



\$~4

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

+ **BAIL APPLN. 4607/2024**

MAHESH KUMAR @ DESHU

.....Petitioner

Through: Mr. Vineet Jain, Advocate.

VCRSUS

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP for the State
with Inspector Neeraj Kumar, PS –
Anand Parbat.

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

22.09.2025

%

1. Having remained under incarceration since 12.11.2018 (more than 6 years and 10 months) in a criminal case arising out of FIR No.0290/2018 dated 10.11.2018 inter alia for the alleged offence punishable under Section 302 of IPC, registered at Police Station Anand Parbat, the applicant seeks bail. Per chargesheet the applicant/accused is an under trial for offences punishable under Sections 302 of IPC and 25,27,54 and 59 of Arms Act.

2. Briefly speaking, the case set up by the prosecution/complainant as per FIR is that:-

2.1 On 10.11.2018, while the complainant, Sunny Kumar, who operates a swing ride at Ramleela Ground, was returning home after finishing his daily wage. He saw Mahesh @ Desu (Applicant herein), known to him, attacking



his maternal uncle, Vinod Giri (deceased victim), with a knife. During the attack, the applicant allegedly shouted, “*Today I will not let you live; I will kill you.*”

2.2 It is stated that the applicant and the deceased victim/Vinod Giri, used to consume alcohol together, and the deceased used to give money to the applicant for purchasing alcohol. Approximately 1 to 1.5 months prior to the incident, the deceased had refused to give money to the applicant, upon which the applicant allegedly threatened to kill him.

2.3 After the knife attack, the deceased fell on the road. The complainant attempted to rescue him and sought help. Initially, no one came forward. Subsequently, Arvind, Raja, and Banti reached the spot, took the injured Vinod Giri (deceased) to MGS Hospital by car and contacted the police. Vinod Giri was pronounced dead upon arrival at the hospital.

2.4 Based on the complainant’s statement, the aforesaid FIR was registered and legal action was initiated. The applicant was arrested.

3. In the aforesaid backdrop, I have heard the rival contentions and perused the case file.

4. Learned counsel for the applicant would *inter alia* argue on the lines of grounds pleaded in the application as below:-

4.1 That the applicant has been falsely implicated in the present case, although he has nothing to do with the alleged offence in any manner whatsoever. He has been in continuous judicial custody since 12.11.2018, having undergone more than 6 years and 10 months of incarceration, which amounts to pre-trial punishment and violates the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India.



4.2 That the applicant has been implicated solely at the instance of the complainant, who claims to be an eyewitness. However, a bare perusal of the MLC of the injured/deceased shows that the complainant's name does not figure therein. The alleged incident is said to have occurred in a densely populated area where, by the prosecution's own admission, several persons were present. Yet, not a single independent witness has been cited or examined by the Investigating Agency.

4.3 That apart from the vague and uncorroborated statement of the complainant, there is no material connecting the applicant to the alleged offence. No recovery has been made from the applicant or at his instance, and the purported recovery, if any, is clearly planted and doubtful.

4.4 That the Investigating Agency has already filed the charge sheet naming 24 witnesses, of whom 12 stand examined before the Learned Trial Court. The public and material witnesses have already deposed, and nothing incriminating has emerged against the applicant. The remaining witnesses are merely formal, leaving no likelihood of the applicant tampering with their testimony.

4.5 That significant contradictions exist in the statements of prosecution witnesses, further undermining the prosecution case. The continued incarceration of the applicant serves no purpose and amounts to punitive detention rather than preventive custody.

4.6 That the Hon'ble Supreme Court, in ***Prabhakar Tiwari v. State of U.P., (2020) 11 SCC 648***, has held that the length of incarceration must be considered while deciding bail applications and that criminal antecedents alone cannot justify rejection of bail.



4.7 That the prosecution has failed to establish any motive on the part of the applicant to commit the alleged offence. The case rests solely on weak circumstantial evidence, insufficient even for framing of charge, let alone sustaining conviction.

4.8 That the applicant's prolonged custody has left his two minor daughters and aged widowed mother unattended, as his wife has deserted the family since the date of arrest. There is no male member left to look after them, causing severe hardship to the family.

4.9 That there is no requirement for further custodial interrogation as the investigation is complete and the Applicant has cooperated with the Investigating Agency throughout. There is no apprehension of the Applicant tampering with evidence or absconding, and that the applicant is willing to abide by any conditions imposed by this Court.

5. Opposing the submissions, the learned APP points out to the seriousness of the allegations. It is submitted that there exists a real apprehension that, if released on bail, the applicant may abscond, threaten or intimidate the witnesses, tamper with the evidence or otherwise obstruct the course of justice.

5.1 It is further submitted that the applicant is a habitual offender and a declared Bad Character (BC) of the area, involved in 27 criminal cases. Out of these 27 criminal cases, he has been convicted in 3 cases arising out of FIR No.715/1999 (under sections 302/34 IPC), FIR No.310/2006 and FIR No.500/2016, while the case arising out of FIR No.307/2006 has been compounded.

5.2 Moreover, the family of the victim resides in the same vicinity as the



applicant, and there is a strong likelihood of him indulging in similar criminal activity again.

5.3 It is further submitted that the earlier bail application of the applicant was dismissed by the learned ASJ, Tis Hazari Courts *vide* order dated 10.12.2024. It is therefore urged that the continued custody of the applicant is necessary to ensure a fair trial and to prevent any misuse of liberty, and the instant petition deserves to be dismissed, being devoid of merit.

6. Having heard, *Prima facie*, I am of the view that there may be some substance in certain of the arguments addressed on merits by the learned counsel for the applicant, but the same are a matter of trial. However, at this stage, in light thereof, it appears to be a case for bail for the reasons stated hereinafter.

7. The applicant's implication is solely based on the complainant's uncorroborated statement, with no independent witnesses or supporting material. The MLC does not mention the complainant, no genuine recovery has been made, and key witnesses already examined have not produced any incriminating evidence. Remaining witnesses are only formal. Prolonged incarceration merely on criminal antecedents may not by themselves justify denial of bail.

8. The prosecution has set up a weak and not so credible a motive, and the case rests on weak circumstantial evidence and *prima facie* the culpability is open to doubt based on the material so far.

9. True it is that that PW-2, the alleged eyewitness and nephew of the deceased, has attributed the act of stabbing directly to the applicant. However, the credibility of his presence at the scene is seriously undermined



by the testimony of PW-11. According to the prosecution, PW-11 was present at the spot, attended to the injured, lifted him, and took him to the hospital. In his deposition, PW-11 categorically stated that the nephew was not present at the scene. Even when confronted in cross-examination by the learned APP through suggestions and leading questions, PW-11 stood firm and reiterated that the nephew was absent, and that it was only members of the public and passersby who witnessed the occurrence. This contradiction casts grave doubt on the presence of the so-called eyewitness. The testimony of PW-11 is though already on record; however, some pages are missing. In the course of the hearing, learned counsel for the applicant has tendered a fresh copy of the same, which is taken on record.

10. Equally damaging to the prosecution's version is the unexplained conduct of PW-2, the nephew. If he had truly witnessed his uncle being stabbed, it defies logic that he would abandon him in such a grievously injured state and leave it to strangers to provide assistance and take him to the hospital. His conspicuous absence and failure to attend to the deceased not only remain unexplained but also seriously erode the credibility of the prosecution case.

11. Be that as it may, these observations are being made solely for the purpose of this bail application, and it is for the Trial Court to adjudicate on them at the appropriate stage.

12. The applicant has already remained in custody since 12.11.2018 for more than 6 years and 10 months. This prolonged pre-trial detention, coupled with the slow progress of proceedings, are contributory factors for bail, and further continued incarceration would cause undue hardship to the



applicant's family and serve no useful purpose, especially when the trial is not likely to conclude in the near future, as it violates the fundamental rule, i.e. *bail is the rule and jail an exception*.

13. As regards the apprehension of tampering with evidence, there is nothing on record to suggest that he would interfere with evidence or influence witnesses. There is also no likelihood of the applicant absconding, given that he is a well-settled individual, has deep roots in society, and is the primary caregiver for his widowed mother, as well as two minor daughters who are dependent on him for their well-being, and hence not a flight risk.

14. Considering that the primary purpose of bail is to secure the presence of the accused during trial, coupled with the fact that the applicant poses no risk of absconding, his continued detention at this stage would serve no purpose other than to punish him prior to conviction.

15. As an upshot and taking a wholesome view of the matter, I am of the view that it is a case of bail at this stage.

16. Thus, the applicant is enlarged on bail in the FIR in hand and the proceedings arising therefrom, on his furnishing personal bond with solvent surety of like amount to the satisfaction of the Trial Court/Duty Judge concerned, as the case may be, subject to the other usual conditions to be imposed by the learned Trial Court/Duty Court.

17. 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.

18. It is however, made clear that *qua* other cases pending against him,



the applicant if required to remain in custody in any of those, he shall take recourse to his remedy of bail in accordance with law. Accordingly, the bail application, along with the pending application(s), if any, stands disposed of.

ARUN MONGA, J

SEPTEMBER 22, 2025

kd