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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3251/2025 & CRL.M.A. 25283/2025,
CRL.M.A. 25284/2025

MOHD SHAN ALI

.....Applicant

Through: Mr. M.A. Hussain Sami
Ahmad & Mr. Tarik Khan,
Advs.

versus

THE STATE NCT OF DELHI & ANR.Respondents

Through: Mr. Sunil Kumar Gautam,
APP for the State.
PSI Pankaj Kumar, PS SJ
Enclave.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

26.08.2025

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1. The present application is filed seeking pre-arrest bail in FIR No. 263/2025 dated 07.07.2025, registered at Police Station Safdarjung Enclave, for offences under Sections 309(5)/333/3(5) of the Bharatiya Nyaya Sanhita, 2023.
2. The FIR was registered pursuant to a PCR call received on 07.07.2025 regarding house trespass and attempted armed robbery by four unidentified individuals.
3. During the course of the investigation, CCTV footages from the cameras installed in the surrounding area were analysed which revealed that four persons had arrived on the spot on one motorcycle and one scooty.
4. All the accused persons except the applicant have been arrested and they have been identified by the witness in TIP proceedings. It is alleged that another accused person, namely

BAIL APPLN. 3251/2025

Page 1 of 6



Salauddin was also found involved with the four accused persons in the offence and he named the applicant in his disclosure statement.

5. Two country made pistols and three live cartridges as well as the vehicles used in the commission of the offence have already been recovered.

6. The learned counsel for the applicant submits that the applicant is innocent and he is essentially being implicated in the present case as he was named by one of the co-accused persons.

7. He submits that the veracity of the CCTV footage cannot be tested at this stage. He further submits that since the alleged weapons and vehicles used in the commission of crime have already been recovered, the custodial interrogation of the applicant is not required.

8. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant on account of the gravity of the alleged offences. He further submits that the applicant is visible in the CCTV footage along with the co-accused persons.

9. I have heard the counsel and perused the record.

10. 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.

11. It is trite law that the power to grant a pre-arrest bail is extraordinary in nature and is to be exercised sparingly. 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.”

12. In the present case, serious allegations have been made against the accused persons, including the applicant, that they



attempted to commit robbery and also fired 3 – 4 shots. It is stated that applicant has been seen in the CCTV footages along with the other co-accused persons, who have since been identified by the witness in the TIP proceedings.

13. At this stage, *prima facie*, the material presented by the prosecution indicates the complicity and active involvement of the applicant in the commission of the offence.

14. Much emphasis has been laid by the counsel for the applicant on the fact that as the alleged weapons as well as vehicles used in the commission of the crime have already been recovered, there is no requirement of subjecting the applicant to custodial interrogation. Even if the said argument is taken at the highest and it is assumed that custodial interrogation of the applicant is not required, as held by the Hon'ble Apex Court in the case of ***Sumitha Pradeep v. Arun Kumar C.K. : (2022) 17 SCC 391***, merely because prosecution fails to make out a case for grant of custodial interrogation, the same alone is insufficient to grant pre-arrest bail. It was noted that the foremost aspect to be considered while adjudicating an application for pre-arrest bail is the existence of a *prima facie* case. The relevant portion of the said judgment is reproduced hereunder:

*“12... In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. **There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail.** Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. **There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or***



overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. **However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.**

(emphasis supplied)

15. As noted above, the applicant has been unable to make out a *prima facie* case in his favour. Moreover, it is important to note that the FIR was only registered on 07.07.2025 and the investigation is currently at a nascent stage. Although certain recoveries have been effected at the behest of co-accused persons, the scope of further investigation being required cannot be nullified.

16. It cannot be held that the investigation is being carried out with the intention to injure or humiliate the applicant and the facts do not indicate that the applicant is being falsely implicated. Granting pre-arrest 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.

17. Gravity of offence and the nature of allegations does not entitle the applicant of the extraordinary relief of prearrest bail.

18. In view of the aforesaid discussion, considering the gravity of offence, material on record as well as the nascent stage of investigation, in the opinion of this Court, the applicant is not entitled for grant of pre-arrest bail

19. The present bail application is, therefore, dismissed. Pending application(s) also stand disposed of.



20. 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 26, 2025

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