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

Date of decision: 28th February, 2025

+ **BAIL APPLN. 4661/2024**

AJAY @ REHTAL

.....Petitioner

Through: **Mr. Chetan and Ms. Deepika,**
Advocates

versus

THE STATE GOVT. OF NCT OF DELHIRespondent

Through: **Ms. Shubhi Gupta, APP for the State**
SI Sohan Lal, PS Tigri

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C.) read with Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking grant of regular bail in FIR No. 311/2022 dated 04.08.2022 registered at Police Station (P.S.) Tigri for offence under Section 393/394/34 of the Indian Penal Code, 1860 (IPC).

2. The charge-sheet in the subject FIR has been filed under Sections 326/392/395/397/34 IPC and Sections 25/27 of the Arms Act, 1959.

Brief Facts

3. It is the case of the prosecution in the status report that the one Avdesh Kumar i.e., the complainant/victim, lodged a complaint and informed the police officials that on the intervening night of 03.08.2022 and 04.08.2022,



when the complainant/victim was going back home on his motorcycle, he was attacked by three (3) boys (hereinafter referred to as 'accused') with a knife. It is stated that after the incident, the complainant/victim was taken to AIIMS Trauma Centre Hospital and subsequently, the subject FIR was filed.

3.1. It is stated that during the investigation, the CCTV footage of the crime scene was checked and the search for the accused persons began on 05.08.2022. It is stated that during the search operation, accused-Ashish¹ was caught and upon his body search, a country-made pistol was recovered from his belly pocket and a knife was found near the back waist. It is stated that after interrogation, co-accused-Ashish was arrested. It is stated that co-accused Roshan² and Rohit³ were also arrested on 05.08.2022 and co-accused Aman⁴ was arrested on 06.08.2022.

3.2. It is stated that charge-sheet against accused persons i.e., Ashish, Aman, Roshan and Rohit was filed.

3.3. It is stated that a supplementary charge-sheet has been filed against the Applicant.

3.4. It is stated that on basis of secret information dated 03.12.2022, Applicant/Ajay⁵ was arrested and during investigation it was revealed that the Applicant was also involved in the crime.

4. It is stated in the charge-sheet that during the investigation, one of the accused person disclosed that accused persons i.e. Ashish, Applicant/Ajay, Aman, Roshan, Rohit, Sohil and two (2) friends of Sohil made a plan to commit robbery; and on the intervening night of 03.08.2022 and 04.08.2022,

¹ Alias Kalu

² Alias Gautam

³ Alias Chota

⁴ Alias Bhatija



the accused persons stopped the complainant/victim; thereafter one of the accused person showed a country made pistol to the complainant/victim, robbed his money and caused grievous injury on the body of the complainant/victim.

Arguments on behalf of the Applicant

5. Learned counsel for the Applicant states that the Applicant was arrested on 03.12.2022 and as on 02.01.2025 as per the Nominal Roll⁶, the Applicant has already undergone a period of 2 Years and 29 days in the judicial custody. He states that no recovery has been affected from the Applicant, which connects the Applicant with the murder of the deceased.

5.1. He states that no role has been assigned to the present Applicant and the Applicant has not done anything in the offence committed.

5.2. He states that the material witness PW-1 i.e., the complainant/victim in the present case has already been examined before the Trial Court and PW-1's testimony dated 13.11.2024 does not supports the case of the prosecution. He stated that PW-1 has not identified the Applicant before the Trial Court.

5.3. He states that as per the testimony of PW-1 only three (3) people were involved in the commission of the crime, whereas, as per prosecution's case allegedly 10-15 people were involved. He states that the alleged other eye witness Mr. Narendra who has been examined as PW-3 has also not supported the case of the prosecution and has failed to identify the Applicant herein. He states that the CCTV footage relied upon by the prosecution also

⁵ Alias Rehtal

⁶ Dated 03.01.2025



does not prove any culpability of the Applicant herein as he is not seen in the said footage. He states that the Applicant has been falsely implicated.

5.4. He states that the investigation has already been completed and charge-sheet has been filed before the Trial Court, the material public witnesses have been examined and thus, there is no requirement for the continuing judicial custody of the Applicant pending the Trial.

5.5. He states that during the last one year, conduct of the Applicant in the judicial custody has been good.

5.6. He states in view of the aforesaid, this Court may be pleased to grant regular bail to the Applicant in the subject FIR.

Arguments on behalf of the State

6. In reply, the learned APP states that the allegations against the Applicant/accused are with respect to Sections 326/392/395/397/34 IPC and Sections 25/27 of the Arms Act, 1959. She states that the Applicant/accused along with other co-accused assaulted the complainant/victim with the intention of robbery and one of the co-accused showed a pistol to the complainant/victim while other co-accused stabbed the complainant/victim.

6.1. She states that the CCTV footage of the alleged incident is available. She however fairly admits that PW-1 and PW-3 have not supported the case of the prosecution and they have turned hostile.

6.2. She states that the crime committed by the Applicant/accused is serious in nature and the Applicant/accused is likely to threaten/cause harm to public witness. Thus, the present bail application be dismissed by this Court.

Analysis and conclusion



7. This Court has heard learned counsel for the parties and perused the record.

8. Before advertng to the analysis of the facts of the present case, it would be apposite to refer to the factors which are to be taken into consideration for granting bail to an accused, similarly placed to the Applicant herein and in the peculiar facts of the present case.

9. The Supreme Court in the case of **Prasanta Kumar Sarkar v. Ashis Chatterjee**⁷, **State of Uttar Pradesh v. Amarmani Tripathi**⁸, and **Deepak Yadav v. State of Uttar Pradesh**⁹ has set out the conditions to be considered by Court while granting bail, which are summarized as under: -

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behavior, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of justice being thwarted by the grant of bail.

10. In the facts of the present case, it is the prosecution's case that during the investigation on basis of the disclosure statement of one of the co-accused, it has been revealed that more than seven (7) persons including the

⁷ (2010) 14 SCC 496.

⁸ (2005) 8 SCC 21.

⁹ (2022) 8 SCC 559.



Applicant/accused were involved in the alleged crime against the complainant/victim. However, a perusal of the statement of PW-1 i.e., the complainant/victim recorded before the Trial Court shows that at the time of the incident, the complainant/victim was attacked by 2-3 boys. Further, PW-1 i.e., the complainant/victim has not identified the Applicant/accused. In fact, even the subject FIR registered on 04.08.2022 records that the complainant/victim had stated that he was attacked by three (3) persons.

11. The issue regarding inconsistency in the case of the prosecution and the testimony of the complainant/victim with respect to the actual number of persons involved will be considered and tested during trial after evaluating the corroborative evidence led by the prosecution. However, the said inconsistency prima facie shows that no specific role has been assigned to the Applicant/accused in commission of the offence of robbery against the complainant/victim. The presence of the Applicant at the scene of crime is also suspicious since the eye witnesses have failed to identify the Applicant/accused. The Applicant has also contended that his presence has not been established from the CCTV footage, as he cannot be seen in the same.

12. At this stage, it cannot be denied that there is no direct evidence against the Applicant of his involvement in the commission of the offence of robbery. The prosecution has mainly relied on the disclosure statement of one of the co-accused, which fact though material whether it is sufficient to prove his participation in alleged robbery in the absence corroborative evidence will be evaluated by the Trial Court. There is no recovery effected at the instance of the Applicant herein.



13. This Court is not expressing any view on the nuanced aspects and merits of the matter as the same is subject matter of an ongoing trial. However, having considered the period of incarceration¹⁰ and the fact that the trial is likely to take some time, as also that the alleged chain of events pleaded by prosecution would have to be proved [by the prosecution] by leading reliable evidence to bring home the guilt of the Applicant, the Court is of the opinion that the Applicant is entitled to bail pending trial.

14. The public witnesses stand examined and the conduct of the Applicant in the jail is reported to be satisfactory. It is settled law that object of the jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. However appropriate conditions ought to be put to assuage the apprehension of the accused tampering with the evidence or evading the trial.

15. In the light of the above, it would not be prudent to keep the Applicant behind the bars for an indefinite period and this Court finds it to be a fit case for grant of regular bail. Consequently, the Applicant is directed to be released on bail on furnishing personal bond in the sum of Rs. 50,000/- with one local 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 the details of the address to the Trial Court and the I.O., at which the Applicant shall be residing. The

¹⁰ Union of India v. K.A. Najeeb (2021) 3 SCC 713.



Applicant shall intimate the Court by way of an affidavit and to the I.O. regarding any change in residential address.

- (iii) Applicant shall appear before the Trial Court as and when the matter is taken up for hearing; and not seek any unnecessary adjournment.
- (iv) Applicant shall join investigation as and when called by the I.O. concerned.
- (v) Applicant shall provide all mobile numbers to the I.O. 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 I.O. concerned.
- (vi) Applicant will report to the concerned S.H.O of the local police station of the area in which the Applicant shall reside on every 1st Monday of every month, at 4:00 PM, and will not be kept waiting for more than an hour. The concerned I.O. will inform the jurisdictional S.H.O about the passing of this order.
- (vii) Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.

16. 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.

17. 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.



18. Accordingly, this Bail Application is allowed and disposed of. Pending applications (if any) are disposed of as infructuous.

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

20. 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 purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

FEBRUARY 28, 2025

MANMEET PRITAM SINGH ARORA, J

Click here to check corrigendum, if any