It is to be kept in mind that serious offences are committed with the aid of illegal firearms. People like the applicant thus actively aid commission of such offences.

22. It is pointed out that the applicant has four more cases pending against him being FIR No. 628/2019 under Sections 307/34 of the IPC, FIR No. 110/2020 under Sections 25/54/59 of the Arma Act, 1959, FIR No. 376/2023 under Sections 307/506/34 of the IPC and FIR No. 97/2023 under Sections 186/353 of the IPC and 25/27 of the Arms Act, 1959.

23. From a perusal of the record, it can be seen that the applicant has repeatedly been involved in several cases and has committed heinous offences whilst on bail and has no regard for law or the orders passed by the Courts. The conditions imposed while releasing the applicant on bail have been blatantly violated.

24. Undisputedly, the bail of the applicant cannot be rejected on the ground that he has been involved in multiple cases, however, it is settled law that the antecedents of the applicant is an essential factor that needs to be considered while exercising the extra ordinary jurisdiction of grant of pre-arrest bail.

25. The involvement of the applicant in multiple cases specially while on bail and the disregard of the authority of law and court does not entitle him the benefit of pre-arrest bail.

26. The relief of pre-arrest bail is a legal safeguard intended to protect individuals from potential misuse of power of arrest. It plays a crucial tool in preventing harassment and unjust detention of innocent persons. However, the court must carefully balance



the individual's right to liberty with the interests of justice. While the presumption of innocence and the right to liberty are fundamental principles of law, they must be considered in conjunction with the gravity of the offence, its societal impact, and the need for a comprehensive and unobstructed investigation.

27. The investigation conducted thus, so far does not indicate that the applicant is sought to be falsely implicated in the present case.

28. In the present case, the allegations against the applicant are serious in nature and some play in the joints ought to be provided to the prosecution to investigate further regarding any other involvement of the applicant.

29. In view of the aforesaid discussion, this Court is of the opinion that, no ground of pre-arrest bail has been made out by the applicant.

30. The present application is accordingly dismissed. Pending application(s) if any also stand disposed of.

31. It is clarified that any observation made in the present order is 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

AUGUST 14, 2025