



\$~59

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

+ BAIL APPLN. 4265/2025 & CRL.M.A. 33048/2025

DEEPAK ALIAS PASSIONApplicant

Through: Ms. Jyoti Babbar and Mr.
Ashish Shukla, Advocates.

versus

THE STATE OF NCT OF DELHIRespondent

Through: Mr. Ritesh Kumar Bahri,
APP for the State with Ms.
Divya Yadav and Mr. Lalit
Luthra, Advocates.
ASI Jayprakash Singh, PS
Burari.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

%

10.11.2025

1. The present application is filed seeking pre-arrest bail in FIR No. 448/2025 dated 20.05.2025, registered at Police Station Burari, for the offence under Sections 110/3(5) of the Bharatiya Nyaya Sanhita, 2023 ('BNS').

2. Briefly stated, the FIR was registered pursuant to a complaint given by one Mohammed Asif. Allegedly, on 19.05.2025, the complainant along with his four friends was attacked by the applicant and other accused persons with sticks, punches and kicks. The victims were allegedly beaten with sticks on their heads as well. It is alleged that about three days before the incident, the complainant and his friend had a heated exchange with the accused Lalit over some money dispute, wherein the said accused had threatened the complainant and his friend.

3. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present matter and he

BAIL APPLN. 4265/2025

Page 1 of 5



is innocent. She further submits that the co-accused Sandeep has already been admitted on bail and the applicant is entitled to bail on account of parity.

4. She submits that the complainant is known to the applicant and is also accused along with the applicant in another FIR. She submits that there is nothing to connect the applicant with the offence in question and he has been implicated by the complainant owing to prior enmity between them due to a financial dispute.

5. She submits that the reason for non-appearance of the applicant during the investigation is that he had shifted his residence from Delhi to his native place and he has not been residing at the earlier address.

6. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant on account of the allegations being serious in nature. He submits that the applicant has been specifically named in the FIR and he has not cooperated with the investigation, due to which, proceedings under Section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') [erstwhile Section 82 of the Code of Criminal Procedure, 1973] have already been initiated. He submits that the applicant cannot claim parity with co-accused Sandeep as he was enlarged on bail after his arrest.

7. I have heard the counsel and perused the record.

8. It is trite law that the power to grant a pre-arrest bail is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of ***State of A.P. v. Bimal***

Krishna Kundu: (1997) 8 SCC 104, held as under:

BAIL APPLN. 4265/2025

Page 2 of 5



“8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

“5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.”

9. Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

“The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.”

xxx

12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”

9. The allegations indicate that the applicant was specifically named by one of the injured victims who has suffered serious injuries.

10. Much emphasis has been laid on behalf of the applicant that he is entitled to receive bail on the ground of parity with the accused Sandeep. It is pointed out that the accused Sandeep was arrested on 21.05.2025, whereafter, he was granted bail on 01.08.2025 by the learned Trial Court after spending around 10



weeks in custody, pursuant to filing of chargesheet against him.

11. It is to be kept in mind that the considerations governing the grant of pre- arrest bail are materially different than those to be considered while adjudicating application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation is carried out by the investigating agency.

12. The present applicant is stated to have never joined the investigation and non-bailable warrants were issued against him. It is also submitted that the proceedings under Section 84 of the BNSS have also been initiated against the applicant. The applicant can thus claim no benefit on the ground of parity.

13. Although it is argued that the applicant has shifted his address, while dismissing the applicant's bail application, the learned Trial Court has duly noted that the concerned incident occurred wayback on 19.05.2025, and despite various efforts, the applicant could not be apprehended and he was on the run. Notices was also served at the address of the applicant and attempts were made to contact the applicant through his tenant, however, he apparently deliberately did not come forward. In the opinion of this Court, the learned Trial Court was rightly weighed by the absence of any cogent reason for the sudden shifting of place of residence by the applicant.

14. It is also informed that the applicant has been involved in multiple cases of similar nature and five more cases are pending against the applicant under various provisions of Indian Penal Code, 1860 and the Arms Act, 1959.

15. While it is stated that the applicant is on bail in all other cases, however, undisputedly, the conduct of the applicant



reveals his tendency to commit offences the moment he gets bail in one case. Antecedents of such nature cannot be ignored while considering the application seeking pre-arrest bail. While the presumption of innocence and the right to liberty are fundamental principles of law, they must be considered in conjunction with the gravity of the offence, its societal impact, and the need for a comprehensive and unobstructed investigation.

16. As noted above, the applicant has never joined the investigation and proceedings under Section 84 of the BNSS have also been initiated against him. In the opinion of this Court, the same coupled with the applicant's prior antecedents does not entitle the applicant to grant of the relief of anticipatory bail, especially considering that he has been specifically named in the FIR by the injured complainant as one of the assailants and a *prima facie* case is made out against him. Moreover, granting pre-arrest bail to the applicant would undoubtedly impede further investigation.

17. The present application is accordingly dismissed. Pending applications also stand disposed of.

18. 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.

AMIT MAHAJAN, J

NOVEMBER 10, 2025

DU