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

+ **BAIL APPLN. 4289/2024**

ARUN KUMAR

.....Petitioner

Through: Mr. Anil Kumar Basoya, Mr. Akash Gahlot, Mr. Amandeep Sarout, Advocates

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Hemant Mehla, APP for the State with Insp. Ravindra Kumar Tomar, PS Tigri
Insp. Afaq Ahmad, PS Vivek Vihar

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **08.05.2025**

1. The present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (corresponding to Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in FIR No. 276/2021 under Section 302 of the Indian Penal Code, 1860³ registered at P.S. Tigri. Subsequently, a chargesheet has been filed *qua* the Applicant under Sections 302, 201, 120B of the IPC as well as Sections 25 and 27 of the Arms Act, 1959.

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

2.1. On 27th July, 2021, a call was received at P.S. Tigri regarding a

¹ "BNSS"

² "Cr.P.C."

³ "IPC"



person who suffered a gunshot wound inside a Temple. The information was recorded *vide* GD Entry No. 75A and the investigation commenced. Upon reaching the Temple where the incident was reported to have occurred, the police recovered two empty and one live cartridge from the spot. The officers were informed that the injured person, identified as Mr. Chanchal Kumar, had been transported to Batra Hospital by his friends, namely, Ajay, Govind @ Golu and Kaushal.

2.2. When the police officers reached the hospital, they were informed that Chanchal had been declared dead. The MLC recorded gunshot injuries. Subsequently, the body of the deceased was transported to AIIMS mortuary and the present FIR was registered.

2.3. Statements of eye-witnesses and friends of the deceased were recorded. They disclosed that after being shot, the deceased collapsed in front of the shop of one Sumit Tiwari, who, along with Govind and Ajay, rushed him to the hospital. It is stated that while being transported and still conscious, the deceased named his assailants, stating that earlier that day, he had been threatened by his cousins Rohit and Arun (the present Applicant) and their associate Rahul, and that it was Rohit who fired at him inside the Temple.

2.4. Investigation further revealed that the Applicant, Rohit, and the deceased were related – they were cousins, and Rahul an old family friend. There was a backdrop of strained relations and prior hostility among them. An incident on 24th August, 2020 involving a quarrel between Rohit and two others in the presence of the deceased allegedly created further rift when the deceased did not side with Rohit during the quarrel. In another episode during the COVID-19 lockdown, the deceased is said to have slapped Rahul



during an altercation over a card game. These incidents, according to the prosecution, sowed the seeds of revenge.

2.5. Since Rohit, Rahul and Arun Kumar were close friends, they were all disgruntled and angry with the deceased. Therefore, they hatched a conspiracy to murder the deceased when he would go to visit the Temple, something he regularly did.

2.6. The father of the deceased, in his statement, also alleged that the three accused had threatened his son around fifteen days prior to the incident.

2.7. The post-mortem report concluded the cause of death was “*shock and hemorrhage due to sustained firearm injury. Injury no. 1 and 2 individually and collectively are sufficient to cause death in ordinary course of nature. All injuries are antemortem in nature and fresh in duration.*”.

2.8. On 29th July, 2021, co-accused Rohit was arrested. During custodial interrogation, he named the Applicant and Rahul as co-conspirators. Both of them were subsequently arrested on 2nd August, 2021 and they allegedly confessed to their roles in the crime.

2.9. The role attributed to the Applicant is that he was part of the criminal conspiracy to eliminate the deceased. As per the charge-sheet, the Applicant and Rahul supplied the weapon, a country-made pistol, used by Rohit to commit the murder. The CDR analysis of the Applicant reportedly places him near the crime scene at the relevant time, and indicates sustained contact among all three accused. The pistol used in the crime, along with three live cartridges, was recovered from Rohit.

2.10. The FSL examination confirmed that the weapon recovered from Rohit was in working condition and fell within the definition of a firearm under the Arms Act. It further established that the two empty and one



misfired cartridge recovered from the scene had been fired from the recovered pistol.

2.11. A chargesheet was filed on 27th October, 2021, and charges under Section 302 read with Section 120B of IPC were framed against all three accused, with additional charges under the Arms Act framed against Rohit. The trial is presently at the stage of prosecution evidence, with 7 out of 44 listed witnesses examined so far.

3. Counsel for the Applicant has urged the following grounds in support of the application for grant of regular bail:

3.1. The case of the prosecution against the present Applicant, is unfounded. No recovery of any weapon, ammunition, or other incriminating material has been effected from the possession of the Applicant or from any premises linked to him.

3.2. There is nothing on record to indicate that the Applicant was involved in the alleged commission of the offence. The charge of criminal conspiracy under Section 120B IPC, as alleged by the prosecution, is based solely on suspicion and lacks any cogent material or overt act attributable to the Applicant. It is submitted that the mere association or prior familiarity with the co-accused is insufficient in law to constitute criminal conspiracy in the absence of clear evidence of prior meeting of minds or any active role played by the Applicant in furtherance of the alleged common object.

3.3. The Applicant has already spent a period of almost 4 years in custody as an under trial and he has no prior criminal antecedents. The investigation in the case stands concluded, chargesheet has been filed and all material prosecution witnesses have been examined before the Trial Court. As such, the continued incarceration of the Applicant in the present case would



amount to punitive punishment, in violation of his right of speedy trial under Article 21 of the Constitution of India.

4. On the other hand, Mr. Hemant Mehla, APP for the State, strongly opposes the present bail application on the following grounds:

4.1. The Applicant is involved in the commission of a grave and heinous offence punishable under Section 302 IPC, which pertains to intentional taking of a human life. The manner in which the murder was committed, inside a place of worship and using a firearm, reflects the premeditated and audacious nature of the offence. Such serious allegations warrant strict consideration.

4.2. Although no recoveries have been made from the Applicant, the prosecution's case is built on strong circumstantial and testimonial evidence. Notably, PW-5, Govind @ Golu, a close friend of the deceased, deposed that while transporting the deceased to the Hospital, the latter, while still conscious, explicitly named the Applicant along with the co-accused Rohit and Rahul as having threatened him earlier that day. He further stated that the deceased identified Rohit as the individual who had fired at him inside the Temple. This oral dying declaration, made contemporaneously and voluntarily, constitutes an important piece of evidence implicating the Applicant in the broader conspiracy.

4.3. Furthermore, the parents of the deceased have supported the prosecution's version and confirmed, in their testimonies before the Trial Court, that the deceased had been threatened by the Applicant and his associates in the days leading up to the incident. These statements corroborate the allegation of prior enmity and strengthen the prosecution's case that the offence was premeditated and jointly executed by all three



accused persons.

5. The Court has considered the submissions of the parties. It is a well-established principle that while considering a bail application, the Court must keep in mind several factors relating to the case, such as – whether there is any *prima facie* reasonable ground to believe that the accused has committed the offence, the nature and gravity of the accusation, severity of potential punishment, risk of the accused absconding or fleeing if released on bail, the likelihood of the offence being repeated, etc⁴. At the same time, the grant of bail cannot be withheld merely on the ground that the offence alleged is serious, if the prosecution is unable to substantiate a *prima facie* case or if continued incarceration amounts to a punitive measure rather than a procedural safeguard⁵.

6. It is equally well settled that while deciding a bail application, the Court is not required to conduct a detailed examination of evidence which would make the bail proceedings akin to a mini-trial⁶. At this stage, the task is limited to forming a *prima facie* view of the evidentiary material available on record. In the present case, the principal accusation against the Applicant is one of criminal conspiracy under Section 120B of IPC. Pertinently, there is no allegation that the Applicant was present at the scene or that he fired the weapon in question. The foundation of the prosecution's case against the Applicant rests on the oral dying declaration allegedly made by the deceased to PW-5, Govind @ Golu, while being transported to the Hospital.

7. The relevant deposition of PW-5, which forms the fulcrum of the

⁴ *Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr.* (2010) 14 SCC 496

⁵ *Javed Gulam Nabi Shaikh v. State of Maharashtra & Anr.*, (2024) 9 SCC 813

⁶ See also: *Brijmani Devi v. Pappu Kumar & Anr.*, (2022) 4 SCC 497 and *Mahipal v. Rajesh Kumar @ Polia*, 2020 (2) SCC 118



prosecution's case against the Applicant, reads as follows:

“On 27.07.2021 at about 08:30-08:40 PM, I was going to my house from my office on my motorcycle. When I reached near the house of Sumit Tiwari, I heard some noise and saw that Chanchal is laying in front of the house of Sumit Tiwari in injured condition. Sumit Tiwari and Ajay was also present there. Sumit Tiwari, Ajay and Chanchal were known to me being friend. In the meantime, brother of Sumit namely Kaushal also reached there.

*I asked Kaushal to get my bike which I had parked at some distance from the house of Sumit Tiwari. I caught hold Chanchal from behind while sitting on motorcycle whereas Ajay driven the said motorcycle to take Chanchal to Batra Hospital, **upon mu asking, Chanchal told me that Rohit, Arun and Rahul had given threatening to kill him during day time and in the evening Rohit had fired a gun shot upon him in the temple.**”*

[Emphasis supplied]

8. This statement, even if accepted at face value, does not impute any direct role to the Applicant in the act of firing. The role of the Applicant, as per this deposition, is confined to the allegation of having threatened the deceased earlier in the day. Whether such a threat, without any overt act, recovery, or corroboration, meets the threshold of criminal conspiracy under Section 120B IPC is a matter that will require evaluation during the course of trial. At this stage, such a conclusion would be speculative and impermissible.

9. It is further relevant to note that there is no recovery of any weapon or incriminating material from the Applicant. Nor has any forensic or scientific evidence been placed on record to link him to the act of firing. The prosecution's reliance is solely on the statement of PW-5, and no further corroboration has been brought to the fore as regards the Applicant's active participation in the planning or facilitation of the offence.

10. The present matter is in the midst of trial, with the prosecution having examined all the material witnesses before the Trial Court. As per nominal



roll, as on 06th January, 2025, the Applicant has been in custody for 03 years 05 months and 04 days. Accordingly, as of today, he has been in custody for nearly 04 years.

11. In light of the foregoing, and particularly considering the fact that the Applicant has remained in custody for nearly 04 years, coupled with the fact that all key prosecution witnesses have already been examined and the trial is proceeding, the Court is of the view that further incarceration of the Applicant is not warranted at this stage. There is no material on record to suggest that if enlarged on bail, the Applicant would abscond or interfere with the trial. Accordingly, in the considered opinion of the Court, the Applicant is entitled to be released on bail.

12. Accordingly, the Applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty Metropolitan Magistrate/ Jail Superintendent, on the following conditions:

- a. The Applicant shall appear before the Trial Court as and when directed;
- 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 provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;



e. 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.

13. 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.

14. 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.

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

SANJEEV NARULA, J

MAY 8, 2025/ab