



\$~62

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

+ **BAIL APPLN. 4298/2024**

MOHAN @ TINKAL

.....Petitioner

Through: Mr. Rajesh Pandey and Mr. Kuldeep
Naagar, Advocates (Through VC)

versus

STATE OF GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Nawal Kishore Jha, APP for State
with SI Deepak Sahu, PS: Pul
Prahladpur

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

%

05.03.2025

1. The present application has been filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 ('BNSS') seeking grant of regular bail to the accused/Applicant in the FIR No. 258/2017 registered under Sections 302/307/341/427/120B/ 34 of the Indian Penal Code, 1860 (IPC) at Police Station (P.S) Pul Prahladpur, Delhi.

2. The relevant facts for the adjudication of this application, as derived from the status report dated 22.01.2025, are as follows: It is stated that on 12.12.2017, information was received via DD Nos. 37-A and 38-A regarding a stabbing incident at Lal Kuan Petrol Pump, Sunday Market, Pul Prahladpur. It is stated that upon the arrival of the police team, it was discovered that Rahul¹ had succumbed to his injuries at ESI Hospital, while

¹ @ Doodha



two other injured individuals, Tara Chand and Suva Lal², were admitted to Safdarjung Hospital for treatment.

2.1. It is stated that on 12.12.2017 Tara Chand, victim was found fit to give a statement. In his statement, he reported that around 7:30 p.m., he was sitting in his Brezza car (registration no. DL 3 CCM 5474) at Peer Baba Chowk, near his residence, when accused Rajesh³ and his associates, Danish⁴ and the Applicant/Mohan, arrived and broke his car's window. He reported that they allegedly assaulted him and threatened him for filing a kidnapping case⁵ against Rajesh. He reported that when he raised an alarm, his family members, including the deceased Rahul and other relatives, came to his aid, prompting the accused persons to flee the scene.

2.2. He reported that later, accused persons Rajesh, Danish, and the Applicant/Mohan, along with other accomplices, returned armed with knives, rods, and wooden sticks. According to the statement, the Applicant restrained the deceased, while accused Rajesh stabbed him in the left thigh.

2.3. It is stated that based on Tara Chand's statement, subject FIR was registered, and the Applicant, along with the other co-accused, was arrested on 13.12.2017. It is stated that during interrogation, accused persons confessed to their involvement, and recoveries were made at their instance. It is stated that additionally, two CCL⁶ were also apprehended, and their social background reports were filed before the J.J. Board-II, Delhi Gate, Delhi.

² @ Ramjilal

³ @ Vanar

⁴ @ Chintoo

⁵ FIR No. 56/2016, dated 11.03.2016, under Section 363 IPC, Police Station Pul Prahaladpur, New Delhi

⁶ Children in Conflict with Law



2.4. It is stated that a country-made pistol was recovered from a concealed location in a Jhuggi at the instance of accused Rajesh, while weapon of offence i.e. knife was recovered at the instance of Danish. It is stated that a black cap, allegedly worn by accused Danish, was found at the crime scene. It is stated that, a Pulsar motorcycle, which CCL and accused Danish had used to reach the location, was recovered from the crime scene after being abandoned during their escape.

2.5. It is stated that the medical report classified complainant Tara Chand's injuries as grievous. It is stated that the postmortem report of deceased Rahul identified hemorrhagic shock as the cause of death, stating that the injury was sufficient to cause death in the ordinary course of nature. It is stated that the statements of eyewitnesses specifically attributed a key role to accused Danish in the deliberate murder of victim Rahul and the infliction of injuries on the other victims.

Arguments of Applicant

3. Learned counsel for the Applicant states that the Applicant/Mohan has been in custody since 13.12.2017 and, as per the Nominal Roll, has undergone a total period of 6 years, 2 months, and 27 days as an undertrial as of 16.12.2024. He states that the Applicant has a clean record and has no previous criminal involvement apart from the present FIR.

3.1. He states that the allegation against the Applicant/Mohan is limited to restraining the complainant i.e., Tara Chand and that there are no direct allegations of the applicant stabbing the deceased/Rahul. He states that co-accused Danish, who played the significant/lead role in stabbing the deceased, has been granted bail by a Coordinate Bench of this Court vide



order dated 29.07.2024⁷. He states that subsequently, co-accused Naresh was also granted bail by a coordinate bench vide order dated 08.10.2024⁸. He, therefore, states that the applicant should also be granted bail on the ground of parity.

3.2. He states that no recoveries were made at the instance of the applicant that could directly link him to the allegations mentioned in the FIR.

3.3. He states that the chargesheet in the present FIR stands filed on 12.03.2018, and the Trial Court framed charges against the applicant vide order dated 18.01.2019. He states that the trial commenced on 14.02.2019.

3.4. He states that since the trial is expected to take a considerable amount of time, since 22 witnesses remained to be examined by the prosecution, therefore, it would be violative of right to speedy trial of the Applicant guaranteed under Article 21 of the constitution and thus the Applicant should be released on bail during the pendency of the trial.

Arguments of the Respondent-State

4. Learned APP states that the Applicant/Mohan cannot claim parity with co-accused Danish for seeking bail as the eye-witnesses have failed to identify Danish whereas the Applicant along-with other co-accused have been identified by the said witnesses. He however fairly admits that the role ascribed by the witnesses to the Applicant is similar to co-accused Naresh.

4.1. He states that main accused Danish along with co-accused Rajesh and other associates including the Applicant had attacked the complainant Tara Chand with a common intention.

⁷ BAIL APPLN. No. 516/2023

⁸ BAIL APPLN. No. 2019/2024



4.2. He states that earlier application for bail filed by this Applicant has been dismissed as withdrawn by the High Court.

Analysis and Findings

5. This Court has considered the submissions of the parties and perused the record.

6. In the facts of the present case, the deceased Rahul, the complainant Tara Chand, and witness Suva Lal suffered stab injuries caused by knives.

7. The role ascribed to the Applicant by the injured eye-witness PW-1, Tara Chand is that the Applicant was armed with a *saria* and he held the arms of the witness Tara Chand, while the accused Rajesh stabbed him on the thigh. As per PW-1 knife injuries were inflicted on the said witness by co-accused Rajesh and knife injuries on deceased Rahul were inflicted by co-accused Naresh.

8. PW-3, Ms. Narangi has identified the Applicant as one of the accused seen by her beating PW-1, Tara Chand with a wooden stick. In her statement she has stated that she does not remember who was holding Tara Chand when he was stabbed by co-accused Rajesh.

9. PW-2, Suva Lal is an injured eye-witness. He has stated that he was assaulted with a knife by co-accused Naresh. He has stated that the Applicant/Mohan was also present at the scene of offence with the accused persons; however, the said witness had not alleged that the Applicant attacked him. He has stated that the Applicant/Mohan was holding a knife.

10. All the three eye-witnesses have consistently stated that the Applicant/Mohan was present at the site on the date of offence. Though there are inconsistencies in the testimony of the three witnesses as regards



the weapon being held by him; however, neither of the three witnesses have alleged that the Applicant inflicted any knife injury either on the deceased Rahul or on the PW-2 injured witnesses. In fact, the witnesses have alleged that knife injuries were caused by co-accused Naresh who has already been enlarged on bail vide order dated 08.10.2024. Moreover, in Section 161 Cr.P.C. statements the eye-witnesses had stated that knife injuries were inflicted by co-accused Danish, who as well has been enlarged on bail vide order dated 29.07.2024; though in their testimony the eye witnesses have not identified co-accused Danish.

11. In these facts, the Applicant is entitled to bail on the grounds of parity with co-accused Naresh.

12. The Supreme Court in in **Satender Kumar Antil v. CBI**⁹, observed as follows:

“12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India...”

13. In addition, considering the fact that the Petitioner has already undergone incarceration for a long period of 06 years and 06 months as on date, has no criminal antecedents, has not contributed in the delay of trial and the conclusion of the trial is likely to take a long time since 22 witnesses remained to be examined by the prosecution, this Court is of the considered opinion the Applicant/Mohan is entitled to be enlarge on regular bail subject to the conditions set out hereinafter. Moreover, the Applicant’s jail record for

⁹ (2022) 10 SCC 51



the calendar year 2024 is reported to be a satisfactory in the Nominal Roll dated 17.12.2024.

14. In this regard it would be apposite to refer to the Judgement of Supreme Court in the case of **Union of India v. K.A. Najeeb**¹⁰ wherein Supreme Court opined that once it is evident to the Court that the trial is not to be going to concluded timely and the accused having undergone sufficient period of incarceration, the Courts would be obligated to enlarge the said accused on bail.

15. Similarly, the Supreme Court in the case of **Praveen Rathore v. State of Rajasthan**¹¹, while granting bail to an accused of murder, noted the importance of personal liberty and right to speedy trial and observed as under: -

“5. It is not in dispute that the Applicant, by now, has undergone more than four and a half years of sentence. The prosecution intends to examine 76 witnesses, out of whom 53 have already deposed. All the crucial witnesses have already been examined. The instant case was adjourned on few occasions to enable the prosecution to examine Chauthmal Kashyap and Manohar Rathore, who were stated to be the vital witnesses. Their deposition is also complete.

....

7. Taking into consideration the period already spent by the Applicant in custody coupled with the fact that conclusion of trial will take some reasonable time however, without expressing any views on the merits of the case, we are inclined to release him on bail.”

(Emphasis supplied)

¹⁰ (2021) 3 SCC 713.

¹¹ 2023 SCC Online SC 1268.



16. Consequently, this Court finds it to be a fit case for grant of bail to the Applicant. The applicant is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Applicant will not leave the country without prior permission of the Court.
- ii. Applicant shall provide permanent address to the Trial Court. The Applicant shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Applicant shall appear before the Court as and when the matter is taken up for hearing.
- iv. Applicant shall join investigation as and when called by the IO concerned.
- v. Applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Applicant will mark presence before the concerned I.O. every 1st Monday of the month at 11:00 AM, and will be not kept waiting for more than an hour.
- vii. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.



17. In the event of there being any FIR/DD-entry/Complaint lodged against the Applicant during the period of bail, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

18. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

19. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

20. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

21. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

MARCH 5, 2025/AKT/hp