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

+ **BAIL APPLN. 3972/2024**

ANAS ALVI

.....Petitioner

Through: Ms. Dolly Sharma, Adv.
versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Mukesh Kumar, APP for the State.
Insp. Sachin Kr. P.S. Parliament Street
& SI Yashveer, P.S. Govind Puri.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

03.04.2025

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1. This hearing has been done through hybrid mode.
2. The present application under Section 483 of the BNSS, 2023 (Section 439 of the Cr.P.C) read with Section 528 of the BNSS (Section 482 of the Cr.P.C.) seeks regular bail in case FIR No. 858/2022, under Sections 302/34 of the IPC, registered at P.S. Govindpuri.
3. As per the status report dated 16.11.2024, authored by Insp. Rajesh Kumar, Station House Officer, P.S. Govindpuri, the case of the prosecution is as under:-

“2. Brief fact of the case is that on 24.12.2022, a PCR call vide GD No. 64A was received at PS Govindpuri that Patient Himanshu, aged 18 years was admitted in quarrel near Tugalkabaad School block. Thereafter, the witness who had brought the patient to the hospital was searched for and then Samshad Hussain (hereinafter referred to as the complainant) was contacted over phone who gave his complaint stating that he was informed by his younger brother namely Naushad that on 23.12.2022 he was beaten by a boy studying in his school. That the complainant took his Naushad on his Splendor bike bearing no. DL3SFC-9359 near his school and stopped at the red light near Tara



Apartment. It is stated by the complainant that his friends Himanshu, Sahil had also accompanied him and were waiting for Sahil who had beaten complainant's brother ie. Naushad on 23.12.2022. Next day, around 1:30 P.M, when Sahil came the complainant confronted him upon which they both started to argue and at this the complainant caught hold of Sahil by his collar and gave him 1-2 slaps. Thereafter Sahil left from there. When they reached near school block to leave Naushad they found Sahil with his friends waiting for Naushad. A fight broke out between all the persons and a boy tried to save Sahil who was pushed by the complainant and his friends. The complainant states to have left his brother at school and came with his friend Himanshu and Sahil at RD Marg bus stand. That they boy whom the complainant had pushed along with his friends came along with his friend on a bike who was wearing a white jacket and told them that they did a mistake by taking up a fight in Panchu's area. Thereafter they hit the complainant and his friends with stone which hit Himanshu on his head. Then Panchu took out a knife from the back side of his belt and caught hold of Himanshu by his hands and his other friend took out a knife from the pocket of his pant and stabbed Himanshu 4-5 times due to which he started to bleed and he became unconscious and felt down after which he was taken to the hospital.

3. Thereafter the supplementary statement u/s 161 CrPC of the complainant was recorded in which he stated that he could recognize the accused persons if they were brought before him and one of them was wearing a white jacket and the other one was wearing a black jacket whose name was Panchu. On 25.12.2022 the statement u/s 161 CrPC of Sahil (friend of the complainant) was also recorded who reiterated the version of the complainant. On 26.12.2022 the supplementary statement u/s 161 CrPC of Sahil was recorded in which he stated that the accused who was being searched for was having Instagram account by the name of Anas Alvi. On 28.12.2022 the complainant also reiterated the statement as was given by Sahil and stated that one of the accused was Anas Alvi whom they had searched on Instagram and found his account and photo on the same.

4. During investigation on 25.12.2022 it was informed that the patient Himanshu expired and subsequently his family members were informed and his post mortem was conducted. Thereafter the site plan was prepared and seizure memo was prepared and crime team was called on the spot of the incident for inspection.

5. Subsequently on 25.12.2022 the accused Noushad (@ Panchu was arrested and his disclosure statement was recorded in which he



disclosed about his co accused Anas Alvi (hereinafter referred to as the Petitioner) and stated that it was upon the instigation of Anas that he went to the house of Anas and brought the knife from there. The weapon of offence was recovered and the sketch was prepared.

6. During course of investigation, on analysis of CDR of Complainant and Anas, it was found that the said persons were present at the place of incident on the said date of incident.

7. On 27.12.2022 the co-accused Anas was also arrested and his disclosure was also recorded. The other knife used in the crime was also recovered upon the instance of Anas and on 29.12.2022 the pointing out memo- site plan was prepared at the instance of the accused persons. On 26.12.2022 and 27.12.2022 the application with regard to TIP proceedings of both the accused persons was sent to the Court of Ld. Duty MM, Saket Court in which both of them refused to participate.

8. On 31.01.2023 the PM report of the deceased Himanshu was received from JPN Apex Trauma Centre, AIIMS, New Delhi in which the cause of death was opined as *“The cause of death due to the hemorrhagic shock due to ante mortem injuries sustained to chest and abdomen, caused by sharp force, could be possible in circumstances as mentioned in the inquest papers. The injuries sustained were sufficient to result in death on the ordinary course of nature”*. The seized exhibits were sent to FSL, Rohini.

9. Vide court order dated 13.05.2024, accused Naushad @ Panchu was granted bail from the Hon'ble Court of Sh. Vishal Singh, Ld. ASJ, Saket Courts, Delhi on the grounds that the key prosecution witnesses PW1 i.e. Samshad Hussain (brother of deceased), PW 2 Md. Sahil (friend of deceased) have not supported the prosecution and did not identify accused Naushad@ Panchu as the offender, who murdered the victim.”

4. Learned counsel appearing on behalf of the applicant submits that the complainant in the present case i.e. Shamshad Hussain (PW-1), who is the brother of the deceased, has set up a totally different case in his examination before the learned Trial Court. It is submitted that as per the case of the prosecution, initially it was co-accused Naushad @ Panchu who had stabbed the deceased alongwith the present applicant. However, before the learned



Trial Court, he exonerated the said Naushad @ Panchu and testified about the present applicant. It is further submitted that the other two alleged eye witnesses on behalf of the prosecution namely Mohd. Sahil (PW-2), i.e., friend of the deceased as well as Mohd. Sohil (PW-3) have not supported the prosecution case. It is further pointed out that the knife allegedly recovered from the present applicant could not be connected with the offence by the prosecution inasmuch as it is not supported by the FSL report.

5. It is further submitted that 33 witnesses have been cited by the prosecution, out of which 12 still remain to be examined. Applicant is in incarceration since 27.12.2022 and had been released on interim bail on a previous occasion and without misusing the liberty granted to him, he surrendered himself.

6. *Per contra* learned APP for the State submits that PW-1, i.e., brother of the deceased has identified the applicant as the person who had given the stab injuries to the deceased, in pursuance of which the latter died.

7. Heard learned counsel for the parties and perused the record.

8. PW-1 in his statement before the learned Trial Court, has given a different version from what he had stated before the police/Investigating Officer. As per his initial statement, it was the co-accused Naushad @ Panchu who took the knife and stabbed his brother and the present applicant came later. However, in his testimony before Court, he does not name Naushad @ Panchu for stabbing but the present applicant. The other two eye witnesses have not identified the present applicant or supported the prosecution case. The knife, which has been recovered from the present applicant also could not be connected to the present offence on account of the FSL report.

9. On a pointed query, it is stated that there are no previous involvements



of the present applicant. As per the nominal roll dated 22.11.2024 received from Superintendent of Prisons, Central Jail no. 4, Tihar, New Delhi, the applicant was released on interim bail on previous occasion from 01.03.2023 to 19.03.2023 and he had duly surrendered without misusing the liberty granted to him.

10. In totality of the facts and circumstances, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 25,000/- with one surety of the like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
 - ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
 - iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
 - v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
11. The application is allowed and disposed of accordingly.
12. Pending application(s), if any, also stands disposed of.
13. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.



14. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
15. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

APRIL 3, 2025/nk/Pc *Click here to check corrigendum, if any*