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

+ **BAIL APPLN. 4227/2024**

RAJ SHARMA

.....Petitioner

Through: **Ms. Nusrat Hossain, Advocate.**

versus

THE STATE

.....Respondent

Through: **Mr. Sanjeev Sabharwal, APP for the State with Inspector Prahlad, PS – Kotla and SI Naresh Kr. Sharma, PS – Shahdara, Delhi.**

Mr. Anil Sharma, Mr. Shivesh Kaushik and Mr. Arpit Sharma, Advocates for complainant.

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

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19.08.2025

1. Having remained under incarceration for almost 6 years, applicant, accused of having conspired with his other brother to kill their third brother as per FIR No. 90/2019 dated 22.04.2019 under Sections 323, 341 and 34 of IPC registered at Police Station Shahadra, is before this Court seeking bail.
2. Per prosecution/ deceased informer Bijender Sharma, aged 52 years, the case set up is that on 21.04.2019 at about 10:00 AM. When deceased was on way home, a man suddenly sprayed some substance on his face, causing a severe burning sensation. Immediately thereafter, his brother Jay Sharma, along with his associates Chokha Ram, Neeraj, and others, obstructed his way. They attacked him with iron rods and sticks, due to which he sustained serious injuries on his shoulders and legs. The injured



was taken to GTB Hospital. At the hospital, the police obtained MLC which recorded the history of physical assault and also noted that the injured was fit for statement. However, on the same day, due to pain, the complainant was unable to give a statement. On 22.04.2019, the SI again met the deceased at GTB Hospital, where he was declared fit to make his statement. His statement was recorded. Subsequently was shifted to Max Vaishali Hospital, where he breathed his last on 24.04.2019. After completion of the investigation, the investigating agency filed the chargesheet under Sections 302, 341, 201, 147, 148, and 120B of the IPC.

3. In the aforesaid backdrop, I have heard the rival contentions.

4. Learned counsel for the applicant would argue on lines of grounds taken in the petition *inter alia* urging as below:

4.1 Learned counsel for the applicant submits that the applicant has been falsely implicated in the present case and has been in judicial custody since 10.08.2019—over six years—without any justifiable reason or basis. It is emphasized that despite this prolonged incarceration, the trial is still far from conclusion.

4.2 The counsel further points out that in the very first statement of the deceased, Mr. Bijender Sharma, the name of the applicant does not appear anywhere. Significantly, the deceased specifically named his other brother, Ajay Sharma, in the complaint, even though the applicant is also a real brother of the deceased.

4.3 It is next contended that the prosecution's case rests solely on the testimony of a single alleged eyewitness, Rahul Sharma (PW-2), who has already been examined in court. During his deposition, nothing incriminating emerged against the applicant or any other accused. On the



contrary, his testimony completely dismantled the prosecution's case, making the continued detention of the applicant wholly unwarranted.

4.4. Counsel also submits that the applicant is entitled to bail on grounds of parity, as two co-accused—Giriraj Maheshwari and Manish Sharma—have already been granted regular bail by the learned Trial Court. The applicant's case is even stronger than that of Manish Sharma, who was released on bail by order dated 06.05.2024 (Annexure P-7).

4.5. Continuing her submissions, counsel asserts that no actual statement of Bijender Sharma was recorded. The alleged statement forming the basis of the Rukka is a fabricated document of doubtful authenticity. It was allegedly recorded at 1:25 a.m. on 21/22.04.2019, yet the FIR was registered only at 9:31 a.m. on 22.04.2019. Medical records confirm that Bijender Sharma left GTB Hospital at 1:30 a.m., making it improbable that any statement was recorded earlier. The statement bears his son Rahul Sharma's mobile number instead of his own and contains a right thumb impression, despite the deceased's right hand being badly injured while the left hand remained intact—rendering such an impression impossible. Furthermore, he was shifted to Max Vaishali Hospital at 2:10 a.m. on ventilator support. The Rukka also contains multiple interpolations, casting serious doubt on its genuineness (Annexures P-8 & P-9).

4.6. Counsel further submits that PW-2 Rahul Sharma, the alleged eyewitness, did not actually witness the incident and is a planted witness. Supporting evidence—including the MLC, GD No. 72A, and the absence of blood-stained clothes or CDR—confirms that he was not present at the scene (Annexures P-10 & P-11). Despite living nearby and owning a car, he transported his father 4.5 km to a government hospital by E-rickshaw. His



testimony was completely discredited during cross-examination, revealing deliberate false implication of the applicant.

4.7. It is also contended that other witnesses, namely Dinesh Gupta and Jatin, have repeatedly acted under the influence of Rahul Sharma. They frequently failed to appear in court and filed false complaints of threats. Summons issued to them were often ignored, and they appeared only in connection with transfer petitions without prior notice. On several occasions, including 08.08.2024 and 20.08.2024, Dinesh Gupta altered his testimony and made unsubstantiated claims of threats that were never previously reported. Jatin, though previously untraceable, appeared unexpectedly. Their statements under Section 161 CrPC confirm that neither was an eyewitness nor did they implicate the applicant (Annexures P-16 to P-19).

5. Learned counsel for son of the deceased would oppose the bail plea urging that the accused resides in the same locality as the family of the deceased and might give threats to them, endangering their security.

5.1 Learned APP also opposes the bail application on the ground that two other material witnesses i.e. who sold the iron rods as well as who were instrumental in following the instructions of the applicant for cutting the rods so as to be of the size to be held in hands while indulging in physical assaults are yet to be examined.

6. Heard the rival contentions and perused the case file.

7. At the outset, when queried regarding the previous order dated 21.05.2025, the learned APP informed this Court that the cross-examination of the material witness, PW-3 Dinesh Gupta, by the applicant's counsel has been completed, though other defense counsels are yet to conduct their cross-examination. Therefore, the earlier apprehension of the applicant



influencing or intimidating the said witness no longer survives, which was the primary reason for adjourning the matter earlier.

8. Having heard the parties, I find that the best eyewitness to the incident was the deceased himself, who, despite being brutally assaulted, was apparently in a conscious state to make a statement that formed the basis of the FIR. From the contents of the FIR, it is evident that the deceased consciously attributed the attack to his other brother, Ajay Sharma, who is the principal accused and remains in custody. Notably, the deceased did not name the applicant—also his real brother—nor did he allege that the assailants acted at the applicant's behest. The learned counsel for the victim's son, however, contends that the deceased, at the time of making the statement, was not fully aware of what to disclose and that an FIR cannot be considered a comprehensive account. He submits that the applicant's culpability surfaced during investigation and, given the gravity of the offence—where two brothers are alleged to have killed their own—bail should be denied. His arguments are being noted only to observe that the same are matter of trial to be eventually dealt with to determine the guilt.

9. The applicant, however, has been in judicial custody since 10.08.2019—over six years—without justification, while the trial remains far from completion. The deceased's initial statement does not mention the applicant and names only Ajay Sharma. The prosecution's case primarily rests on a single alleged eyewitness, Rahul Sharma (PW-2), whose testimony has been recorded. Additionally, two co-accused have already been granted bail.

10. The authenticity of the alleged statement forming the basis of the Rukka, apart from being disputed are stated to be full of inconsistencies such



as improbable timing, the use of the son's mobile number instead of the deceased's, a thumb impression despite severe right-hand injuries, and multiple interpolations. Witnesses, Dinesh Gupta and Jatin are stated to have altered their testimonies. These issues, though significant, remain matters for trial and final adjudication after the evidence is evaluated at the stage of final arguments.

11. I am unable to agree with the submissions of the learned counsel for the victim's son. At this stage, the only consideration is whether this is a fit case for bail, not whether the applicant will ultimately be convicted or acquitted. As regards allegations relating to the sale and cutting of metal rods, there are no accusations against the applicant in this respect.

12. Considering the totality of facts and circumstances, the stage of the trial, and the role attributed to the applicant in the FIR, I am of the view that this is a fit case for granting bail to the applicant at this stage.

13. Accordingly, it is so ordered. The applicant is directed to be released on bail on his furnishing bail bonds and surety of an equivalent like amount to the satisfaction of the Trial Court/Duty Judge concerned as the case may be, subject to the usual conditions to be imposed by the learned Trial Court.

14. Any observation made herein above is only for the purpose of disposing of the instant bail application and not to be construed, in any manner, as any expression on the merits of the pending case and the trial shall proceed without being influenced either way by the same.

15. Accordingly, the bail application stands disposed of.

ARUN MONGA, J

AUGUST 19, 2025/kd