



2025:DHC:1261



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

Date of decision: 25.02.2025

+ BAIL APPLN. 302/2025

D. ARJUN @ DEVENDER ARJUNPetitioner

Through: Mr. Jitendra Sethi, Sr. Adv., Mr. Hemant Gulati and Mr. Shobhit Dimri, Advocates

versus

STATE, NCT OF DELHIRespondent

Through: Mr. Laksh Khanna, APP for the State Insp. Balam, P.S. Subhash Place

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present application is filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking regular bail in FIR No. 609/2023 registered under Sections 302/201/120-B/34 of the Indian Penal Code, 1860 (IPC) at Police Station (P.S.) Subhash Place.

Brief Facts

2. As per the case of the prosecution as set out in the Status Report, on 20.08.2023 a PCR call was received at the P.S. Subhash Palace (lodged as DD No. 77A), that one person has been injured by a knife by another person at PP towers, Netaji Subhash Place (NSP) and he has been taken to hospital.



2.1. It is stated that HC Manoj reached the spot of crime i.e., Café Dens Don Club, NSP. It is stated that on enquiry it was found that a lot of blood was scattered near the parking and on the stairs leading to the Club. It is stated that further blood was also found on the floor of the kitchen of the Club.

2.2. It is stated that it was found that the victim was taken to the BSA hospital by his friends, who was admitted there vide MLC No. 11092 dated 20.08.2023 and the doctor informed that the victim is not fit for statement. It is stated that later the person was declared dead by the doctor.

2.3. It is stated that statement of eye-witness/Nishant was recorded wherein he stated that on 20.08.2023 he received a call from Gaurav¹ that they have to go to NSP Club and thereafter, they went on motorcycle of Gaurav and they also took another friend namely Mannu on the said motorcycle. It is stated that they reached at the NSP Club and they went towards Café Dens Don at 3:30 PM. It is stated that Mannu brought a bottle of liquor which they had with them while they were going towards the Club.

2.4. It is stated that Gaurav had quarrel with 2-3 boys (i.e. Ashish and Vijay). It is stated that eye-witness/Nishant pacified the quarrel. It is stated that Gaurav made a video call to Nishant's cousin Vinay and Ankit (brother of Gaurav) and informed about the incident on which Ankit stated that they will reach the spot.

2.5. It is stated that at 7:30 PM, Gaurav came on the ground floor of the Club to receive Vinay, Ankit and Suuny and after 15 minutes Nishant also went there to check upon Gaurav and saw the boys (Ashish and Vijay) who had earlier quarreled were standing on the stairs. It is stated that then Vinay,



Ankit, Sunny and Savi came towards the stairs and Vinay had a scuffle with those boys. It is stated that Nishant tried to calm the situation and took away Vinay from there. It is stated that however then those boys abused Vinay and attacked him with a knife on his leg and after some time Vinay fell down and became unconscious. It is stated that Vinay was thereafter taken to the BSA hospital.

2.6. It is stated that thereafter FIR No. 609/2023 was filed under Sections 302/201/120B/34 of IPC was registered at PS Subhash Place.

2.7. It is stated that during course of investigation, the accused persons namely (i) Aftab²; (ii) Vijay (brother of the Applicant); (iii) Ashish³; (iv) Sachin; (v) Sandeep and (vi) D. Arjun the Applicant herein were identified as the persons present at the stairs. It is stated that all of them were arrested and sent to Judicial Custody.

2.8. It is stated that TIP proceedings of the Applicant were carried out and he has been identified by the Complainant/Nishant and other eye-witnesses Ankit and Sunny.

2.9. It is stated that charge-sheet has been filed and the next date of hearing before the Trial Court is 22.04.2025 for prosecution evidence.

Argument of Applicant

3. Learned counsel for the Applicant states that no offence can be attributed to the Applicant herein for causing injuries to the deceased because there is no evidence to suggest that there was any overt act on the part of the Applicant.

¹ Gaurav alias Kaku.

² Aftab alias Ashraf Ali

³ Ashish alias Sibbu



3.1. He states that as per prosecution injuries were caused by the other co-accused Aftab and Shadab on non-vital part of the body of the deceased/Vinay. He states that no injuries were caused by the Applicant herein.

3.2. He states that the prosecution version in the status report shows that the quarrel had been resolved; however, deceased Vinay and the others approached co-accused Ashish and Vijay on the stairs with the intent to pick a fight. He states that the Applicant herein happened to be standing on the stairs when the fight broke out; however, the Applicant had no role in the same.

3.3. He states that investigation in the present matter is complete and chargesheet has been filed.

3.4. He states that the Applicant is the sole bread earner of his family comprising of his wife and minor children. He states Applicant works as a graphic assistant and is 30 years old.

3.5. He states that the Applicant has been granted interim bail by the Trial Court and the Applicant has never abused the said concession.

3.6. He states father of the Applicant gave surety for interim bail before the Trial Court and the father is willing to stand surety for the Applicant on grant bail by this Court.

Arguments of State

4. In reply, Mr. Khanna, learned APP states that charge-sheet has been filed against the Applicant herein and public witnesses are yet to be examined.



4.1. He states that since the public witnesses are yet to be examined therefore, there is apprehension that if the Applicant is enlarged on bail he might influence/threaten the witnesses and complainant.

4.2. He states that the offence in the present matter is serious and the Applicant has only been in jail for 10 months (approx.).

4.3. He states that the Applicant did not co-operate in the investigation and refused TIP, compelling the police seek a judicial TIP.

Analysis and conclusion

5. This Court has heard the learned counsels for the parties and perused the record.

6. Before advertng to 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. A co-ordinate bench of this Court in the case of **Ashok Sagar v. State**⁴ has further summarized the principle for granting bail in matter which involve serious/heinous offences. The relevant paragraph of the said judgment reads as under: -

“35. Authorities on bail, and the jurisprudence relating thereto, are in overabundance, and it is hardly necessary to multiply references thereto. The principles governing exercise of judicial discretion in such cases, appear, however, to be well-settled. The following principles may immediately be discerned, from the aforementioned authorities:

(i) Incarceration, during trial, is not punitive, but to secure the presence of the accused. ...

(ii) While examining the issue, courts are **not to presume** that the accused would flee justice, were he to be released, and search for evidence indicating to the contrary. Logistically, every accused, who is released during trial, has the potentiality of fleeing. Were

⁴ 2018 SCC OnLine Del 9548.



this potentiality to be allowed to influence the mind of the court, no accused would be entitled to bail.

(iii) While examining applications for bail, the court has to be duly sensitized to the mandate of Article 21 of the Constitution of India, which guarantees freedom to every citizen of India save and except by procedure prescribed by law. Curtailment of personal liberty during trial, has, therefore, to be limited to those cases **in which it is absolutely essential**, and in which, in the absence of such curtailment, the process of trial is likely to be hampered by the accused, whether by vanishing or by unduly influencing the trial process, by intimidating the witnesses, or otherwise. If no such apprehension can legitimately be expressed, there can be no reasonable ground to keep the accused incarcerated, as incarceration would then assume a punitive avatar.

(iv) **Given this legal position, the nature of the offence committed necessarily has a limited role to play, while examining the merits of an application for bail.** This is for a simple reason that the application being examined by the court is not for suspension of sentence, but for release during trial. If the court were to allow itself to be unduly influenced by the nature of the charges against the accused, and the seriousness of the crime alleged to have been committed by him, it would result in obliterating the distinction between grant of bail and suspension of sentence. Inasmuch as the applicant, in a bail application, has yet to be found guilty of the offence with which he is charged, the significance of the nature of the offence stand substantially reduced, while examining the application for bail. Courts have to be alive to the legal position - underscored in the very first paragraph of Dataram Singh (supra) - that every accused is presumed to be innocent until proved guilty.

.....”

(Emphasis supplied)



7. The Supreme Court in the case of **Sanjay Chandra v. CBI**⁵ has held that the grant or refusal of bail lies within the discretion of the Court and the object of bail is to secure the appearance of the accused person at trial. The relevant paragraphs of the said judgment are reproduced hereinbelow: -

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been

⁵ (2012) 1 SCC 40



convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

...

25. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual.

...

27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.

...

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

...



42. When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is whether the same is possible in the present case.”

(Emphasis supplied)

8. The prosecution in the charge-sheet has recorded that Applicant, Aftab and Saddab were seen standing on the stairs in the CCTV footage. The accused persons who inflicted the injury on the deceased through stabbing have been identified and named in the charge-sheet as Aftab and Saddab. The role of stabbing the deceased is not ascribed to the Applicant.

9. As per the status report, the initial fight broke out between Gaurav and accused Ashish and Vijay, which was resolved by the complainant Nishant. However, after learning about the fight deceased Vinay, Ankit and Sunny reached the club and along with Gaurav approached accused Ashish and Vijay who were standing at the stairs, which led to a scuffle resulting in the death of the deceased Vinay. At this stage, except for the fact that the Applicant was present at the stairs when the fight occurred, no other evidence against him is available. In these facts, admittedly, the role of the Applicant/D. Arjun who has been charged by invoking Sections 120B and 34 IPC would require examination at trial.

10. The charge-sheet in the matter has been filed and the Applicant has been in jail since more than 9 months. As per the Nominal Roll the Applicant has been granted interim bail twice by the Trial Court and has never misused the said liberty granted. Further the conduct of the Applicant has been found to be satisfactory in jail as per the said Nominal Roll.



11. The submission of the learned APP with respect to pendency of the examination of public witness, the said fact by itself (without anything more) would not be a ground for denying bail. Moreover, appropriate conditions of bail restraining the Applicant from approaching the witnesses can be imposed by this order.

12. In view of the foregoing, and the fact that the chargesheet has been filed and the purpose of having Applicant in custody has been fulfilled, it would not be prudent to keep the Applicant behind bars, this Court deems it to be a suitable case for the Applicant's release on bail. As a result, the Applicant is directed to be released on bail upon providing a personal bond in the sum of Rs. 30,000/- with one sound surety of the like amount subject to the satisfaction of the Trial Court, and further subject to the following conditions:

- (i) Applicant will not leave the country without prior permission of the Court.
- (ii) Applicant shall provide permanent address to the Trial Court. The Applicant shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- (iii) Applicant shall appear before the Court as and when the matter is taken up for hearing.
- (iv) Applicant shall join investigation as and when called by the IO concerned.
- (v) 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.



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- (vi) Applicant will report to the concerned IO every 2nd and 4th Friday of every month, at 4:00 PM, and will not be kept waiting for more than an hour.
- (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.
13. 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.
14. 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.
15. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
16. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.
17. 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 the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.
18. A copy of the order be sent to the Jail Superintendent for information and necessary compliance.

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 25, 2025/sk/hp



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Click here to check corrigendum, if any