



\$~6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3473/2024**
AAKASH @ KASAApplicant

Through: Mr. Lewish Edward, Mr. Vignesh P.
and Mr. S.S. Tomar, Advocates.

versus

STATE OF NCT OF DELHIRespondent
Through: Mr. Mukesh Kumar, APP.
SI Amit Kumar, P.S. Crime Branch.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
% **15.01.2025**

1. The present application has been filed under Section 439 of the Code of Criminal Procedure, 1973,¹ seeking grant of bail in proceedings arising from FIR No. 865/2023 dated 4th December, 2023, for offences under Sections 336/34 of the Indian Penal Code, 1860² read with Sections 25/27 of the Arms Act, 1959, registered at Police Station Punjabi Bagh. Subsequently, chargesheet was filed wherein the Applicant was also charged with offences under Sections 307/482/120B of IPC.

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

2.1. The present case was registered on 4th December, 2023, on the basis of the statement of one Mr. Yogesh Kumar whereby he stated that he was

¹ "CrPC"

² "IPC"



working as a guard at Kothi No. 59/77, Om Villa, West Punjabi Bagh, Delhi which belongs to Mr. Deep Malhotra, Ex-MLA, Faridkot, Punjab.

2.2. On 3rd December, 2023, at 06:30 PM, he was in the guard room at the main gate and heard a gunshot. When he went outside, he saw that there were two unidentified persons, approximately 25 years old, who fired around 4-5 rounds at the main gate of the house, after which they fled towards *Ganda Nala*, Punjabi Bagh. Accordingly, the present FIR was registered and the instant case was transferred for further investigation to the Crime Branch, New Delhi.

2.3. On receipt of secret information, Mr. Aakash @ Kasa, the Applicant herein, was apprehended on 8th December, 2023. During interrogation, he disclosed that he along with two other persons namely Mr. Sombir and Mr. Nitesh @ Sinti were involved in the crime. He also revealed that he was in contact with Mr. Rohit Moi of “Gogi Gang” who directed the Applicant to contact one Mr. Vishal Chaudhary of the “Lawrence Bishnoi Gang”. Mr. Vishal Chaudhary had ordered the Applicant to fire at the gate of Mr. Deep Malhotra and in furtherance of his directions, the Applicant received 5 pistols and 15-16 cartridges from Jahari Bypass, Sonipat.

2.4. Thereafter, on 3rd December, 2023, the Applicant along with his two associates reached Madipur Metro Station and received a motorcycle from the co-accused namely, Mr. Vansh @ Gola. The Applicant then reached riding the said motorcycle at the place of occurrence and met with Mr. Sombir and Mr. Nitesh who reached by an auto-rickshaw. The Applicant kept sitting on his motorcycle near the house of Mr. Deep Malhotra while Mr. Sombir and Mr. Nitesh executed the firing. Consequently, the Applicant and Mr. Nitesh were arrested on 18th December, 2023.



2.5. During the course of investigation, on 13th December, 2023, the third accused i.e. Mr. Sombir @ Totla who was also one of the shooters, was arrested after a brief exchange of fire with the police team. Resultantly, another FIR No. 286/2023 under Sections 186/353/307 of the IPC and Sections 25/27 of the Arms Act, was registered.

2.6. During interrogation, the Applicant had provided the mobile number of Mr. Vansh, who was then apprehended. Mr. Vansh disclosed that he had received the motorcycle on 3rd December, 2023, from one Mr. Gaurav Rana. Thereafter, Mr. Gaurav Rana was also arrested. It was also revealed that one Mr. Rohit Moi directed Mr. Gaurav Rana to follow the directions of Mr. Vishal Chaudhary and it was on the instructions of Mr. Vishal Chaudhary that Mr. Gaurav Rana sent Mr. Vansh Gola to get the bike and deliver it at Madipur Metro Station.

2.7. During the investigation, Section 307/120B/482 of the IPC were also added to the present case. On 20th December, 2023, the TIP proceedings of Mr. Sombir and Mr. Nitesh were conducted, however, the Complainant refused to identify the accused citing that since they are associated with a notorious gang, he is afraid that they may cause harm to him. Although he identified the shooters, he did not disclose the same to the Magistrate. In this regard, his statement under Section 161 of the CrPC was also recorded.

2.8. Meanwhile, Mr. Deep Malhotra was also examined wherein he stated that in October 2023, Mr. Goldy Brar, a fugitive, had made threatening calls to him and he was demanding extortion money from him. Thereafter, he had sent some of his associates and burnt his two liquor shops in Punjab. In this regard, an FIR has also been registered at Police Station City Kotkapura, Faridkot, Punjab.



2.9. According to the IPDR records of the Applicant's mobile phone, the Applicant, along with Mr. Vansh and Mr. Gaurav Rana, were in contact with the destination IP address 98.41.121.53 during the period from 29th November, 2023 to 3rd December, 2023. This IP belongs to Internet Service Provider Comcast Cable Communications LLC, California, USA, which indicates that someone from outside India was directed the Applicant. As per the Call Detail Records³ and location chart of the mobile of all the accused persons, it is revealed that the trio of shooters were present near the place of occurrence on 29th November, 2023 and 3rd December, 2023. It was also revealed that Mr. Vansh, who delivered the bike, was present at Madipur Metro Station on 3rd December, 2023 before the incident.

3. In this background, the Applicant submits that he has been wrongly implicated in the present case. He makes the following submissions in support of his request for bail:

3.1. According to the prosecution, two individuals are visible in the CCTV footage firing at the gate of the residence of Mr. Deep Malhotra. However, the Applicant is not seen in the footage. The prosecution's case against the Applicant relies primarily on disclosure statements and CDRs, with the CCTV footage being relied upon as additional evidence.

3.2. The phone location of the Applicant has been seen at Madipur Metro Station which is not near the place of crime. Moreover, the said mobile number is not registered in the Applicant's name but in the name of one Mr. Rakesh, whose statement has not been recorded by the police.

3.3. The Applicant also points out that two co-accused, namely Mr. Vansh

³ "CDRs"



and Mr. Gaurav Rana, have already been granted bail by this Court through orders 5th August, 2024 and 22nd August, 2024, respectively.

3.4. Furthermore, the Applicant emphasizes his deep roots in society and submits that he has no criminal antecedents.

4. The bail application is strongly opposed by Mr. Mukesh Kumar, APP for State. According to the prosecution, the Applicant is part of the two organised crime syndicates known as “Gogi Gang” and “Lawrence Bishnoi Gang” who are involved in a large number of crimes. He submits that the CDRs of the Applicant along with their location and the other disclosure statements made by the co-accused, clearly indicate that the Applicant was acting at the instance of the other gangs mentioned above. This evidence is sufficient to establish the guilt of the Applicant. It is also submitted that the guard who was the Complainant, had a fear of the Applicant acting under the influence of a gang and declined to identify the Applicant during the TIP proceedings. In such circumstances, the prosecution apprehends that if the Applicant were enlarged on the bail, he would threaten the witness and the Complainant which would then affect the case of the prosecution. As regards the offence under Section 307 of the IPC, Mr. Kumar states that the said offence was added on account of the statement made by the Complainant who had stated that the assailants had shot him which, therefore, attracts Section 307 of the IPC.

5. The Court has considered the facts and the submissions advanced. 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

6. Pertinently, the Applicant has been in custody for over a year. While the chargesheet has been filed, the framing of charges is still pending. Significantly, it is not disputed that the Applicant is neither visible in the CCTV footage nor seen shooting at the gate of Mr. Deep Malhotra. The evidence against the Applicant primarily relies on disclosure statements and the CDR analysis, which will have to be established during the trial.

7. It is also to be noted that the offence under Section 307 of the IPC was added later, based on a subsequent statement made by the Complainant. At the initial stage, the Complainant did not allege the ingredients of Section 307, which is why it was not included as the basis for the registration of the FIR. This sequence of events raises questions about the *prima facie* nature of the allegations under Section 307 of IPC, further justifying the Applicant's release on bail.

8. Considering the overall facts and circumstances of the case, and the fact that the Applicant does not have any criminal antecedents, the Court is inclined to enlarge the Applicant 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, on the following conditions:

- a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;
- b. 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;

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



- c. The Applicant shall under no circumstance leave the bounds of Delhi NCR without informing the concerned IO;
- 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, after his release, appear before the concerned IO/SHO once in every week.
- 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.
- 9. 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.
- 10. 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.
- 11. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

JANUARY 15, 2025

as