



\$~44

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 2825/2025, CRL.M.A. 21969/2025,
CRL.M.A. 21970/2025 & CRL.M.A. 21971/2025

KASHIF

.....Applicant

Through: Mr. Vishal Raj Sehijpal &
Ms. Priyanka Handa,
Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP
for the State
ASI Dev Roy, PS-
Jafrabad

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

%

30.07.2025

1. The present application is filed seeking pre-arrest bail in FIR No. 270/2025 dated 15.06.2025, registered at Police Station Jafrabad for the offences under Sections 109(1)/61(2)/3(5) of the Bharatiya Nyaya Sanhita, 2023 and Sections 25/27 of the Arms Act, 1959.
2. The FIR was registered pursuant to a DD entry that one person has been injured and is being taken to hospital. The victim sustained a gunshot injury on his foot. In his complaint, the victim stated that five persons including the applicant had come to his house and had caused injury to him.
3. The learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. He submits that the gunshot injury to the victim was caused by co-accused – Asif. He submits that for the same reason, co-accused Asif was arrested in the present case and that



the Police, in the Grounds of the, categorically mentioned that the gunshot injury was caused by co-accused Asif.

4. He submits that the applicant is similarly placed with one co-accused – Shahwaz, who by order dated 21.07.2025 has already been granted interim protection by this Court noting that the said co-accused had not caused the gun shot injury.

5. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. She submits that the victim, in his statement, categorically stated that the present applicant had fired the gunshot which had led to any injury on the victim's foot.

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

7. It is to be kept in mind that the investigation is currently at a nascent stage. 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 is carried out by the investigating agency.

8. 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, 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.”

XXXX

XXXX

XXXX

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.”

9. It is settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 482 of the BNSS [*State v. Anil Sharma* : (1997) 7 SCC 187]. Granting anticipatory bail to the applicant would undoubtedly impede further investigation. An order of bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

10. In the present case, the learned counsel for the applicant has urged that the gunshot injury was caused to the victim by the



co-accused Asif. It is contended that the co-accused – Asif has been arrested in the present case and that the Grounds of Arrest of co-accused Asif by the Police makes it manifest that the gun shot injury was caused by the said co-accused – Asif. It has also been emphasised that the applicant is similarly placed as one co-accused Shahwaz who has been granted interim protection by this Court.

11. It is pertinent to note that this Court, by order dated 21.07.2025, had granted interim protection to co-accused – Shahwaz, taking note of the fact that the present applicant is the one who is stated to have caused the gun shot injury.

12. I have also perused the case diary and the statement given by the victim. In his statement, the victim categorically stated that the applicant had fired a gun shot which led to the injury on his foot. The victim further stated that the other co-accused persons were accompanying the present applicant.

13. This Court has also taken note of the Grounds of Arrest in relation to co-accused – Asif. While the Grounds of Arrest in regard to co-accused – Asif mentions that it was co-accused – Asif who had caused the gunshot injury to the victim pursuant to which his arrest was effected, the same is contrary to the statement of the victim who categorically stated that the shot was fired by the applicant. Merely because the Police has made an accusation against co-accused Asif, the benefit of such inconsistency cannot be extended to the applicant. The allegations ought to be assessed based on the specific statement of the victim.

14. It is also pointed out that the applicant's sister is married to the victim and that they were involved in a matrimonial dispute which led to the applicant and other co-accused persons to visit



the victim's house pursuant to which the injury was caused to the victim.

15. Considering the allegations against the applicant, it cannot be held at this stage that the investigation is being carried out with the intention to injure or humiliate the applicant. *Prima facie*, the facts do not indicate false implication of the applicant.

16. Gravity of offence and the nature of allegations does not entitle the applicant of the extraordinary relief of prearrest bail. The same would undoubtedly impede the investigation considering the motive alleged, the threat to victim also cannot be ruled out. In the opinion of this Court, the applicant has not established a *prima facie* case for grant of pre-arrest bail.

17. The present application is accordingly dismissed. Pending applications also stand disposed of.

18. It is clarified that any observations made in the present order are only 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

JULY 30, 2025

"SS"