



\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2729/2024 and Crl.M.A. Nos. 10214/2025 & 10223/2025**

HARISH KUSHWAHA

.....Petitioner

Through: Mr.Sudhir Nagar, Advocate

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP for State
with Inspector Lalit Kumar, DIU East
and Inspector Manish Kumar Ist Bn.
DAP

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

%

28.08.2025

1. The applicant is before this Court having remained under incarceration since 28.07.2021, seeking indulgence of this Court for grant of bail during pendency of the trial in the criminal proceedings arising out of FIR No. 289/2021 dated 27.07.2021 for alleged offences under Sections 365, 34 IPC, registered at New Ashok Nagar, East Delhi.
2. Per the FIR, complainant Ashok Kumar reported on 13.06.2021 that his brother Ajit went missing and could not be traced despite search.
- 2.1 Later, complainant informed that one Atul told him that Ajit and Atul both were beaten up by some boys on 04.06.2021 near Indira Chowk. Ajit was later abducted in a car. He suspected his neighbour Rishi Gupta, with



whom Ajit had a prior dispute. On inquiry, Rishi Gupta's brother Gaurav showed a mobile video dated wherein four boys were seen beating two persons; while Atul fled but the other (Ajit) was dragged into a white car.

3. In the aforesaid backdrop, I have heard the parties and perused the case file.

4. The counsel for the applicant would submit as below:

4.1 that the applicant has been falsely implicated and that there is no direct, indirect or circumstantial evidence to link the applicant with the crime in question;

4.2 that PW-1, namely Atul Kumar has categorically stated in his deposition that he had met with the deceased after 2 days of the alleged incident;

4.3 that PW-5, namely Gaurav Gupta who recorded the video of the alleged assault was neither able to identify the accused persons in the video nor physically in the Court. The said eye witness has thus turned hostile;

4.4 that the entire case of the prosecution hinges on circumstantial evidence with gaps in the chain of evidence and;

4.5 that the supplementary charge-sheets reveals that:

- i. The alleged blood sample was insufficient for DNA profiling;
- ii. CCTV footage was unclear, with faces of assailants not identifiable;

4.6 Learned counsel for the applicant also contends that the applicant has been in judicial custody since 28.07.2021 (more than 4 years). The trial is still pending, and continued incarceration would amount to unjust pre-conviction punishment in violation of Article 21 of the Constitution of India.

5. Opposing the bail application, the learned APP would submit that it is



a gruesome case where the deceased was killed by the accused persons without any reason in very heinous manner. Moreover, she submits that inhumanely the body of the deceased was also later on disposed.

5.1 The learned APP would contend that the applicant does not have permanent residence in Delhi and lives in a rented accommodation and can abscond, if granted bail.

5.2 Furthermore, she would argue that there is possibility of applicant influencing, threatening the witnesses and tampering with the evidence and material witnesses are yet to be examined.

6. Having heard, there may be substance in the arguments of the learned counsel for the applicant on merits, but that is a matter to be adjudicated by the Trial Court. However, I am of the view that it is a case for bail at this stage. Let us see how.

7. It transpires from the testimonies of the star witnesses appended with the bail application (Annexures P/3 and P/5) that none of them have supported the prosecution version. In fact, it turns out that companion of the deceased, i.e., Atul, his friend who is the best eye-witness, having witnessed the entire scene of occurrence has also not supported the version of the prosecution. He stated that after two days of the incident, he met with the deceased in forest area at Chilla Village, when the deceased was drunk and asked about the persons who met them at the night of 04.06.2021. Moreover, he stated that he cannot identify the persons who were quarrelling with the deceased on the night of 04.06.2021 and also gave beatings to him on the said night.

8. When the eyewitness/Atul turned hostile, he was cross examined by the APP. But, he stood by his chief. He stated that accused persons Vikas



Sirohi, Monu Sirohi, Vinit and Harish (applicant herein) who were present in Court were not the same persons who gave beatings to him and the deceased or took away his deceased friend.

9. It so seems that it cannot be ascertained from testimony as aforesaid that the applicant/Harish was one of the assailants and inflicted injuries on the deceased which led to the registration of FIR.

10. Apart from the aforesaid eye-witness, even the electronic evidence, i.e., contents of videography which was initially used as the prime evidence, alleging that the persons in the video are the assailants, have also not been supported by the other eye witness who made the video, i.e., PW-5/Gaurav. He is otherwise stated to have also witnessed the occurrence, while making the video as per prosecution. But in his testimony he stated that he cannot identify the applicant/Harish out of the accused persons as their face is not visible.

11. Statedly, the applicant is a permanent resident of Delhi and has deep roots in the society. Even as per the nominal roll dated 28.04.2025, the applicant does not have any criminal antecedents. The trial would take considerable time to complete as it is moving at snail's pace and the applicant has been behind bars for more than 4 years.

12. Further continued incarceration would serve no useful purpose, especially when the trial is not likely to conclude in the near future. A prolonged pre-trial detention becomes punitive even before conviction, and violates the fundamental rule i.e. bail is the rule and jail the exception, particularly when the accused does not pose a flight risk.

13. In the entirety of the circumstances, and apart from other reasons as enumerated hereinabove, I am of the view that, at this stage, it is a fit case



for bail and that the applicant ought not be kept in jail during the entirety of trial.

14. As an upshot and taking a wholesome view of the matter, 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.

15. Any observation made herein above is only for the purpose of disposing of the instant bail application and not to be construed, in any manner, as any expression on the merits of the pending case and the trial shall proceed without being influenced either way by the same.

16. Accordingly, the bail application stands disposed of.

ARUN MONGA, J

AUGUST 28, 2025/SV