



2024:DHC:9324



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

% **Date of order: 21<sup>st</sup> November, 2024**

+ **BAIL APPLN. 2936/2024**

**DEEPAK ALIAS GAURAV** .....Petitioner

Through: **Mr. Neeraj Anand, Advocate**  
(Through VC).

versus

**THE STATE GOVT OF NCT DELHI** .....Respondent

Through: **Mr. Satish Kumar APP for the State**

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

**ORDER**

**CHANDRA DHARI SINGH, J (Oral)**

1. The instant bail application has been filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 ("BNSS" hereinafter) [earlier Section 439 of the Code of Criminal Procedure, 1973] seeking grant of regular bail in FIR No.383/2021, registered at Police Station Ambedkar Nagar, Delhi, for the offences punishable under Sections 302/34 of the Indian Penal Code, 1860 ("IPC" hereinafter). The prayer of the applicant is produced as under:

*"It is, therefore most respectfully prayed that this Hon'ble Court keeping in view the aforesaid facts and circumstances may kindly be pleased to:-*

*a) Grant regular bail to the petitioner in case FIR No. 383/2021 U/s. 302/34 IPC, P.S. Ambedkar Nagar till the disposal of the case.*

*b) Pass any other or further order as this Hon'ble Court may deem fit and proper, in the interest of justice."*



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2. The brief facts that led to the filing of the present application are as follows:

a. The complainant and the deceased resided in the same neighborhood and were childhood friends. It is stated in the FIR that on 1<sup>st</sup> June, 2021, they went out to purchase cake for deceased's father's birthday celebrations. After purchasing the cake, while they were returning home on their scooter, they were allegedly stopped by the applicant and one Mr. Sameer.

b. Allegedly, the applicant caught hold of the deceased and pulled him away from the scooter. The balance of the scooter was disturbed and the complainant fell from it. Thereafter, the applicant allegedly started stabbing the deceased with a knife, while Mr. Sameer caught hold of him and started kicking him.

c. It is further stated in the FIR that two more accused, namely Mr. Sahil and Mr. Bhola came to the spot. They allegedly had knives in their hands when they came, while announcing that they wanted to finish the deceased. They started stabbing the deceased, along with the applicant.

d. When people gathered around the incident site, the accused ran away. The complainant went back to the spot and saw that the deceased was bleeding profusely and a knife was stuck in his neck. The Complainant called deceased's brother, Mr. Ravi, who came to the spot and took the deceased to the hospital, along with his friend, namely, Mr. Ankush. On inspection, it was found that the deceased



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had multiple stab wounds on his face and body. Thereafter, the deceased passed away in the hospital.

e. Consequently, the instant FIR No.383/2021 was registered at Police Station Ambedkar Nagar, Delhi, for the offences punishable under Sections 302/34 of the IPC.

f. The applicant filed his first bail application before the learned Trial Court, which was dismissed *vide* order dated 9<sup>th</sup> June, 2023. The second bail application filed by the applicant was dismissed as withdrawn *vide* order dated 5<sup>th</sup> December, 2023. Lastly, another bail application filed by the applicant was dismissed by the learned ASJ *vide* Order dated 22<sup>nd</sup> July, 2024. The trial is currently at the stage of prosecution evidence.

g. Hence, the present bail application is filed before this Court.

3. Learned counsel appearing for the petitioner submitted that the applicant is falsely implicated in the present case and that the applicant has nothing to do with the commission of the offence in the present case.

4. It is submitted that the allegations made in the FIR against the applicant are completely frivolous and unsubstantiated as there is no evidence to point towards the direct or indirect involvement of the applicant in the commission of the offence in the present case.

5. It is submitted that the investigation in the present matter has already been completed, the chargesheet has also been filed against the applicant and all the material witnesses have already been examined.

6. It is submitted that the applicant has been languishing in judicial custody since 3<sup>rd</sup> June, 2021, and that no useful purpose would be served by



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further keeping the applicant in judicial custody.

7. It is submitted that nothing incriminating has been recovered from the possession of the petitioner. It is further submitted that the prosecution's case is unsubstantiated as they have failed to establish the motive behind the commission of the alleged offence by the applicant.

8. It is submitted that there are various contradictions in the statement of PW1, who is also the complainant in the present case. It is further submitted that his deposition is not admissible as he is a tutored witness who deposed at the instance of the police officials.

9. It is submitted that the pen drive containing the CCTV footage of the incident is fabricated and forged in order to concoct a false story for implicating the petitioner. It is further submitted that the said pen drive has been filed without certificate under Section 65B of the Indian Evidence Act and that the said pen drive was neither supplied to the applicant nor was it a part of the chargesheet before 22<sup>nd</sup> May, 2023.

10. It is submitted that the CCTV footage is not clear and the identity of the assailants in the present case cannot be clearly established from the said footage.

11. It is submitted that two co-accused persons namely, Mr. Nikhil Nagar and Mr. Shiv Kumar have already been granted bail in the present case and therefore, the applicant being accused of committing the same offence, should be granted bail.

12. It is submitted that the petitioner is of young age and is the sole bread earner for his family, while also having responsibility for the education and other expenses of his mother and younger siblings. It is further submitted that the applicant's father is mentally ill and the applicant's family is facing



great trouble as there is no earning member in the family presently.

13. It is submitted that it will take a significantly long period of time to adduce prosecution evidence. It is further submitted that the applicant has clean antecedents and has never been previously involved or convicted in any case.

14. It is submitted that the applicant is ready to furnish a sound surety to the satisfaction of this Court and undertakes to abide by any terms and conditions that may be imposed by this Hon'ble Court if he is released on bail.

15. *Per Contra*, the learned APP appearing on behalf of the State vehemently opposed the instant application submitting to the effect that the same may be dismissed being devoid of any merits and lack of grounds for grant of bail.

16. It is submitted that the deceased along with the complainant was stopped by the applicant along with Mr. Sameer, who blocked their way and the deceased was pulled down from the scooter after which he was stabbed with knife by the applicant, while Mr. Sameer was repeatedly kicking and punching him.

17. It is submitted that two other persons, namely, Mr. Sahil and Mr. Bhola, came to the spot with knives in their hands and started stabbing him, along with the applicant, while Mr. Sameer continued kicking and punching the deceased.

18. It is submitted that during the course of investigation, the accused persons were arrested and the weapon of offence i.e., the knives, were recovered from the accused persons.

19. It is submitted that it was discovered upon interrogation of the



accused persons that the applicant had some personal enmity with the deceased and the deceased had threatened the applicant to be ready for dire consequence if he continues to act in an objectionable manner. It is further submitted that consequently, the accused planned to kill the deceased and in order to execute the plan, they purchased knives which were given to the applicant, Mr. Sahil and Mr. Bhola.

20. It is submitted that the deceased was brutally murdered thereafter on 1<sup>st</sup> June, 2021. It is further submitted that the applicant shall not be granted bail as he is the prime accused in the present case and that the offence committed by him is serious and heinous in nature.

21. It is submitted that the applicant may threaten the complainant and tamper the evidence if he is released on bail. It is further submitted that the applicant may abscond if the bail is granted in the present case.

22. Therefore, in view of the foregoing submissions, it is prayed that the instant application may be dismissed.

23. Heard the learned counsel appearing on behalf of the parties and perused the material placed on record.

24. Before advertng to the merits of the matter, it is important at this stage to discuss the settled position of law on the factors to be considered while granting bail to an accused.

25. In the case of *State of Haryana v. Dharamraj*, 2023 SCC OnLine SC 1085, the Hon'ble Supreme Court reiterated the relevant considerations while granting bail and observed as under:

“7. A foray, albeit brief, into relevant precedents is warranted. This Court considered the factors to guide grant of bail in *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC



598 and *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528. In *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496, the relevant principles were restated thus:

*'9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:*

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail."*

26. In light of the aforesaid judgements, it is clear that while it has been posited time and again by Courts in the bail jurisprudence that bail is the rule and jail is the exception, it cannot be accepted that it follows as a



corollary that bail should be granted without taking into account relevant considerations that may impact the case. The Hon'ble Supreme Court in the aforementioned judgements has posited the law on the relevant considerations that must be taken into account by Courts for granting bail.

27. Even though this Court is of the view that individual liberty is an invaluable right, this consideration should be meticulously balanced with the interest of justice while determining the question of grant of bail to the applicant. The Court must consider the gravity of the accusations against the applicant and the relevant facts of the case while deciding bail applications. This particularly gains importance when the accusations appear to be substantiated and are not frivolous or vexatious, enabling the Court to take a *prima facie* view of the case. The Court should also take into account the severity of the punishment in case the accused is convicted of the alleged offence and if there is a strong likelihood of evidence tampering or influencing of witnesses if the bail is granted to the applicant. These considerations must be taken into account by the Court for it to reach a conclusion while deciding the question of bail, balancing the concerns of individual liberty with the interest of justice.

28. At this stage, it is imperative to evaluate the submissions of the learned counsel appearing for the parties.

29. On the aspect that there are multiple discrepancies in the prosecution's version in the present case, and that such version is based on unreliable evidence, this Court is of the view that this ground is a subject matter of trial and it cannot be decided by this Court, as an evaluation of the same will lead to a determination on the merits of the case, which cannot be done by this Court while deciding the present bail application.



30. With respect to the applicant's submission that he has been falsely implicated in the present case and the charges against him are frivolous and baseless, this Court refrains from deciding on the merits of the case. However, it can certainly take a *prima facie* view that the prosecution's version of the incident which is corroborated by the testimonies of the key witnesses, including the complainant, points towards the commission of the offence by the applicant. It is also pertinent to note that the offence involved in the present case is serious and heinous in nature.

31. Learned counsel for the applicant submitted that the chargesheet is filed and it would serve no purpose to keep the accused in judicial custody any longer. At this stage, it is imperative for this Court to consider if there is any possibility of the applicant indulging in tampering of evidence or influencing the witnesses if he is enlarged on bail.

32. It is observed that in the criminal justice system in the country, witnesses have often gone through traumatic experiences, which ultimately leads them to turn hostile. This is frequently occurring phenomenon that the Courts must be mindful of. The value of witnesses in the delivery of justice cannot be denied, as criminal proceedings largely depend on the testimonies and cooperation of witnesses to assist the Court in reaching an informed conclusion in a given case. Therefore, it becomes the duty of this Court to ensure that witnesses are not subject to any intimidation or are influenced in any manner, such that the process of delivering justice gets derailed, especially in cases where the accused persons are tried for heinous offences.

33. In the case of ***Munilakshmi v. Narendra Babu*, 2023 SCC OnLine SC 1380**, the Hon'ble Supreme Court emphasized on the importance of witness not being under threat or influence and held that:



*“21. The Courts are under an onerous duty to ensure that the criminal justice system is vibrant and effective; perpetrators of the crime do not go unpunished; the witnesses are not under any threat or influence to prevent them from deposing truthfully and the victims of the crime get their voices heard at every stage of the proceedings.”*

34. Similarly, in the case of ***Sudha Singh v. State of U.P.***, (2021) 4 SCC 781, the Hon’ble Supreme Court held that:

*“8. We find in this case that the high court has overlooked several aspects, such as the potential threat to witnesses, forcing the trial court to grant protection. It is needless to point out that in cases of this nature, it is important that courts do not enlarge an accused on bail with a blinkered vision by just taking into account only the parties before them and the incident in question. It is necessary for courts to consider the impact that release of such persons on bail will have on the witnesses yet to be examined and the innocent members of the family of the victim who might be the next victims.”*

35. From the aforementioned judgements, it is clear that the Courts should strive to protect witnesses from any kind of intimidation or influence. This is extremely crucial in ensuring that Courts administer justice by way of a fair trial. Therefore, whether it is likely that the accused will indulge in any act of influencing witnesses, is a crucial consideration for Courts while deciding the question of grant of bail to an accused.

36. In the present case, the applicant is accused of commission of a heinous offence of Murder. The complainant who is also PW-1, has multiple times stated that he has throughout been fearful of the accused persons. It can clearly be observed that during his examination-in-chief, the complainant contradicted his statement made in the complaint, wherein he



had mentioned that he had clearly seen the applicant stabbing the deceased, whereas in the examination-in-chief, the complainant stated that he could not see the persons who committed the offence because it was dark at that time. Further, in the cross-examination, the complainant retreated to his original statement made in the complaint, stating that he clearly saw the applicant stabbing the deceased. The complainant repeatedly expressed that he was fearful of the accused persons.

37. In the present case before this Court, the applicant is accused of commission of a heinous offence. The trial is currently at the stage of prosecution evidence. It is observed that one of the material witnesses has repeatedly expressed his fear of testifying against the accused persons in the present case. This Court is satisfied that there is a strong possibility that the applicant may attempt to influence the witnesses and their families if he is enlarged on bail. In light of the above, this Court finds that there is a strong likelihood that the process of fair trial would be obstructed in the present case if the applicant is released on bail.

38. Therefore, this Court is of the considered view that, at this stage, bail cannot be granted to the applicant under Section 483 of the BNSS as it is likely to obstruct the process of delivering justice considering that there is a strong likelihood that the witnesses can be influenced by the applicant, who is accused of commission of a heinous offence, if bail is granted to him.

39. Therefore, taking into consideration the settled position of law as well as facts of the present case, this Court at this stage, does not find any cogent reasons on merits for granting bail to the applicant as no grounds have been made out by the applicant warranting the same.

40. Accordingly, the instant bail application stands dismissed along with



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the pending applications, if any.

41. The order be uploaded on the website forthwith.

**CHANDRA DHARI SINGH, J**

**NOVEMBER 21, 2024**

Rt/st/av

*Click here to check corrigendum, if any*