



\$~5

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

+ **BAIL APPLN. 3360/2024**

AKSHAY @ VASU

.....Petitioner

Through: Mr. Nishant Choudhary, Mr. Narveer Dabas, Mr. Rakshit Singh, Advocates

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Mukesh Kumar, APP for the State with SI Anil Kumar, PS GTB Enclave
Mr. Sanjeet Paliwal, Ms. Rimika Chauhan, Ms. Mehak, Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

10.03.2025

%

1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 439 of the Code of Criminal Procedure, 1973²) seeks grant of regular bail in proceedings arising from FIR No. 459/2023 registered under Section 325/341/354/394/452/34 of the Indian Penal Code, 1860³ at P.S. G.T.B. Enclave.

2. In brief, the case of the prosecution is as follows:

2.1. On 6th September, 2023, a PCR call was received and lodged as DD No. 31A, reporting an incident of assault and robbery. ASI Virender, along

¹ "BNSS"

² "Cr.P.C."



with HC Mahesh Kumar, arrived at House No. 672, Janta Flats, GTB Enclave, Shahdara, Delhi, where they found Ms. 'N' with visible injuries. In her statement, Ms. 'N' alleged that two individuals, namely Mr. Siddhant @ Sonu and Mr. Akshay @ Vasu (the Applicant), forcibly entered her residence and assaulted her with a stick (*danda*). She further alleged that Mr. Siddhant @ Sonu put a gun on her brother, Mr. Raj Tomar, and robbed her jewellery along with cash amounting to approximately INR 1-1.5 lakhs from her purse kept in the house. She also implicated two other individuals, Mr. Vipin and Ms. Seema, as co-conspirators in the robbery.

2.2. During the investigation, statement of Mr. Raj Tomar was recorded under Section 161 of Cr.P.C. The footage of CCTV camera installed near the victim's house was retrieved and examined, which captured the accused persons approaching the house of the victim on a two-wheeler.

2.3. On 8th September, 2023, Mr. Siddhant @ Sonu and the Applicant were arrested on the basis of the statement of the eyewitness and the CCTV footage. During interrogation, Mr. Siddhant @ Sonu also produced the two-wheeler allegedly used to travel to the victim's residence. The roles of Vipin and Seema were examined; however, an analysis of their mobile CDRs indicated that they were not present near the crime scene at the relevant time.

2.4. During the investigation, Mr. Siddhant @ Sonu disclosed that he had been in a prior romantic relationship with the victim but claimed she had been avoiding him. Upon learning of her alleged involvement with another person, he and the Applicant conspired to assault her.

2.5. The stick allegedly used in the incident was recovered at the instance

³ "IPC"



of Mr. Siddhant @ Sonu and was seized as case property. However, the accused persons did not provide any details regarding the stolen jewellery and cash.

2.6. Medical examination of the victim was conducted and as per the MLC report, her injuries were classified as grievous.

2.7. Fingerprint analysis was conducted by the Mobile Crime Team, Shahdara, which lifted chance prints from the crime scene. A report from the Fingerprint Bureau concluded: *“Chance Prints marked Q1 to Q3 have been searched in the database of NAFIS and these prints remained unidentified.”*

2.8. The seized exhibits have been sent to FSL for examination and the result thereof is awaited.

3. The Applicant submits that he has been falsely implicated and urges the following grounds for seeking bail:

3.1. There are inconsistencies between the victim’s statement recorded under Section 161 Cr.P.C. and her statements before the Court under Section 164 Cr.P.C. Further, her account does not align with the statement provided by her brother under Section 161 Cr.P.C., casting doubt on the prosecution’s version.

3.2. The CCTV footage does not show any woman accompanying the Applicant, contrary to the victim’s allegations. Moreover, the Applicant is not seen carrying a stick or taking any money or jewellery from the victim’s house. Additionally, no recoveries have been made from him.

3.3. The Applicant has clean antecedents and is willing to abide by the conditions imposed by this Court if bail were to be granted.

4. *Per contra*, Mr. Mukesh Kumar APP for the State and Mr. Sanjeet Paliwal, counsel for the Complainant strongly oppose the bail application



and submit as follows:

4.1. The Applicant, along with the co-accused, inflicted grievous and life-threatening injuries on the Prosecutrix, leading to her hospitalization for over a month due to fractures and the need for surgical procedures.

4.2. CDR records establish that accused Vipin was in contact with the Applicant both before and after the incident, strengthening the prosecution's case of premeditated involvement.

4.3. The Prosecutrix and her relatives have been subjected to threats from the Petitioner and the other co-accused, coercing her to withdraw the present proceedings. The Prosecutrix lodged a complaint regarding these threats, however, no action has been taken. Further, the Complainant filed a protest application before the Trial Court, against the manner of investigation conducted by the police, which was allowed by order dated 2nd December, 2024.

4.4. The Applicant's bail applications have been repeatedly rejected by the Trial Court through detailed orders dated 17th October, 2023, 16th December, 2023, 3rd July, 2024, and 31st May, 2024, indicating the gravity of the allegations and the lack of any change in circumstances warranting bail at this stage.

5. The Court has noted the afore-mentioned facts and submissions.

6. At the outset, it is relevant to note that on 2nd December, 2024, the Trial Court directed the DCP to personally oversee and monitor the investigation of the present case. Further, during the last hearing, this Court had instructed the State to furnish details of any additional investigation conducted in compliance with the Trial Court's directions. In response, the State has submitted a fresh status report, which is taken on record. The



report indicates that an analysis of the CDR records of accused Mr. Vipin and Ms. Seema did not yield substantial evidence linking them to the alleged offence, leading to their inclusion in column No. 12 of the chargesheet. While the investigation confirmed that the accused persons had been in communication with each other, there was insufficient material to establish that these interactions were part of a conspiracy to commit the crime. Be that as it may, if the Petitioner remains aggrieved by the outcome of the investigation, he is at liberty to pursue appropriate remedies before the Trial Court, in accordance with law.

7. The Applicant has drawn attention to certain inconsistencies in the statements of the Prosecutrix, particularly variations between her statement recorded under Section 161 Cr.P.C. and her deposition under Section 164 Cr.P.C. While discrepancies in witness testimonies may, in some instances, impact the prosecution's case, the crucial question is whether these inconsistencies are merely minor variations attributable to lapse of time or memory, or whether they are material contradictions that fundamentally undermine the credibility of the allegations. Such a determination requires a careful and detailed appreciation of evidence, which cannot be undertaken at this stage.

8. Furthermore, the precise role of the Applicant in the alleged incident, including his degree of involvement and the extent of culpability, remains a matter to be assessed based on the evidence led during trial. At this stage, the Court must refrain from making any definitive opinion on the veracity of the prosecution's case or the Applicant's defence, as doing so would prejudice the trial proceedings. Instead, the present inquiry is confined to whether a *prima facie* case exists against the Applicant and whether the



rigours for the grant of bail are met, particularly considering the gravity of the allegations and the overall case record.

9. At this stage, the prosecution has not produced any direct evidence linking the Applicant to the alleged robbery. The Applicant has acknowledged that the CCTV footage, while confirming his presence, does not depict him carrying a weapon or taking money or jewellery from the victim's house. This fact has not been denied by the State. Additionally, no recoveries have been made from the Applicant, and there is no forensic evidence tying him to the crime scene. Moreover, the investigation has not revealed any material establishing a prior conspiracy or premeditation between the Applicant and the co-accused.

10. It is well established through catena of judgments by the Supreme Court that the object of granting bail is neither punitive nor preventative. The primary aim sought to be achieved by bail is to secure the attendance of the accused person at the trial.⁴ Pertinently, the investigation in the present case has been concluded, and a chargesheet has already been filed. The Applicant has no criminal antecedents and has been in judicial custody since 9th September, 2023, amounting to nearly one and a half years of incarceration. Given that the investigation has been completed and all necessary evidence has been placed before the Trial Court, the continued detention of the Applicant would not serve any further investigative purpose. There is material on record indicating that the Applicant poses a flight risk or is likely to tamper with evidence. Accordingly, the Court finds it appropriate to grant bail to the Applicant, subject to appropriate conditions.

⁴ See also: *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.



11. In view of the foregoing, the present application is allowed and the Applicant is directed to be released on bail on furnishing a personal bond for a sum of INR 50,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty MM, 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 not contact the victim or any of her family members;
- c. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;
- d. The Applicant shall appear before the Trial Court as and when directed;
- e. 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;
- f. The Applicant shall not reside within 3 km radius of the residence of the victim and shall also furnish proof of his residence to the concerned IO. The Applicant shall also not move in the vicinity of the victim in any manner;
- g. 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;

12. 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.

13. 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 shall also not be taken as an expression of opinion on the merits of the case.

14. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

MARCH 10, 2025

d.negi