



\$~1

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

+ **BAIL APPLN. 2962/2024 & CRL.M.(BAIL) 1393/2024**

KUMAIL ALI

.....Petitioner

Through: Mr.R.K.Bhardwaj and Mr.Muntazil
Mehdi, Advocates

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Ms.Richa Dhawan, APP for the State
alongwith Insp. Ravi Kant and Insp.
M.Kumar, P.S.-Bara Hindu Rao

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

17.09.2025

%

1. The applicant herein is before this Court seeking regular bail, having remained under incarceration since 11.07.2018 in a criminal case arising out of FIR No. 0094/2018 dated 08.07.2018 for the alleged offences punishable under Section 326 of the IPC, registered at Police Station Bara Hindu Rao. Subsequently, chargesheet was filed under Sections 326, 302 and 34 of the IPC.

2. Briefly speaking, the case set up by the complainant is that:-

2.1 On 07.07.2018, ASI Virender Singh (Complainant) received DD No. 26A from P.S. Bara Hindu Rao regarding a stabbing incident at H. No. 744, Sheesh Mahal, Azad Market, Delhi. The information was conveyed through PCR call by Ct. Krishna (2505/PCR), stating that a quarrel had taken place and an injured person was being taken to Bada Hindu Rao Hospital.



2.2 Acting upon the information, the complainant reached the spot but found no eyewitnesses present. He then proceeded to Hindu Rao Hospital where MLC No. 4481/18 of an unknown injured person was found. The injured was identified as Mohd. Sabir (deceased victim).

2.3 Considering the nature of injuries, an offence under Section 326 IPC was found to be made out, whereupon the aforesaid FIR No.0094/2018 was registered and investigation commenced.

2.4 On 08.07.2018, the attending doctor declared the victim fit for statement. Thereafter, the complainant recorded the statement of the deceased victim, wherein he stated that on 07.07.2018, co-accused/ Accused no.1 Saif called him near Bahadurgarh Road Khatta to apologise in connection with an earlier dispute at Rajouri Garden Club. Upon reaching the spot, he found co-accused Saif and accused no.2 Kumail (Applicant herein) already present there.

2.5 According to the victim, the applicant caught hold of his hands, whereafter co-accused Saif stabbed him on the left side of his stomach with a sharp object. After sustaining the injury, he started walking towards his home, whereupon his friends took him to Hindu Rao Hospital for treatment.

2.6 In his statement, the victim categorically alleged that both co-accused Saif and the applicant caused hurt to him and requested legal action against them. Based on this statement, further investigation was carried out and both accused were subsequently arrayed in the case.

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

4. Learned counsel for the applicant would *inter alia* argue on the lines of grounds pleaded in the petition as below:-



4.1 That the Applicant has been falsely implicated at the instance of interested persons. He has been in judicial custody since 11.07.2018, and has thus faced incarceration for more than 7 years without conclusion of trial. Such prolonged incarceration of an un-convicted person amounts to punishment prior conviction and violates Article 21 of the Constitution of India.

4.2 That the CCTV footage of the date of incident (07.07.2018), which forms part of the charge sheet, clearly demonstrates that the applicant was not even present at the spot at the time of the quarrel or stabbing. The video completely falsifies the prosecution's version that the applicant/accused had allegedly caught hold of the hands of the deceased while co-accused Saif stabbed him.

4.3 That the entire quarrel, as seen in the CCTV footage, occurred solely between the deceased Sabir and co-accused Saif. The applicant was not present at the scene, that fact alone demolishes the prosecution story and entitles the applicant to bail pending trial.

4.4 That out of three public witnesses cited by the prosecution, two witnesses, namely PW-3 Wasim and PW-4 Mohd. Shahrukh, have already been examined before the Trial Court, and neither has deposed a single word against the applicant in their chief examinations.

4.5 That the identity of PW-4 Mohd. Shahrukh has still not been verified by the IO despite repeated opportunities, resulting in unnecessary delay in cross-examination after his chief examination recorded on 30.09.2019. On several occasions, either the IO or the witness has remained absent, causing a "hide and seek" situation before the Trial Court since 30.09.2019 and thereby delaying the trial deliberately.



4.6 That the third public witness i.e. Shri. Aamir , is not an eyewitness to the incident but merely identified the body of his deceased brother and took it from the mortuary, as per his statement under Section 161 CrPC. Therefore, there is no remaining public witness who can depose against the applicant.

4.7 That the Trial Court has rejected the two interim bail applications of the applicant on the apprehension that he may influence witnesses in the vicinity. However, since two out of three public witnesses have already been examined and the applicant undertakes to reside in a distant area away from Azad Market/Bara Hindu Rao, Delhi, such apprehension no longer survives.

4.8 That the prosecution is deliberately delaying the trial with mala fide intent to keep the applicant behind bars. The learned Trial Court is lying vacant, and examination of the remaining 23 witnesses will take an inordinate time, prolonging the applicant's custody unjustly.

4.9 That the orders rejecting bail have been passed casually and on flimsy grounds without proper appreciation of evidence, facts, or the principle of natural justice. The orders are based on conjectures and surmises and are liable to be set aside.

4.10 That no purpose would be served by keeping the applicant in jail any further since his custodial interrogation is long over, and the trial is likely to take several more years to conclude.

4.11 That the applicant has no prior criminal antecedents, is the only son of his parents, and is a permanent resident of Delhi. He undertakes to abide by any condition imposed by this Hon'ble Court while granting bail, including staying away from the locality of the witnesses.

4.12 That considering the totality of facts, particularly the CCTV footage



exonerating the applicant, his prolonged custody, the examination of key public witnesses, and his willingness to relocate, the applicant is entitled to be released on regular bail pending trial.

5. Opposing the submissions, the learned APP submits that the applicant is not entitled to relief as there exists a genuine apprehension that, if released on bail, the applicant may threaten or intimidate the prosecution witnesses, including witness Aamir, or the family members of the deceased, all of whom reside in the same locality, i.e., Sheesh Mahal, Azad Market, as the applicant. Such threat perception may also lead to breach of peace in the locality. It is further submitted that there are two other criminal cases registered against the applicant in different police stations of Delhi, which reflects his propensity to indulge in criminal conduct. It is, therefore, urged that the applicant does not deserve the concession of bail at this stage.

6. Having heard, I am of the view that there may be some substance in some of the arguments addressed on merits by the learned counsel for the applicant but the same are a matter of trial. However, at this stage, in light thereof, it is otherwise a fit case for bail. Let us see how.

7. Per the CCTV footage, forming part of the charge sheet, the applicant was not present at the scene of the stabbing. *Prima facie* it contradicts the prosecution's claim of his involvement by being at the scene of occurrence so as to hold the deceased as alleged, when he was stabbed. It may have so happened that the incident occurred solely between the deceased Sabir and co-accused Saif and was named to settle scores with Saif. Further, two public witnesses, PW-3 Wasim and PW-4 Mohd. Shahrukh, have been examined and have not deposed anything against the applicant, while PW-4's identity remains unverified, causing repeated delays in cross-



examination. The third witness, Shri Aamir, is not an eyewitness but only identified the body of the deceased. Hence, no public witness supports the prosecution's case, entitling the applicant to bail.

8. The arguments addressed by learned APP for the State as above that there is enough incriminating material against the applicant may too have some force, but again it is a matter of trial and has to be adjudicated at the appropriate stage. At this stage, suffice to note that the applicant has been under incarceration for more than 7 years, which, in itself is a telling tale of the Trial moving at a snail's pace. It transpires same is merely half way through, as out of 23 witnesses only 11 have been examined.

9. Be that as it may, the ones examined are the material witnesses, and the rest of them seem to be either formal or official witnesses. Thus, any apprehension *qua* the applicant either influencing the testimony and/or otherwise intimidating them or promising them anything in return for a favourable testimony seems to be completely unfounded. Though of course, the applicant is involved in two more FIRs, but he is stated to be on bail in the same and is otherwise a family person having a wife and old ailing parents to look after, and thus, he appears to be deeply rooted in the society and is not at flight risk being on bail in other two cases.

10. The applicant has already remained in custody for approximately 7 years. This prolonged pre-trial detention, coupled with the slow progress of proceedings, are contributory factors for bail 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*.



11. As regards the apprehension of tampering with evidence, there is nothing on record to suggest that he would interfere with evidence, or influence witnesses. There is also no likelihood of the applicant absconding, given that he is a well-settled individual, has deep roots in society, and is the primary caregiver of his old ailing parents and wife, who are dependent on him for their well-being, and hence not a flight risk.

12. Considering that the primary purpose of bail is to secure the presence of the accused during trial, coupled with the fact that the applicant poses no risk of absconding, his continued detention at this stage would serve no purpose other than to punish him prior to conviction.

13. 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.

14. 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.

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, along with pending application stands disposed of.

ARUN MONGA, J

SEPTEMBER 17, 2025/dy