



\$~6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3707/2024**
AZHARUDDIN @ AJJUApplicant

Through: Ms. Alka Singh, Mr. Vaibhav Tomar
and Ms. Shalu Sharma, Advocates.

versus

STATE GOVT. OF NCT OF DELHIRespondent
Through: Mr. Amit Ahlawat, APP.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
14.01.2025

%

1. The present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹, read with Section 439 of the Code of Criminal Procedure, 1973², seeks grant of regular bail in FIR No. 782/2023 under Sections 323, 341, 307, 452, 50 and 36 of the Indian Penal Code, 1860³ read with Section 27 of the Arms Act, 1959, registered at P.S. Welcome. Briefly, the case of the prosecution is as follows:

1.1. On 1st October, 2023, a PCR call was recorded under DD No. 84A along with other PCR calls regarding incident of a quarrel between two groups. When the police officer reached the spot of the incident, it was informed that the victim's had been taken to GTB hospital for treatment. Upon reaching the hospital, MLCs of five victims were obtained, which

¹ "BNSS"

² "Cr.P.C."

³ "IPC"



indicate simple as well as grievous injuries. Accordingly, the statement of the victims was recorded on the same day. Thereafter, on 3rd October, 2023, one of the victims – Mr. Aash Mohd. came to the police station and gave a statement to a sub-inspector on the basis of which the FIR was lodged.

1.2. In his statement, Mr. Aash Mohd. – i.e., the complainant alleged that on 1st October, 2023, when he was standing outside his house i.e., A-59, Gali No. 2, Masjid Wali Gali, Babarpur, Delhi, along with his brother Ramzan at about 07:00 PM, one Kais S/o Kayyum came on his bike in a rash manner and almost hit the child of the Complainant. Upon confrontation regarding the rash driving, Kais abused and threatened the Complainant. This led to the Complainant calling the emergency number ‘112’. The Complainant further alleged in his statement that after some time Kais, Afzal @ Billu, Nadeem, Kayyum, Suhail @ Sallu, Akhlakh, Firoz and Aarif @ Babu came to the house with rods and sticks, upon which the Complainant ran inside his house.

1.3. The above-mentioned persons forcefully entered the Complainant’s house and started beating him, along with his brother Ramzan and nephews Noman and Akram.

1.4. After the incident, the Complainant along with the other victims went to the P.S. Welcome. At that stage, the Complainant’s wife, who was at home at the time, called the Complainant and informed him that two persons namely, Azharuddin @ Ajju (the Applicant herein) and Akram @ Tirru opened fire at the Complainant’s wife, which she and the children of the Complainant narrowly escaped.

1.5. Subsequently, after registration of the FIR, CCTV footage was



analysed by the Investigating Officer⁴, wherein the Applicant along with the co-accused Akram who found present at the spot and was also subsequently identified by the Complainant. On the same day, the co-accused Akram was arrested by the police, at the instance of the Complainant and was sent to judicial custody. On 7th November, 2023, the Applicant himself surrendered in the police station and the weapon used in the incident, along with 2 empty rounds were recovered at his instance. Subsequently, the Applicant was sent to judicial custody. Further, eight other accused persons, who were involved in the beating of the Complainant and his family members, have been issued notices under Section 41A of the Cr.P.C.

1.6. In the aforementioned background, counsel for Applicant states that he has been in custody for more than a year. She argues that the Applicant has no past criminal antecedents and deep roots in society and is not likely to abscond if released on bail. She opposes the allegation of recovery of the weapon and argues that the same was planted by the police since the person who has allegedly fired shots at someone is not expected to take the empty cartridges away from the scene of the incident only to keep them in his room. She further submits that even though it is alleged that the Applicant fired shots at the Complainant's wife, there is no grievous injury caused to either the Complainant or any of the family members due to any action which can be attributed to the Applicant. The main incident involved other accused persons who allegedly beat up the Complainant and his family members with sticks and rods. In light of the above, since the Applicant is a young man who has been living in jail with hardened criminals for more than a year, counsel for the Applicant urges that he ought to be granted

⁴ "IO"



regular bail.

2. On the other hand, the present request of the bail is strongly opposed by Mr. Amit Ahlawat, APP for the State. He submits that irrespective of no injury being directly caused to the Complainant or his family members due to the Applicant, the facts of the case as noted above, clearly disclose the offence under Section 307 of IPC. He submits that the Applicant has been clearly identified by the Complainant in the CCTV footage. Furthermore, the weapon involved in the incident as well as two empty cartridges have been recovered at the instance of the Applicant and therefore, his involvement in the present offence is clearly established and there is no ground made out for his release on bail. Mr. Ahlawat also informs the Court that the Complainant has challenged the order under Section 41A of Cr.P.C. before the Trial Court, which is now listed for consideration on 18th January, 2025.

3. The Court has considered the aforementioned contentions of the parties. The Petitioner has been in custody since 7th November, 2023. Therefore, more than a year has passed since his arrest. As of now, the chargesheet stands filed and the charges have also been framed. Currently, the trial is at the stage of prosecution evidence and material witnesses are yet to be examined. On a *prima facie* analysis of the FIR, Chargesheet as well as the status report filed by the State, it is noted that the Applicant was not involved in the main incident of quarrel which escalated to violence against the Complainant and his family members. No injury was caused due to the alleged actions of the Applicant. In fact, as per the status report, the Applicant himself surrendered to the police station on 7th November, 2023. In terms of the recovery of the weapon and empty cartridges being made at the instance of the Applicant, the FSL reports regarding the same are



awaited. Therefore, considering the above, in the opinion of the Court, the Applicant can be released on regular bail.

4. The Applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of Rs. 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;

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, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

5. 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.

6. 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.

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

SANJEEV NARULA, J

JANUARY 14, 2025

as