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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2540/2025**
GAURAV ASWATHI

.....Petitioner

Through: Mr. Rajesh Kumar Tiwari, Mr. Sunil
Kumar Singh, Mr. Vijendar Singh, Advs.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Sanjeev Sabharwal APP with
Inspector Naveen Kumar (SHO) with SI
Dharmendra Sharma, P.S. Patel Nagar.

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

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18.09.2025

1. The applicant herein is before this Court seeking regular bail, having remained under incarceration since 29.05.2023 i.e. approximately 2 years 3 months, in a criminal case arising out of FIR No. 368/2023 dated 28.05.2023 for the alleged offences punishable under Sections 392/394/397/34 of IPC, registered at Police Station Patel Nagar, Delhi.
2. Applicant's earlier attempt to secure bail before the learned Sessions Court has been futile as his bail application was dismissed vide order dated 02.04.2025.
3. The case of the prosecution as per the status report is that on 28.05.2028, a PCR call was received in the police station stating that, "*Pahari Vala Park Patel Nagar, Do Ladko Ne Park Me Mere Sath Maar peet Karke Mera Phone Chhin Liya Charsi Type Ke The*". The complainant



stated that he is working as a salesman in the food division of the Hamdard Company. When he was going to his customer after parking his scooty in Khanna Market, he reached near the Abbu Park, when the four boys started following him and robbed a mobile phone make - TECNO and a purse containing 60 rupees, ID proof and some visiting cards at knife point.

3.1 Very next day i.e. on 29.05.2023, another case of similar type, bearing FIR No 369/2025, U/s 392/394/397/411/34 was again registered implicating the applicant/accused when he along with his co accused, were arrested red-handed while committing the crime. The modus operandi was the same as used by the accused persons in the case FIR No 368/2023, dated 28.05.2023, U/s 392/394/397/34. After that, the arrested accused persons were interrogated at large and during the interrogation, they all disclosed their involvement in the present case bearing FIR No 368/2023, U/s 392/394/397/34 IPC.

3.2 Subsequently, the robbed article, i.e., a Mobile Phone, a Purse containing 60 rupees and a voter card of the complainant were recovered from the possession of the accused persons.

3.3 Thereafter, on 29.05.2023, when the complainant reached the police station to submit the bill for his robbed mobile phone, he was showed all the accused persons in the police station. On that, he straightaway identified the accused person in the police station, and for the same, a supplementary statement of the complainant was recorded, and the bill of his mobile phone was taken into the case file through a seizure memo. After that, the IMEI number of the robbed mobile phone was matched with the bill provided by the complainant and found correct and it was matched.

3.4 During the investigation, the robbed purse was recovered from the



possession of the applicant/accused, and in the purse, an amount of rupees 60/- and along with the voter ID were recovered.

3.5 Later on, as per the supplementary statement, the complainant categorically stated that the applicant/accused robbed him with his other co-accused, and the complainant also stated that the applicant/accused took out the purse and mobile phone from his pocket.

3.6 The chargesheet of the case has already been filed before the Ld. ASJ Court. Charges against all the accused persons were initially framed U/s 392/395/397/4 11/34 IPC.

3.7 Presently, the stage of the trial is at the prosecution's evidence, and there are a total of 10 in numbers PWs and out of these, 5 have been examined. The next date of the hearing before the trial court is 28.10.2025. The complainant (PW-1) has been recalled for the examination in chief as the charge U/s 397 was framed later on.

3.8 The complainant has supported his version during the evidence and currently identified the applicant/accused before the trial court during the identification and he applicant also has previous involvement.

4. Per FIR, version of the complainant is that while passing through Abu Park, West Patel Nagar, the applicant and three others followed him. They caught his hands, choked his neck, and one of them threatened him with a knife. They snatched his mobile phone and a purse containing Rs. 50–60, ID and visiting cards. Out of fear, he went home and informed his uncle Bablu Kumar, who later brought him to Patel Nagar police station.

5. In the aforesaid backdrop, I have heard the rival contentions and perused the case file.

6. Learned counsel for the applicant would *inter alia* argue on the lines



of grounds pleaded in the petition as below:-

5.1 He would submit that the Petitioner has been in judicial custody since 29.05.2023 i.e., for a period of 2 years 3 months. He would also submit that the applicant has clean antecedents, never previously convicted, and belonging to a well-reputed family with deep roots in society. He further submits that the applicant is about 21 years old, a student of Class XII, and his continued incarceration would irreparably damage his career.

5.2 The learned counsel would urge that the case against him is false, frivolous, and a result of collusion between police officials and the complainant. He would also urge that no TIP was conducted, and proper procedure was not followed. He would further point that there are no eye-witnesses as per the charge sheet, no independent no CCTV footage, and no CDR to support the prosecution's case, despite the incident allegedly occurring in broad daylight at 2:15 p.m. Further, no recovery has been effected from his possession or at his instance.

5.3 Furthermore he would submit that another FIR, No. 369/2023, was also registered for the same incident as the petitioner had refused to pay bribe, and he has already been granted bail therein. He would further submit that the investigation in the present case is complete, the charge sheet has been filed, the complainant's statement and those of most witnesses have already been recorded, and hence, his further detention serves no purpose.

5.4 Learned counsel would also submit that pre-trial incarceration is unwarranted as bail is the rule and jail the exception, being protected under Article 21 of the Constitution of India. He would further submit that in the absence of recovery or risk of tampering with evidence or absconding, he deserves to be enlarged on bail.



7. Learned APP for the State would oppose the aforesaid submissions taking recourse to the contents of the report. He would also urge that the petitioner does not deserve any leniency as he is a habitual offender. He would point out that similar FIR was registered against him just a after to the incident in question in which he is seeking bail. He also submits that in the year 2022, he was found to be indulging in similar activities and thus, FIR No. 369/2023 was registered. On a Court query, however, he does not dispute that the petitioner is on bail in both the other FIRs.

8. I have heard the rival submissions of the parties and perused the case file.

9. Learned counsel for the applicant has though argued on the merits of the culpability and there may be some substance in the same, but it is for the Trial Court to adjudicate the same. However, I am of the view that in the light thereof and for the other reasons stated hereinafter, it is a case for bail, at this stage.

10. First and foremost, while the registration of two FIRs on consecutive dates may, at first glance, appear to support the prosecution's argument that the applicant is a habitual offender, the circumstances surrounding their timing and manner of registration raise serious concerns. One FIR bearing No. 368/2023 was registered on 28.05.2023 i.e. date of incident and subsequently, on 29.05.2023, FIR bearing No. 369/2023 was registered.

10.1 That the complainant specifically named all the 4 persons who are rank strangers and allegedly accosted the complainant and attempted to snatch his mobile phone and money. How does he know the name of the strangers with such vividness? No answer is there. Moreover, despite the incident being reported in broad daylight at a public park, no effort was



made to collect material evidence, whether in the form of independent witnesses or CCTV footage, to substantiate the allegations.

11. Thus, prima facie, the procedural lapses i.e. including the absence of a Test Identification Parade, lack of eye-witnesses, CCTV footage, call detail records, or any recovery from the accused, despite the alleged incident occurring in broad daylight, create a doubt in the prosecution version.

12. The applicant is a 21-year-old man who, at the crucial years of his career and continued preventive detention would jeopardize his career prospects for rest of the life. He is currently in 12th grade and has a bright career ahead of him.

13. The applicant has deep roots in the society. Moreover, it transpires that two FIRs were registered against the applicant herein. However, he was also released on bail on both the cases. Thus, I am of the view that he does not appear to be a flight risk.

14. Investigation is over qua him as the charge sheet has been filed 07.08.2023. He is thus not required for any custodial investigation. As regards the apprehension of influencing or intimidating the witnesses, absconding and tampering with evidence, there is nothing on record to support the same, rendering such apprehension illusory. One of the primary objects of bail is to secure the presence of the accused during trial. Since the applicant poses no flight risk, continued detention may amount to punishment before conviction, at this stage.

15. The applicant has already remained in custody since 29.05.2023, for approximately 2 years 3 months. The trial is moving at a snail's pace and further continued incarceration would cause undue hardship to the applicant's family and serve no useful purpose, especially when the trial is



not likely to conclude in the near future as it violates the fundamental rule i.e. bail is the rule and jail an exception.

16. As an upshot and taking a wholesome view of the matter, particularly the undertaking given by learned counsel for the applicant and apart from what has been recorded hereinabove, I am of the view that it is a case of bail at this stage.

17. Thus, the applicant is directed to be released on bail on his furnishing personal bond with solvent surety of like amount to the satisfaction of the Trial Court/Duty Judge concerned as the case may be, subject to the other usual conditions to be imposed by the learned Trial Court/Duty Court. Apart from usual conditions, the learned Trial Court shall also take specific undertaking from the applicant that he shall provide his mobile phone number to the IO.

18. Be that as it may, all these observations are being made only for the purposes of granting bail as already noted the same are to be otherwise to be traced out during trial proceedings at appropriate stage.

19. Accordingly, the bail application stands disposed of.

ARUN MONGA, J

SEPTEMBER 18, 2025
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