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

+ **BAIL APPLN. 2813/2025 & CRL.M.A. 21878/2025**

SUKHWINDER KUMAR

.....Applicant

Through: Mr. Tanvir Ahmed Mir,
Sr. Adv. along with Mr.
Mudit Jain, Mr. Lakshay
Tayal, Mr. Rajat Tayal,
Mr. Ambrish Dhawan &
Ms. Somya Shahma,
Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP
for the State.
SI Rahul, HC Kuldeep, PS
R.K. Puram.
Mr. Shreesh Chadha &
Mr. Shaurya Agarwal,
Advs. for complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

04.08.2025

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1. The present application is filed seeking regular bail in FIR No.219/2025 dated 09.06.2025, registered at Police Station R.K. Puram, for offence under Section 174-A of the Indian Penal Code, 1860 ('**IPC**').

2. The present FIR was registered pursuant to the declaration of the applicant as a Proclaimed Person in Complaint Case No. 5510/2020 filed by complainant namely, M/s. I.A. Housing Solutions Pvt. Ltd. under Section 138 of the Negotiable Instruments Act, 1881 ('**N.I. Act**').

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3. The complaint was filed pursuant to the dishonour of cheques dated 29.04.2020. The offence under Section 138 of the NI Act is a bailable offence. However, it is undisputed that when an accused fails to appear in such complaints, the Courts are within its power to initiate proceedings under Section 84 of the Bharatiya Nagarik Bharatiya Nagarik, 2023 ('BNSS') and take appropriate action in accordance with law.

4. Learned Senior Counsel for the applicant states that the applicant could not appear on few occasions due to multiple litigations. He submits that applicant undertakes to appear on every date and also not to take any unwarranted adjournments. He submits that the applicant is in custody since 14.07.2025.

5. The applicant is bound down by the aforesaid undertaking to appear before the Trial Court on every date of hearing.

6. Learned Senior Counsel for the applicant also relies upon the judgment passed by the Coordinate Bench of this Court in ***Amandeep Gill & Anr. v. The State of Govt. of NCT of Delhi : 2024 : DHC : 7218***, wherein this Court relying upon the judgment passed by the Hon'ble Apex Court in the case of ***C. Maniappan & Ors. v. State of Tamil Nadu : (2010) 9 SCC 567***, held that the offence under Section 174-A of the IPC is covered by the bar of Section 195 Code of Criminal Procedure, 1973 ('CrPC'). The cognizance for the same can only be taken on a complaint in writing filed by an authorized officer and hence no FIR can be registered.

7. Learned Additional Public Prosecutor ('APP') for the State submits that a reference pursuant the judgment passed by the Coordinate Bench of this Court in ***Amandeep Gill & Anr. v.***



The State of Govt. of NCT of Delhi (supra) has been pending consideration before the Division Bench of this Court.

8. She submits that the order declaring the applicant as a proclaimed person was passed pursuant to the coming into the force of BNSS. She further submits that in such circumstances, the FIR should be treated as one under Section 209 of the Bharatiya Nyaya Sanhita, 2023 ('BNS') for which the prosecution can be initiated on an FIR.

9. The learned Additional Public Prosecutor for the State submits that applicant in another case pending against him has violated the conditions imposed by the Hon'ble Apex Court while admitting him on bail in FIR No.215/2024.

10. She further submits that the conduct of the applicant does not entitle him for any relief.

11. Learned Senior Counsel for the applicant submits that Section 531(2)(A) of the BNSS provides that all proceedings that is, appeal, application, trial, inquiry, pending immediately before the date on which the BNSS came into force shall be held in accordance with the provisions of CrPC.

12. It appears that the applicant has failed to appear before the learned Trial Court in many cases which has led his arrest not only in the present FIR but also in another FIR being FIR No. 215/2024.

13. Be that as it may, undisputedly the FIR has been registered under Section 174-A of the IPC and the maximum punishment provided for the said offence is imprisonment for a term which may extend to three years or with fine or both.

14. In view of the judgment passed by the Coordinate Bench



of this Court in the case of ***Amandeep Gill & Anr. v. The State of Govt. of NCT of Delhi*** (*supra*), *prima facie*, the Police could not have registered an FIR under Section 174-A of the IPC and, therefore, the arrest of the applicant is also *prima facie* not in accordance with law.

15. The applicant has been in custody since 14.07.2025 and as noted above has given undertaking to appear before the learned Trial Court on every date of hearing and that he will not take any unwarranted adjournments.

16. Even otherwise the purpose of jail is to secure the presence of the accused during the course of the trial. The purpose is neither punitive nor preventive.

17. In view of the above, in the opinion of this Court, the applicant has made out a *prima facie* case for the grant of bail and is thereby directed to be released (if not required in any other case) on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court. He shall surrender his passport to the Investigating Officer;
- c. The applicant shall appear before the learned Trial Court as and when directed;



- d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

18. In the event of there being any FIR/DD entry/complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

19. 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.

20. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

AUGUST 4, 2025

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