



2025:DHC:1739



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

% ***Judgment reserved on: 17.03.2025***
Judgment pronounced on: 19.03.2025

+ BAIL APPLN. 377/2024

IQRAR AHMED @ AFZAL Petitioner

Through: Mr. Hum Nashin Ahmed, Mr.
Imran Alam, Mr. Sharaf Hasan,
Mr. Akshay Kumar Singh, Mr.
JavedSaifi, Mr. Aniket Singh,
Mr. Prakhar Singh & Mr.
FarkhundaKaunain, Advs.

versus

STATE NCT OF DELHI Respondent

Through: Mr. Tarang Srivastava, APP for
the State.
SI Sudheer Kumar, Inspector
Ravinder PS Ranjit Nagar.
Mr. Avneesh Saran (DHCLSC)
Advocate for the victim.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. This is a second Regular Bail Application under Section 439 of Code of Criminal Procedure, 1973 (Cr.PC) filed by the Petitioner seeking a grant of bail in FIR No. 693/2022 under Sections 308, 302, 202, 212 & 34 of the Indian Penal Code, 1860 (IPC) [hereinafter



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referred to as ‘Subject FIR’] registered at the Police Station Ranjit Nagar. *Vide* Order dated 18.01.2024, the learned Additional Sessions Judge (NDPS), West District, Tis Hazari Courts, Delhi (Trial Court) dismissed the bail application filed on behalf of the Petitioner.

2. The succinct facts of the case are such that the subject FIR was registered on account of a quarrel that broke-out in the midnight of 12/13.10.2022 amongst two group of persons; the accused persons; Adnan, Huzaifa and Akdas, and the deceased (Nitesh) and his friends (Alok Dubey and Monty) over hurling of abuses and blowing of horn of the motorcycle by the accused persons near Chawla Bakery, Mandir Wali Gali, Ranjit Nagar, Delhi, after which the accused persons also called some other friends [Hamza and Afzal (Petitioner)], who are also the co-accused in the case. The accused persons, including the Petitioner, are alleged to have beaten the deceased and his friends with bricks and stones.

3. On the intervening night, the Police reached the spot of incident and were informed that deceased Nitesh and Alok Dubey had been admitted for treatment in RML Hospital. However, Alok Dubey, reportedly left the hospital to seek treatment in a different hospital. Their statements were recorded under Section 161 of the Cr.PC. On 16.10.2022, ASI Sukhvir Singh was informed that the deceased Nitesh succumbed to his injuries and died while undergoing treatment at the Safdarjung Hospital. Consequent thereto, an offence under Section 302 of IPC was added and the investigation was transferred to the



present Investigating Officer (IO) of the case.

4. During the course of the investigation, accused persons Huzaifa, Aqdas, Adnan and Hamza were arrested, their disclosure statements were duly recorded and CCTV footages of the area were obtained and the accused persons Adnan, Huzaifa and Aqdas were identified from the said footage. The Petitioner was also called by the IO on several occasions in connection with the subject FIR. On 06.01.2023, the statement of the eyewitness Alok Dubey was recorded before the Magistrate under Section 164 of the Cr.PC, wherein he named the Petitioner. Accordingly, the Petitioner was arrested by the IO on 07.01.2023 from his residence and presently remains in judicial custody. Thereafter, the Chargesheet was filed under Section 302, 308 and 34 of the IPC, arraying the Petitioner as Accused No. 5.

5. Aggrieved, the Petitioner had preferred two bail applications before the learned trial court which were dismissed *vide* Orders dated 25.03.2023 and 25.04.2023. Subsequent thereto, the Petitioner filed a bail application bearing no. 1651/2023 before this Court, during the pendency of which the learned trial court *vide* Order dated 22.11.2023 framed the charges against the Petitioner under Section 304(1), 308 and 34 of the IPC and it had dropped the Charge under Section 302 of IPC against the Petitioner and thus, the Petitioner withdrew the said bail application pending before this Court with a liberty to file afresh before the learned trial court in view of this factum. The fresh bail application preferred by the Petitioner thereafter, was rejected by the



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learned trial court *vide* Order dated 18.01.2024. Being dissatisfied, the Petitioner has preferred the present bail application before this Court.

6. Mr. Hum Nashin Ahmed, learned counsel for the Petitioner, at the outset, had taken an objection of the procedural irregularity with respect to the arrest and remand of the Petitioner to the judicial custody. He submitted that the Arrest Memo dated 13.10.2022, *vide* which the Petitioner was arrested, the time of arrest is not mentioned nor the grounds of arrests were made available to him. Moreso, he submitted, the investigating agency had violated Section 41B and Section 50 of the Cr.PC as well as the Fundamental Right of the Petitioner under Article 22 of the Constitution of India.

7. Learned counsel further submitted that even though, the Petitioner is alleged to have been arrested from his residence, none of his family members or any persons from his locality were made witness to his arrest as per the laid down procedure, whereas, the Arrest Memo has been witnessed by the eye witness Alok Dubey and one of the Constables.

8. On merits, the learned counsel for the Petitioner submitted that the Petitioner, with no criminal antecedents, is innocent and has falsely been implicated in the subject FIR. He submitted that in the CCTV footage from Chawla Bakery, the Petitioner has not been seen as an assailant in the said footage like the other co-accused persons. In fact, he had a shop in the same Gali where the alleged incident took place and he, merely being a *passerby*, was passing through the site of



the incident.

9. He further submitted that the Supreme Court in catena of decisions has repeatedly emphasized on balancing the personal liberty of the accused with a fair investigation. That apart, he further submitted, the IO has implicated the Petitioner solely on the basis of a statement made by the eyewitness under Section 164 of the Cr.PC, without any corroborative evidence like Call Detail Records (CDR) linking him to the other accused persons.

10. Learned counsel submitted that the Petitioner had never absconded and had actively cooperated with the Police and participated in the investigation and repeatedly appeared before them, even in front of the eyewitnesses who had not initially named him.

11. Learned counsel further submitted that the Prosecution has failed to show any involvement of the Petitioner in the incident. He submitted that the Petitioner was not even named in the FIR, which was lodged at the complaint of ASI Sukhvir Singh. It was only after a period of 2 months and 24 days that the name of the Petitioner surfaced at the time of recording of the statement of Alok Dubey under Section 164 of the Cr.PC. Moreover, the Prosecution has failed to justify the delay caused in recording the statement of this witness at a belated stage.

12. On the point of parity, the learned counsel submitted that the role assigned to the co-accused Aqsad, who was granted bail by the Coordinate Bench of this Court *vide* Order dated 04.03.2025 in Bail



Application bearing no. 122/2024, is graver than the role of the Petitioner, thus, the Petitioner is also entitled to be enlarged on bail on this consideration alone.

13. In support of his contentions, he placed reliance on the following judgements:

- *Vihaan Kumar vs State of Haryana & Anr.* 2025 INSC 162.
- *Marfing Tamang vs State (NCT of Delhi)* (2025) SCC OnLine Del 548
- *Kanishk Sinha & Another vs The State of West Bengal & Another* 2025 INSC 278
- *Pankaj Bansal vs Union of India* (2024) 7 SCC 576
- *Manish Kumar @ Boxer vs The State (GOVT. of NCT of Delhi)* passed in Bail Application No. 1983/2022, date of decision 22.08.2023.
- *Zakir Hussain vs State (NCT of Delhi)* passed in Bail Application No. 1301/2023, date of decision 03.10.2023.

14. *Per contra*, Mr. Tarang Srivastava, learned APP appearing on behalf of the Respondent submitted that the Petitioner's reliance on the decision of the Supreme Court in *Pankaj Bansal* (supra) does not come to his aid as the guidelines laid down therein were made mandatory, however, the accused was arrested prior to the passing of the said judgement and the procedure as laid down by law at that point in time were duly followed. Therefore, there is no irregularity or illegality in the arrest of the Petitioner.



15. Learned counsel submitted that the arguments contended on behalf of the Petitioner are as if he is trying to convert the consideration of his bail application into a mini-trial. As far as the CCTV footage is concerned, the learned counsel submitted that the Petitioner has not brought complete set of facts on record. At a point in time, the Petitioner though appeared to be passing through the place of incident, but, he thereafter, came running to the place of incident where the deceased was beaten with bricks and sillis. He had actively participated in assaulting the deceased with bricks and sillis and thus, cannot be said to be a mere *passerby*. He further submitted that the Petitioner arrived at the scene of incident upon a phone call by one of the accused persons.

16. The learned APP distinguished the role of the co-accused Aqsad by submitting that he was merely a bystander watching the scene of incident, therefore, was granted bail. The counsel appearing for the next of Kin has also supported this statement, while seeking dismissal of the present bail application.

17. Learned APP also submitted that the ground of procedural irregularity in arrest raised on behalf of the Petitioner has not been raised in the bail application and has only been raised for the first time before this Court during the course of arguments.

18. Having heard the learned counsels for the parties and perused the record, this Court may note that the learned Trial Court at the time of framing of Charge *vide* Order dated 22.11.2023 has observed as



under:-

“It is also clear that there is no suggestion in the chargesheet about existence of any pre-meditated plan on the part of accused persons to kill the deceased as sudden quarrel broke among abovementioned accused persons and deceased and his friends over the issue of abusing and blowing horn of bike. It is also noticeable that complainant himself did not tell about carrying or use of any inherently dangerous/ lethal weapon despite calling some known persons namely accused Hamza and Iqrar Ahmed @Afzal at the spot by accused persons riding the bike at the spot. There is also nothing on record which indicates that there has been any previous enmity amongst the parties.”

19. Notably, the Petitioner is not named in the FIR which was registered on 06.01.2023 and neither the Petitioner's name appears in the statement of injured Alok that was recorded under Section 161 of the Cr.PC by the Police on 14.10.2022. Incidentally, the Petitioner was arrested at the instance of statement of eyewitness/injured Alok, which was recorded under Section 164 of Cr.PC, which was about 2½ months from the date of the incident.

20. The statement of the Prosecution witnesses, that is, the injured Alok Dubey and eye witness Monty have been recorded as PW1 and PW2 respectively. The Prosecution though has cited 33 witnesses to support to their case, but has so far only examined two witnesses, that is, PW1 and PW2.

21. Regarding the argument made on behalf of the Petitioner that



the Petitioner was merely a *passerby* and had no role to play in the incident, which was refuted by the Respondent that as per the Prosecution, the Petitioner in fact, subsequently came running to the place of incident and had given beatings to the deceased with bricks and sillis and there was commonality of intention. It is needless to say that the Court is not required to dwell upon the detailed analysis of the evidence on record as that would be a matter of trial.

22. In the instant case, the gravity and seriousness of the offence cannot be denied. It is a settled proposition of law that the same cannot be the sole basis for denial of bail.

23. As per the Nominal Roll dated 09.02.2024, the Petitioner has been in judicial custody for 2 years and 2 months since 07.01.2023. It is further reflected in the Nominal Roll that the Petitioner is not involved in any other offence and his overall conduct in jail has been reported to be satisfactory. In addition, the co-accused Aqdas has been admitted to bail by this Court *vide* Order dated 04.03.2025, the relevant extracts are reproduced hereinbelow:

“13.1. The role ascribed to the Petitioner in the Order on charge dated 22.11.2023, is that as per the complainant/Alok Dubey, the Petitioner Aqdas “... .. was having watchful eye over the passerby at the spot during the incident... ..”. Even though in his deposition record on 13.02.2024, PW-1 has ascribed to the Petitioner the role of beating the deceased with bricks and sillis jointly with 02 other co-accused persons viz. Adnan and Huzaiifa, the Order on charge observes, that based on the evidence that has come on record, it is clear that there was no



pre-mediated plan on the part of the accused persons to kill the deceased; and the incident was a result of a quarrel that broke-out amongst some of the accused persons in relation to abusing and blowing of the motorcycle horn, after which the accused persons called some other friends, who are also now co-accused in the case. The Petitioner was one of the boys who was on the motorcycle when the quarrel broke-out.”

24. In view of the consideration of the above circumstances, the Petitioner, ***Iqrar Ahmed @ Afzal*** is admitted to regular bail pending trial in the subject FIR, on his furnishing a personal bond in the sum of ₹30,000/- with one surety bond of the like amount, subject to the satisfaction of the learned Trial Court / CMM / Duty Magistrate and further subject to the following conditions:

- i.** The Petitioner shall not leave India without prior permission of the Learned Trial Court.
- ii.** The Petitioner shall report at P.S. Ranjit Nagar every Saturday at 4:00 P.M. The concerned officer shall release the Petitioner by 5:00 P.M. after recording his presence and after completion of all the necessary formalities.
- iii.** The Petitioner shall immediately intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change of residential address.
- iv.** The Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- v.** The Petitioner is directed to give his mobile number to the



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Investigating Officer and keep it operational at all times.

- vi. The Petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the Prosecution witnesses or other persons acquainted with the facts of case. The Petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

25. A copy of this Order be sent to the Jail Superintendent concerned for information and necessary compliance.

26. It is made clear that this Court has not expressed any opinion on the merits of the Petitioner/applicant's case.

27. Accordingly, the petition is disposed of.

SHALINDER KAUR, J

MARCH 19, 2025/ab/km

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