



2026:DHC:9504



\$~63, 64, 65

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

%

Date of Decision : 27.10.2026# **CNR No.DLHC010773032025**+ **BAIL APPLN. 3871/2025**(63) **AMIT**

.....Petitioner

versus

STATE (NCT OF DELHI)

.....Respondent

CNR No.DLHC010773092025+ **BAIL APPLN. 3877/2025**(64) **DEVENDER @ DEV**

.....Petitioner

versus

STATE (NCT OF DELHI)

.....Respondent

CNR No.DLHC010258012026+ **BAIL APPLN. 2165/2026**(65) **RAKESH ALIAS MINTU**

.....Petitioner

versus

STATE NCT OF DELHI

.....Respondent

Through:

Presence:

Mr. Jitender Sethi, Sr. Adv. and Mr. Javed Alvi, Adv. for petitioner in item no.63.

Mr. Kirti Uppal, Sr. Adv., Mr. Himanhsu Kaushiuk, Mr. Rupender Sharma, Mr. Abhinav Raghav, Ms. Riya Gulati, Mr. Abhay Sharma and Mr. Krishna Singh Jadon, Advs. for petitioner in item no.64.

Mr. Amit Chadha, Sr. Adv., Mr. Himanshu Kaushik, Mr. Dhruv Tomar, Mr. Harjas Singh, Mr. Sanbjay Singh and Ms. Juhi Chauhan, Advs. for petitioner in item no.65.

Mr. Shishir Mathur, Mr. Akshat Aggarwal, Mr. Yajur Sharma and Ms. Muskan Tyagi, Advs. for complainant in item nos.63, 64, 65.

Ms. Priyanka Dalal, APP for State in item nos.63, 64 and 65.

Inspector Kailash Chand, PS Tilak Nagar, New Delhi.



2026:DHC:9504



CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

CrI.M.A.38036/2025 (filed on behalf of complainant / victim seeking necessary directions for vacating interim protection from arrest) in BAIL APPLN. 3871/2025

CrI.M.A.37915/2025 (filed on behalf of complainant / victim seeking necessary direction for vacating interim protection from arrest) in BAIL APPLN. 3877/2025

BAIL APPLN. 3871/2025

BAIL APPLN. 3877/2025

BAIL APPLN. 2165/2026

1. The present applications filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“**BNSS**”) seek anticipatory bail in FIR No.190/2025 dated 30.03.2025, registered at P.S. Tilak Nagar under Sections 140/103(1), 238,3(5),61(2) of the Bharatiya Nyaya Sanhita, 2023 (“**BNS**”) and Sections 25,27,54,59 of Arms Act. Section 209 BNS was added against the accused, Devender @ Dev and Rakesh @ Mintu who had absconded.

2. BAIL APPLN. 3871/2025 has been filed by accused Amit; BAIL APPLN. 3877/2025 has been filed by his brother Devender @ Dev. BAIL APPLN. 2165/2026 has been filed by accused Rakesh @ Mintu.

3. CrI.M.A.38036/2025 in BAIL APPLN. 3871/2025 and CrI. M.A. 37915/2025 in BAIL APPLN. 3877/2025 have been filed by the complainant, who is the brother of the deceased, seeking vacation of the interim protection granted by this Court to accused Amit and Devender on 10.10.2025. Thereafter, interim protection was also granted to the accused



2026:DHC:9504



Rakesh on 03.06.2026.

4. All the matters arise out of the same FIR and are, therefore being disposed of by way of this common order.

5. An updated status report dated 04.10.2026 (handed over on 06.10.2026) has been filed in BAIL APPLN. 3871/2025.

Factual Background

6. It is the case of the prosecution that the deceased Sagar, aged about 28 years, and his brothers worked in hotels run by the applicants Amit and Devender till November, 2024. Thereafter they ventured into their own hotel business.

7. On 22.02.2025, Sagar approached the owner of the premises of Hotel D-2, Meera Bagh, Paschim Vihar, Delhi for taking the hotel on lease. However, the proposed transaction did not fructify. On 27.02.2025, at the instance of Devender, the same premises was taken on a five-year lease in the name of Mohit, brother of Amit and Devender. The premises was run as Hotel D-2. Co-accused Amit @'Sulli', a relative of one of the applicants, was working there as a senior manager.

8. It is stated that at about 11.40 PM on 26.03.2025, Sagar reached the adjoining Bro-Stay Hotel on his motorcycle, where co-accused Ankit and Sahil met him, and he was thereafter taken by them and others into Hotel D-2. Sagar was not seen alive again post this incident.

9. It is the case of the prosecution that at about 01.15 AM on 27.03.2025, Sahil wearing Sagar's clothes and a helmet rode away on Sagar's motorcycle. At about 03.00 AM the night- shift manager, Ashwani, who had earlier been sent upstairs by co-accused Ankit, found the cameras



2026:DHC:9504



and the computer system of the hotel switched off. It is further the case of prosecution that movement of a Santro car was also found in the CCTV footage of nearby hotels. The same car crossed Jevana Toll Plaza at about 05.17 AM. At about 07.15 AM, Sagar's body bearing bullet injuries was found burnt in a sugarcane field near Kandla, District Shamli, U.P. The Santro car was also found burnt.

10. The DVR of the hotel has not yet been found nor has the pistol / weapon been recovered.

11. Ankit, Sahil and Manjeet @ Monu, who were arrested on 08.04.2025 were charge-sheeted by way of the main charge-sheet.

12. The accused Amit @ Sulli absconded and was declared a proclaimed offender. However, he was arrested on 25.10.2025 and has been charge-sheeted by way of a supplementary chargesheet along with Ankush @ Heddy; the latter was chargesheeted only under Section 238(a) BNS.

13. Both charge-sheets record that the investigation against the present applicants continues. In the status report dated 04.10.2026 (handed over during the course of hearing on 06.10.2026) it has been recorded that a further supplementary charge-sheet against all the present accused has been prepared and has been sent to the prosecution branch. It has been further stated that 'the same shall be filed shortly'.

Role attributed to each applicant

14. For the purpose of the present petitions, this Court is not taking into account the disclosure statements of co-accused in line with the dicta laid down by the Supreme Court in *P. Krishna Mohan Reddy v. State of*



Andhra Pradesh, 2025 SCC OnLine SC 1157¹. However, it is the case of the prosecution that there is ample material against the present accused persons based on statements made by the witnesses and also from documentary and electronic records.

15. It is the case of the prosecution that accused Amit and Devender are the principal conspirators and that they had a motive to kill Sagar in view of the business rivalry between them. It is further the case of the prosecution that the said accused persons had control over the hotel where the deceased Sagar was killed. Reliance is also placed on Call Data Records (CDRs) which reveal the manner in which the accused persons and the present petitioners were in touch with each other.

16. Attention is also drawn to the fact that Sagar's brothers (Shantanu and Abhishek) and his cousin (Vipin) have stated in their statements under Section 180 BNSS that on 30.11.2024, Amit and Devender told Sagar that they would kill him or get him shot if he works separately and that in January, 2025 they again threatened Sagar to vacate his hotel or else he would be shot. It is further pointed out that Devender took the premises of hotel D-2 on lease just five days after Sagar made an attempt to do so.

¹ 46. Both *Indresh Kumar* (supra) and *Salim Khan* (supra) have held that in deciding the question of grant of bail, it is the statements of witness under Section 161 of the Cr. P.C. that has to be looked into. Nowhere has this Court held that even the police statements of the accused person under Section 161 of the Cr. P.C. must also be looked into at the stage of grant of anticipatory or regular bail.

47. This is because a statement of an accused under Section 161 of the Cr. P.C. stands on a different footing from a police statement of any ordinary witness. Statements of an accused person under Section 161 of the Cr. P.C. by virtue of ordinarily being in the form of either an admission or a confession cannot be looked into *qua* another co-accused, as to say otherwise would be to ignore the substantive provisions of Section(s) 17, 21, 25 and 26 of the Evidence Act and the well settled canons of law of evidence. However, the aforesaid does not apply, where the statement of an accused under Section 161 of the Cr. P.C. is exculpatory in nature, which we shall discuss later.



2026:DHC:9504



17. Specific attention is also drawn to the CDRs which reveal that accused Devender (petitioner in BAIL APPLN. 3877/2025) spoke to accused Sulli at 02.45 AM on 27.03.2025. Accused Amit is alleged to be a co-conspirator who ran Hotel D-2 and who was allegedly at the hotel on the evening of the murder with the very co-accused who took Sagar inside. The threats to kill are specifically attributed to the said accused as well.

18. The accused Rakesh is alleged to have assisted the co-accused in disposing of Sagar's body by providing a clear passage to the Santro carrying the body, so as to help it cross the Delhi border and avoid police checking, while travelling in his own car, i.e. a Kia Seltos. Co-accused Ankush @ Heddy is stated to have been travelling with Rakesh in the said car.

19. The concerned car is registered in Rakesh's own name, and its location was found at the Jevana Toll Plaza crossing at 05.14 AM on 27.03.2025, i.e. three minutes ahead of the Santro, which crossed the toll at 05.17 AM. As many as 15 calls are stated to have been exchanged between the mobile phone of Rakesh and the number used by co-accused Ankit between 04.14 AM and 06.14 AM on 27.03.2025, and the location of Rakesh's mobile phone was found on the route to Shamli at the relevant time.

20. Importantly, the prosecution emphasized the conduct of the accused persons. Both Amit and Devender (accused in BAIL APPLN. 3871/2025 and BAIL APPLN. 3877/2025, respectively) left their houses on 30.03.2025 and switched off their mobiles, and remained untraceable for a substantial period. Raids were thereafter conducted at their village and at their hotels



and a Look Out Circular (LOC) was also opened. Learned Magistrate vide order dated 16.04.2025 issued non-bailable warrants against both on the ground that the said accused persons were evading joining the investigation.

21. On 09.05.2025, this Court dismissed CRL.M.C. 2844/2025, the petition which laid challenge to their warrants, noticing that the accused persons were evading arrest and not joining investigation and were not traceable either at their homes or at the 15 hotels which they were allegedly running in Delhi. Process under Section 84 BNSS followed.

22. Thereafter, accused Devender and Amit managed to obtain interim protection from the learned ASJ vide orders dated 28.06.2025 and 25.07.2025 respectively, whereupon they are stated to have joined the investigation. It is stated that the issuance of process under Section 84 BNSS was thereafter stayed. Consequently, the said accused were never declared proclaimed offenders. However, *qua* accused Rakesh, process under Section 84 BNSS was issued and executed and he was declared a proclaimed offender on 28.02.2026. Even so, vide order dated 03.06.2026, passed by this Court, interim protection was granted to Rakesh on the same lines as Amit and Devender.

Submissions

23. The primary submission of learned counsel for the applicants is that the accused have joined the investigation and that the investigation stands completed. A supplementary charge-sheet against them has also been prepared and is ready to be filed as per the prosecution itself. It is also pointed out that the petitioners have joined the investigation whenever called



2026:DHC:9504



upon to do so pursuant to interim protection being granted by this Court and that they have not misused the interim protection.

24. It is further submitted that the phones of the petitioners have already been seized and nothing remains to be recovered from them. Further, the electronic devices / mobile phones of Amit and Devender have already been subject to examination by the FSL.

25. It is further the case of the petitioners that it is implicit from the status report filed on behalf of the prosecution that custodial interrogation of accused Amit (applicant in BAIL APPLN. 3871/2025) is not required. It is further submitted on behalf of accused Amit that even as per the prosecution itself he is not the principal conspirator. It is further pointed out that even as per accused Sulli, it is Devender (applicant in BAIL APPLN. 3877/2025), who is the principal conspirator.

26. Learned counsel for the applicant in CrI.M.A. 38036/2025 strongly controverts the aforesaid submission. He submits that Amit was a co-conspirator who ran Hotel D-2 and who was at the hotel on the evening of the murder. It is further pointed out that in the statement of night-manager Ashwini, under Section 180 and 183 BNSS, the latter disclosed that on the evening of 26.03.2025, Amit (owner) was at the hotel with Sulli, Ankit, Sahil and Monu @ Bacardi, and had dinner with Sulli at the reception before leaving. This is stated to be corroborated by the statements of Bhupender (day manager) and Vinod (housekeeping staff) under Section 180 BNSS.

27. It is also emphasized that accused Rakesh has been declared a proclaimed offender and has criminal antecedents.

28. It is further submitted that in the present petition there has been a



blatant concealment on the part of the accused Rakesh as regards the coercive process issued against him.

Reasoning and Conclusion

29. The legal position is well settled that anticipatory bail is an extraordinary legal remedy. The Supreme Court has held in **Jai Prakash Singh v. State of Bihar**, (2012) 4 SCC 379 that anticipatory bail, being an extraordinary privilege should be granted in exceptional cases. The relevant observations are as under:

“13. There is no substantial difference between Sections 438 and 439 CrPC so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.

19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty.”

30. In **Srikant Upadhyay v. State of Bihar**, (2024) 12 SCC 382, the Supreme Court reiterated that the power to grant anticipatory bail is an extraordinary power, and that a person against whom a warrant of arrest or proclamation has been issued is ordinarily not entitled to invoke the same. It was observed as under:

“30. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the court



depending on the facts and circumstances of each case. While called upon to exercise the said power, the court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the court shall not pass an interim protection pending consideration of such application as the section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously defying orders and keeps absconding is not entitled to such grant.”

31. On the specific question regarding whether absence of a need for custodial interrogation or the completion of investigation entitles an accused to anticipatory bail, the position has been settled by the Supreme Court in the following decisions:

(i) ***P. Chidambaram v. Directorate of Enforcement***, (2019) 9 SCC 24:

“74. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In State v. Anil Sharma [State v. Anil Sharma, (1997) 7 SCC 187 : 1997 SCC (Cri) 1039] , the Supreme Court held as under: (SCC p. 189, para 6)

“6. We find force in the submission of CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well-ensconced with a favourable order under Section 438 of the Code. In a case like this, effective interrogation of a suspected person is of tremendous advantage in disinterring many useful



informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.””

(ii) **Sumitha Pradeep vs. Arun Kumar C.K**, (2022) 17 SCC 391:

“12. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like Pocco and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be



one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

32. It is in the aforesaid context that this Court is required to examine the plea of the petitioners that investigation is complete and therefore no purpose would be served by the custodial interrogation of the petitioners. In this regard the following aspects are noticed by this Court:

- (i) Both the charge-sheets that have been so far filed record that the investigation against the present petitioners continues.
- (ii) The draft of the supplementary charge-sheet which has been prepared and lying with the prosecution branch cannot be equated with the report forwarded to the Magistrate under Section 193(3) BNSS. Even after the same is filed, the police retain the power of further investigation under Section 193 (9) BNSS. The investigation into the role of the applicants and into the missing weapon and the DVR is by no means foreclosed given the factual conspectus of the case.
- (iii) The investigation clearly has a specific unfinished object viz. to recover the weapon with which the deceased was shot and to recover the DVR of the concerned hotel which has conspicuously gone missing. Both ought to be within the knowledge of those who controlled the hotel on the night of the alleged incident, which includes the petitioners Amit and Devender.
- (iv) The status report dated 04.10.2026 (handed over during the course of proceedings on 06.10.2026) record that Amit and Devender were called and interrogated, while protective orders were in



2026:DHC:9504



operation, regarding their role and the recovery of the weapon of offence and the DVR of Hotel D-2; they denied their role and stated that they were not aware of the weapon of offence or the DVR, neither of which could be recovered. Qua Rakesh, the aforesaid status report records that he is not disclosing the true facts, not cooperating with the investigation and that all the data on his mobile phone was found to have already been deleted when it was seized. This is precisely the situation in which questioning of a person who is “well-ensconced with a favourable order” is unproductive, as noticed in P. Chidambaram (supra).

(v) The seizure of the mobile phones of the applicants does not exhaust the matter. As acknowledged in the written submissions of Devender himself, one of his two phones could not be accessed by the FSL, and the data on the mobile phone of Rakesh had already been deleted before it was seized. That the electronic trail is wiped or inaccessible is a reason against, and not for, the relief sought.

33. The considerations governing grant of anticipatory bail are not confined to custodial interrogation. The gravity of the offence, the role attributed, the conduct of the applicants towards the process of law, all bear on the exercise of discretion. Each of these weighs against the applicants.

34. The offence, as alleged, is a planned murder, after which the body of the deceased was transported across the State border to District Shamli, U.P., where it was set on fire with a view to destroying the evidence. As regards the conduct of the applicants, non-bailable warrants were issued against Amit and Devender after they left their houses and switched off their



2026:DHC:9504



mobile phones on 30.03.2025, and proclamation proceedings under Section 84 BNSS were initiated against them before they obtained interim protection. Rakesh evaded the non-bailable warrant issued against him and was declared a proclaimed offender on 28.02.2026. This itself a ground to decline the discretionary relief of anticipatory bail.

35. Material witnesses, viz. Ashwani (night-shift manager), Bhupender (day manager) and Vinod (housekeeping staff), were working at Hotel D-2, which was being run by the applicants Amit and Devender. The risk of influence on such witnesses is real and does not end with the filing of the charge-sheet. The applicants joined the investigation only after obtaining interim protection having remained untraceable for a considerable period of time.

36. Joining of the investigation does not efface the earlier evasion. Further, denial of extraordinary pre-arrest protection cannot possibly affect the applicants' right to seek regular bail after surrender. Any such application would necessarily be considered on its own merits.

37. An accused who has evaded the process of law cannot, by doing so long enough for the investigation to near its end, convert that evasion into a ground for pre-arrest bail.

38. As such, this Court is not inclined to extend the interim protection *qua* the petitioners nor does the Court find any merit in the present petitions.

39. The submission made on behalf of Amit that he is not the principal conspirator does not advance his case. The threats to kill Sagar are attributed to him, along with Devender, by three witnesses. The day manager, Bhupender, describes him as the owner through whom he received his salary



2026:DHC:9504



and who placed him in charge of Hotel D-2. Ashwani, corroborated by Bhupender and Vinod, places him at the hotel on the evening of 26.03.2025 in the company of Sulli, Ankit, Sahil and Manjeet @ Monu, shortly before Sagar was taken inside. The reliance placed on the statement of Sulli, to the effect that Devender is the principal conspirator, is reliance on the disclosure of a co-accused, and does not diminish the material/ evidence against Amit. The observation of the learned ASJ in the order dated 25.07.2025 that the material against Amit was “not substantial” was made at the stage of grant of interim protection; the same Court dismissed his application on 27.09.2025 on a fuller record.

40. The plea that role attributed to Rakesh is a limited one under Section 238 BNS does not assist him either. The disposal of the body was the culminating step of a planned murder, and the conduct of a person who is alleged to have escorted it across the State border bears directly on the relief sought by him in these proceedings.

41. As noticed, the material against these applicants is substantial and the prosecution has painstakingly emphasised the same.

42. Learned APP for the State has also emphasized that the call details between the applicants and the co-accused persons, subsequent conduct of the applicants in becoming untraceable and evading the due process, are also telling in nature.

43. No exceptional case for grant of anticipatory bail is made out considering the following facts and circumstances :

- (i) the planned nature of the murder;
- (ii) the independent material against each applicant;



2026:DHC:9504



- (iii) the evasion of non bailable warrants;
- (iv) the non-recovery of the weapon and the DVR;
- (v) the prime witnesses are the applicants' own employees.

44. Accordingly, the present petitions are dismissed. Crl.M.A. 38036/2025 in BAIL APPLN. 3871/2025 and Crl.M.A. 37915/2025 in BAIL APPLN. 3877/2025 are allowed. The interim protection granted to the petitioners vide orders dated 10.10.2025 and 03.06.2026 stands vacated. All other pending applications also stand disposed of.

45. The applicants shall surrender before the Trial Court within a period of one week from today. In default, the concerned Investigating Officer / Trial Court shall proceed in accordance with law.

46. After surrender, the applicants shall be at liberty to apply for regular bail which shall be considered on its own merits uninfluenced by the observations made herein.

47. It is made clear that the observations herein are *prima facie* and confined to decision of these applications. The same shall not be construed as an unqualified and final expression of opinion of this Court on merits of the case.

48. Let a copy of this order be sent to the concerned Trial Court.

49. Order ***dasti***.

SACHIN DATTA, J

OCTOBER 27, 2026/cl