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

Date of decision: 19.02.2025

+ BAIL APPLN. 145/2025

ASHISH @ KALU

.....Petitioner

Through: Mr. Sandeep Sharma, Sr. Advocate
with Mr. Sarthak Mannan, Ms.
Konika Mitra, Mr. Ashok K. Verma,
Mr. Deven Varun and Mr. T. S.
Varun, Advocates

versus

THE STATE GOVT. OF NCT OF DELHIRespondent

Through: Mr. Laksh Khanna, APP for the State
ASI Yoginder Parsad PS Mayur
Vihar-I

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition has been filed seeking release of the Applicant on regular bail till the final disposal of the case vide S.C. No. 1216/2024 in FIR No.320/2024, under Section 109(1)/3(5) of Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') and Section 25/27 of the Arms Act, 1959 at Police Station (P.S) Mayur Vihar Phase-I, Delhi.

1.1. The case of the prosecution as borne out from the status report is that the case was registered at the behest of complainant namely Asif. It is stated on 30.09.2024 around 9:00 P.M when the complainant was working at his stall located at 20 Block Trilokpuri Vegetable Market, the Applicant/Ashish



alias Kalu came to him and started drinking alcohol and when he stopped the complainant from doing so, he started, abusing him and further threatened him that he would teach him a lesson. It is stated thereafter on 01.10.2024 i.e., date of incident at about 8:15 PM and the complainant was standing in front of his house, the Applicant along with his two friends (both boys) came in front of house of complainant. It is stated that the two friends had a cloth tied on their faces. It is stated that one of the boys had a knife in his hand. It is stated that Applicant/Ashish came at the spot and he had a pistol (*katta*) in his hand and he fired at the complainant with the intention of killing him but the bullet did not hit him. It is stated that then one of the friends of Applicant/Ashish caught the complainant and the other boy who had a knife in his hand stabbed the complainant in his right leg. It is stated thereafter all the three accused fled the scene as the crowd had gathered.

1.2. It is states that the complainant was taken to the LBS HOSPITAL and his medical examination was conducted. Further the bullet that was fired on the complainant by the Applicant/Ashish was found in the pant that he was wearing.

1.3. It is states that the Applicant/Ashish was arrested on 03.10.2024 and in his disclosure the name of the two friends/associates was disclosed i.e. Sanjay and Arun. It was further revealed by the Applicant that co-accused Arun had used a knife in order to attack the complainant on the date of incident.

1.4. It is stated that the co-accused Sanjay was arrested on 04.12.2024 and two-day police custody was taken. Thereafter, during the police custody the knife used during the attack as well was recovered. It is stated that the third co-accused i.e. Arun was arrested on 05.12.2024 and during his arrest, a



country made firearm/pistol used in the commission of the aforesaid offence was recovered.

Arguments on behalf of the Applicant

2. Learned counsel for the Applicant states that Applicant has been falsely implicated and has no criminal antecedents.

2.1. He states that the allegations in the FIR even if assumed to be correct it would not amount to attempt to murder under Section 307 of Indian Penal Code ('IPC').

2.2. He states that Applicant was arrested on 03.10.2024 and has already undergone custody of 139 days. He states that the investigation qua the Applicant is complete and the charge-sheet stands filed.

2.3. He states that supplementary charge-sheet against the co-accused Sanjay and Arun though stated to have been filed, however, has not been supplied to the said co accused.

2.4. He states that the matter is still at the stage of framing of charge and is likely to take some time.

2.5. He states that admittedly the Applicant herein did not cause injury to the complainant.

2.6. He states that the Applicant undertakes to abide by any restrictions imposed by this Court and infact since the evidence of complainant is yet to be recorded, he undertakes that he will neither reside nor visit the area in the vicinity of 5 km of the complainant's residence. He states that he will reside at H.No. E-316, Nand Nagri, North East Delhi.

Arguments on behalf of the Prosecution

2.7. Learned APP states that as per the prosecution the co-accused Sanjay held back the complainant and the co-accused Arun was carrying a pistol



which was snatched by the Applicant herein and in fact a shot was fired at the complainant though fortunately the shot was missed him.

3. He states that since the shot was missed at this stage, therefore, it is difficult to state that where was the shot aimed.

3.1. He states that, however, it was the co-accused Arun who had a knife in his hand and he stabbed the complainant on his right leg, which led to an injury which has been opined in the MLC as simple.

3.2. He states that the knife has been recovered from co accused Sanjay and the pistol has been recovered from co-accused Arun.

3.3. He confirms that no recovery has been affected from the Applicant. He states, however, a shot was fired by the Appellant, therefore, a charge-sheet has been rightly filed before the Trial Court under Section 307 IPC.

4. This Court has considered the submission of the parties.

5. The Nominal Roll of the Applicant shows that he has no criminal priors. His jail conduct has been recorded as satisfactory. He has been incarcerated for 04 months 07 days as on 10.02.2025.

6. The investigation in the matter is complete and the matter is at the stage of filing of the supplementary charge-sheet qua the co-accused, the charges are yet to be framed and the Trial shall take some time. The Applicant is a resident of Delhi and is stated to have family at Delhi and therefore be available to appear at trial.

7. As held by Supreme Court in **Sanjay Chandra v. CBI, (2012) 1 SCC 40** the object of bail is neither punitive nor preventative. The object of bail is to secure the appearance of accused person at his trial. Further it is also a settled law now that the nature of offences and charges involved being grave and serious cannot be the only basis for rejection of bail and the Court has to



take a holistic view of the facts and circumstances. [Re.: **Prabhakar Tiwari vs. State of Uttar Pradesh, (2020) 11 SCC 648**]

8. Thus, taking into account the overall facts and without commenting on the merits of the case, this Court is of the opinion that the Applicant ought to be enlarged on bail. The Applicant is, therefore, admitted to regular bail in FIR No.320/2024 registered at P.S. Mayur Vihar, Delhi and is directed to be released 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 learned Trial Court and subject to the following conditions:

- (i) Applicant will not leave the country without prior permission of the Trial Court.
- (ii) Applicant shall appear before the Trial Court as and when the matter is taken up for hearing.
- (iii) 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.
- (iv) 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 or any member of the complainant's as well as deceased family except her own husband Deepak Hooda and her minor son.
- (v) The Applicant shall not threaten the witnesses or tamper with the evidence of the case.
- (vi) The Applicant shall physically report at the Police Station in Mayur Vihar, Delhi once in a month, i.e., on the 1st and 3rd Monday



of every month at 04:00 PM and the concerned officer is directed to release her by 05:00 PM after recording her presence and completion of all formalities.

(vii) Applicant shall reside at H. No. E-316, Nand Nagri, North East Delhi. The Applicant shall intimate the said Court by way of an affidavit and to the IO regarding any change in residential address.

(viii) The Applicant shall not reside within 5 Km radius of the residence of the complainant.

9. 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.

10. 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.

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

MANMEET PRITAM SINGH ARORA, J
FEBRUARY 19, 2025/hp/ms

Click here to check corrigendum, if any