



2026:DHC:4708



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

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BAIL APPLN. 3340/2025

NAZIM

....Applicant

Through: Mr. N. Hariharan, Sr. Advocate with Mr. Amaan Shreyas, Mr. Aman Akhtar, Mr. Akshay Kumar, Mr. Vasundhara Raj Tyagi, Mr. Arjan Singh Mandla and Mr. Manish Kumar, Advocates.

Versus

STATE NCT OF DELHI

....Respondent

Through: Ms. Meenakshi Dahiya, APP for the State with Ms. Vanshika Singh and Ms. Apoorva Khosla, Advs. Insp. B, Dutt Vishnoi and Insp. Rajiv Kumar, PS.: Ghazipur.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. By virtue of the present bail application under *Section 483* of the Bharatiya Nagarik Suraksha Sanhita, 2023¹, the applicant seeks grant of regular bail in proceedings arising out of FIR No.121/2025 dated 10.03.2025 registered at PS.: Ghazipur, Delhi under *Sections 103(1)/3(5)* of the Bharatiya Nyaya Sanhita, 2023².

¹ Hereinafter "*BNSS*"

² Hereinafter "*BNS*"



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2. As per FIR, on 10.03.2025 at about 01:00 AM, the complainant received a telephonic call from Rohit³ (*since deceased*), who requested him to bring his scooter to help collect diesel. After collecting diesel in a 40-litre oil can, while the complainant and deceased were returning on the wrong side of the road near Phool Mandi cut on NH-24, a blue car carrying 3 to 4 persons approached them from behind. The complainant identified Yamin as the driver of the said vehicle, along with Taleem and Talib, and stated that he can identify another occupant upon seeing him. The said car overtook them, and when Rohit stopped the scooter, Yamin fired a gunshot at the deceased, which struck him on his left shoulder. Another occupant of the car fired a second gunshot at the oil can being carried, resulting in diesel spilling on the road. Whereafter, the attackers fled towards Uttar Pradesh. Despite sustaining injuries, the deceased remained conscious and named Nazim, Yamin, Kapil, Talib and the present applicant as persons involved in the incident. The complainant, with the assistance of a passer-by, took the deceased to LBS Hospital, where he succumbed to his injuries during treatment.

3. As per the post-mortem, the cause of death was opined as “*Haemorrhagic shock consequent upon gunshot injuries to lungs and heart produce by rifled firearm projectile and sufficient to cause death in ordinary course of nature. All the injuries are fresh in duration and ante-mortem in nature*”. During the course of investigation, the Police inspected the place of occurrence and seized relevant exhibits, including blood samples, soil

³ Hereinafter “*deceased*”



samples and empty cartridges. Based thereon, the present FIR came to be registered and the accused persons were taken into judicial custody.

4. Of the many grounds raised in the present application, Mr. N. Hariharan, learned senior counsel for the applicant primarily submitted that the applicant has been falsely implicated in the present FIR. Even otherwise, it is not the case of the prosecution that the applicant was physically present at the scene of the alleged offence and the role attributable to him is limited to that of a supposed conspirator, however, there is no material on record to show that the applicant ever met the co-accused persons, Yamin, Talib, or Naved prior to the incident. In fact, neither has the investigation yielded any intercepted communication, CCTV footage, and recovery linking the applicant to any preparatory act, nor has any incriminating material/ evidence such as fingerprints, DNA, weapon, vehicle used in the commission of the alleged offence, blood-stained clothes, etc., have been recovered at the instance of the applicant herein.

5. The learned senior counsel submitted that the alleged oral dying declaration is wholly unreliable as it was neither recorded by a Magistrate nor supported by any medical certification as to the deceased's fitness to speak. On the contrary, the prosecution's own medical evidence shows gunshot injuries to the lungs and heart, making it highly improbable for the deceased to have made any coherent or prolonged statement. Significantly, the alleged declaration is attributed solely to the complainant, an interested witness, and finds no independent corroboration whatsoever.

6. The learned senior counsel further submitted that though the



prosecution seeks to rely upon Call Detail Records⁴ to allege association between the applicant and co-accused persons, however, the CDR does not reveal any communication suggestive of participation in the alleged conspiracy. In fact, the CDR spanning over *three* months reflects only *three* (3) calls with Yamin, *thirteen* (13) with Naved, and *one hundred sixteen* (116) routine familial conversations with Tariq (*his cousin*), and significantly, there were no calls with any of the co-accused on the date of the incident and none whatsoever with Kapil Gurjar, the alleged principal conspirator.

7. The learned senior counsel then submitted that reliance placed by the prosecution on the disclosure statement of Samina (*wife of co-accused Yamin*) given on 11.03.2025, which, though records that certain co-accused had gathered at her house, however, she did not name or implicate the applicant having attended the said gathering. In fact, she referred to a dispute between her husband and the deceased regarding diesel/ scrap business, yet made no allegation of the applicant's involvement in the said rivalry. Moreover, custodial statements being inadmissible, have no evidentiary value in the eyes of law.

8. Lastly, since the CCTV footage unequivocally shows that the applicant was picked up from his residence prior to the registration of the FIR, however, the arrest memo was deliberately prepared with a later time stamp to suggest a post-FIR arrest, the learned senior counsel submitted that the same shows that the applicant's arrest indicate a predetermined effort to

⁴ Hereinafter "*CDR*"



frame him. Moreover, since the applicant has been languishing in jail since 10.03.2025 i.e. for more than *one year two months* as on date, and since the chargesheet has been filed way back on 05.06.2025, his continued incarceration would not serve any fruitful purpose.

9. Thus, learned senior counsel for the applicant sought bail of the applicant under the aforesaid facts and circumstances.

10. *Per contra*, Ms. Meenakshi Dahiya, learned APP for the State opposed the present application to submit that according to the testimony of the complainant, who also happens to be the eye-witness, even after sustaining the gunshots, and shortly before his death, the deceased remained conscious and named Yamin, Kapil, Talib, and the present applicant as the persons involved in the firing and the conspiracy, thus, the said statement constitutes a valid '*dying declaration*' under *Section 26* of the Bharatiya Sakshya Adhiniyam, 2023⁵.

11. The learned APP submitted that the role attributable to the applicant herein is that of a key conspirator, his presence at the scene of crime has thus no relevance. The learned APP further submitted that the CRD analysis reflects *three (3)* calls with Yamin, *thirteen (13)* with Naved, and *one hundred sixteen (116)* calls with Tariq, thereby corroborating the nexus and '*conspiracy*' between the applicant and the co-accused as also the absence of telephonic conversations on the day of the incident is not enough to disregard the element of '*conspiracy*'.

⁵ Hereinafter "*BSA*"



12. The learned APP also submitted that the brother of the deceased, in his disclosure statement has categorically stated that prior to his death, his brother had informed him of threats being extended to his life by Tariq, Kapil, Yameen and the present applicant since he was instrumental in stopping of the theft of diesel/ scrap. Furthermore, even the wife of co-accused Yamin in her disclosure statement has stated that the co-accused persons had gathered at her house as also there was a dispute with the deceased *qua* the diesel/ scrap business.

13. Lastly, the learned APP submitted that the investigation in the matter is complete, the chargesheet has been filed way back on 05.06.2025, the charges have been framed, and the trial is at the stage of prosecution evidence, hence, there is no delay in trial. Moreover, as per the Nominal Roll, the conduct of the applicant is '*Unsatisfactory*' and he has been involved in as many as *seven (7)* criminal antecedents, thereby demonstrating his propensity to be involved in repeated criminal activities. As such, learned APP sought rejection of the present regular bail application.

14. Additionally, learned counsel for the complainant has supported the case set up by the prosecution hereinabove. Relying upon *Laxman vs. State of Maharashtra*⁶ and *Naeem vs. State of Uttar Pradesh*⁷, the learned counsel submitted that (i) dying declaration can be the sole basis for conviction, and (ii) there is no requirement of law that a dying declaration must necessarily be made to a Magistrate. Moreover, where the eyewitness states that the

⁶ 2022 (1) Suppl. SCR 697

⁷ 2024 INSC 169



deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the Doctor as to the fitness of the mind of the declarant, the dying declaration cannot be accepted. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind.

15. This Court has heard the learned senior counsel for the applicant, learned APP for the State and the learned counsel for the complainant as also perused the materials on record and the judgments cited by them at Bar.

16. Since it is no longer *res integra* that at the stage of consideration of an application for bail, the Court is to only consider if a *prima facie* is made out or is/ are there is any reasonable ground(s) to believe that the accused/ applicant had committed the alleged offence and not assume the role of a trial Court and venture into the veracity of the evidence. This Court has to be cognizant of the fact that this is not a mini-trial which needs any streak of evidence to be taken into consideration.

17. In view of the aforesaid, and what has been sought to be submitted by the learned senior counsel for the applicant be it *qua* discrepancies regarding time of arrest as per the CCTV footage and/ or absence of telephonic conversations of the applicant on the day of the incident, primarily, since those are all matters of trial which need to be established after leading evidence, as also considering the overall facts and circumstances involved herein, the nature and gravity of the accusations levelled against the applicant, the severity of punishment prescribed in the event of conviction



and more particularly since the applicant having been explicitly named in the dying declaration given by the deceased, this Court is not inclined to grant regular bail to the applicant, at this stage.

18. Regarding the nature of the dying declaration, it need not be gone into at this stage as the probative value thereof and the weight of evidence thereon will be considerations for trial. Even otherwise, as held in *Laxman (supra)* a dying declaration need not always be recorded by a Magistrate and/ or supported by any medical certification as to the deceased's fitness to speak as asserted by the learned senior counsel for the applicant. Also, there is no denial about the deceased being mentally fit till before. As of now, there is no *prima facie* material to dislodge the dying declaration.

19. Though the applicant was arrested on the basis of a disclosure statement of the brother of the deceased and wife of co-accused, however, the same is to be seen coupled with the fact that the applicant has been explicitly named in the dying declaration, and there are CDR connectivity *inter se* him and the co-accused persons. The same raise a doubt in the mind of this Court *qua* non-involvement of the applicant in the present FIR and is actually sufficient for this Court to draw an adverse inference against him.

20. Lastly, as per the Nominal Roll received, the conduct of the applicant inside Jail has been '*Unsatisfactory*' and outside Jail, he has as many as *seven (7)* criminal antecedents. There may thus be a reasonable apprehension for the applicant influencing the witnesses, tampering with evidence to hamper the trial thereby frustrating the administration of justice and/ or indulge in similar offences, if released on bail.



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21. Accordingly, the present application is dismissed.
22. Needless to say, the expression of opinion(s), if any, are for the purposes of adjudicating the present application only, and they shall have no bearing on the trial.

MAY 25, 2026/Ab/DA

SAURABH BANERJEE, J.