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

+ **BAIL APPLN. 3224/2025 & CRL.M.A. 24981/2025,**
CRL.M.A. 24982/2025

KABIR @ LUCKY

.....Applicant

Through: Mr. Amit Kumar Jha and
Ms. Aakansha Chandela,
Advs.

versus

STATE(NCT OF DELHI)

.....Respondent

Through: Ms. Richa Dhawan, APP
for the State with Insp.
Lakhnu Chand, PS P.V.
West.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **25.08.2025**

1. The present application is filed seeking pre-arrest bail in FIR No. 208/2025 dated 15.05.2025, registered at Police Station Paschim Vihar West, for offences under Sections 109(1)/118(2)/351(3)/61(2)/3(5) of the Bharatiya Nyaya Sanhita, 2023.

2. The FIR was registered on a complaint given by one Akhad. It is alleged that on 14.05.2025 at about 11:30 PM, the accused persons including the applicant came near the house of the complainant and stabbed the complainant's brothers which led to the death of Suhail, and caused grievous injuries to Ali and Parveen.

3. The learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the

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present case. He submits that there is a dearth of any direct evidence to incriminate the applicant in the present case. He submits that no specific allegation has been made against the applicant.

4. He submits that the applicant was previously arrested in the present case on 22.05.2025 and was thereafter released *vide* order dated 24.05.2025 passed by the learned Judicial Magistrate First Class ('JMFC') noting that the grounds of arrest had not been supplied to the applicant. He submits that the applicant after already having been released ought not to be re-arrested. He further submits that no motive can be attributed to the applicant for committing the alleged offences.

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 allegations against the applicant are serious in nature. She submits that the name of the applicant has been specifically mentioned in the FIR and submits that one of the injured victims - Ali also named the applicant in his statement under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') as one of the accused persons who delivered the stab injuries.

6. She submits that the applicant was previously released from custody only on account of the fact that the grounds of arrest had not been supplied to him, and the same cannot be a ground to not re-arrest the applicant for investigation.

7. I have heard the counsels and perused the material on record.

8. 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.

9. 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.”

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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.”

10. It is pertinent to note that the applicant was previously arrested in the present case on 22.05.2025 and was thereafter directed to be released by the learned JMFC by order dated 24.05.2025 noting that the grounds of arrest had not been supplied to the applicant. The learned JMFC, however, also clarified that the Police can re-arrest the applicant after giving the grounds of arrest in writing.

11. The applicant, pursuant to his release, filed an application for pre-arrest bail which was dismissed by the learned Additional Sessions Judge by order dated 28.07.2025 which led to the filing of the present application.

12. The learned counsel for the applicant has emphasised that there is a scarcity of direct evidence to implicate the applicant in the present case and has contended that the applicant after already having been released ought not to be re-arrested.

13. It is relevant to note that the allegation against the applicant is that he along with other accused persons inflicted stab injuries on the complainant’s brothers which led to the death of victim Suhail, and grievous injuries to victims – Ali and Parveen. The applicant has been specifically named by one of the injured victims to be present along with other accused persons



and to have been involved in delivering the blows which led to the death of victim Suhail.

14. The applicant was arrested on an earlier occasion and was released by order dated 24.05.2025 by the learned JMFC because it was found that the grounds of arrest had not been supplied to the applicant, the same, however, does not give any immunity to the applicant from being arrested subsequently. The present application is to be considered on its own merits in terms of Section 482 of the BNSS.

15. Considering the nature of the allegations and that the applicant was specifically named by one of the injured victims to be involved in the scuffle which led to the death of victim – Suhail, it cannot, at this stage, be stated that the applicant is sought to be falsely implicated in the present case with an intention to injure or humiliate him. The material presented by the prosecution establishes a *prima facie* involvement of the applicant. Granting pre-arrest bail to the applicant would undoubtedly impede further investigation.

16. It is also 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 the 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.

17. Considering the above, and the nature of the offence, no ground for grant of pre-arrest bail to the applicant is made out.

18. The present application is accordingly dismissed. Pending



applications also stand disposed of.

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.

AMIT MAHAJAN, J

AUGUST 25, 2025/ 'KDK'