

Ajay Butan @ Deepak vs State Govt. Of Nct Of Delhi on 20 February, 2025

Author: Neena Bansal Krishna

Bench: Neena Bansal Krishna

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 459/2025

AJAY BUTAN @ DEEPAK

Through:

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STATE GOVT. OF NCT OF DELHI

Through: Ms. Meenakshi Dah

State with Insp.R

P.S.Adarsh Nagar.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

OR

% 20.02.2025

1. Bail Application under Section 439 of the Code of Criminal Procedure, 1973 („Cr.P.C hereinafter) read with Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 („BNSS hereinafter) has been filed on behalf of the Applicant, Ajay Bhutan for grant of Regular Bail in FIR No.378/2021 under Sections 302/392/394/395/396/397 of the Indian Penal Code, 1860 („IPC hereinafter) .

2. It is submitted in the Application that the Applicant is in judicial custody since 30.07.2021. The Charges have already been framed against him and the other co-accused persons. After 3½ years only 9 out of 28 prosecution witnesses have been examined. It is claimed that it is a false case in which he has been implicated by the police officials. The prosecution has failed to substantiate their case This is a digitally signed order.

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3. The eye witness, PW-3, Sh. Ram Pravesh Yadav is not a reliable witness and has given totally contradictory statements. He has completely failed to support the prosecution and no incriminating evidence has been led by him against the Applicant.

4. The bail is sought on the ground of parity as the co-accused Mukesh who had a graver role, has already been granted bail by this Court vide Order 10.11.2024 in Bail Appl.No.2320/2024. The remaining prosecution witnesses are all police witnesses or formal witnesses.

5. His detention in jail would tantamount to punishment before conviction which is against the criminal jurisprudence. Reliance has been placed on Dataram Singh vs. State of Uttar Pradesh and Anr, (2018) 3 SCC 22 wherein it has been observed that the fundamental principles of grant of bail as a general rule, has been lost sight of with the result that more and more persons are being incarcerated for longer period.

6. Similar observations about the personal liberty has been observed by Supreme Court of India in Arnab Manoranjan Goswami vs. State of Maharashtra & Ors, SLP (Crl) Diary No.24646/2020 in Bail Order dated 11.11.2020.

7. Though it has been reflected in the Status Report that he has been implicated earlier in the FIRs but he stands acquitted in them thereby establishing his innocence.

8. Furthermore, Applicant is a 25 years old and his ailing parents are dependent upon him. Moreover, if he is kept in judicial custody This is a digitally signed order.

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9. Hence, a prayer is made for grant of bail.

10. The Status Report has been filed on behalf of the State which is taken on record. It is submitted that in the present case, there were three adult accused namely Ajay Bhutan @ Deepak, the Applicant, Aslam Ali, Mukesh alongwith 2 CCL also who were also apprehended for the commission of the offence.

11. During the investigations, the purse of the deceased containing 4,300/-, a Voter ID card, a PAN card and an AADHAR card were recovered from the co-accused Mukesh. The weapon of offence a Poker was recovered from the CCL, Shivam @ Shibu. The clothes worn by the accused persons including the Applicant at the time of offence have also been recovered and the same have been sent to FSL, but the result is still awaited. The Applicant had refused to get his TIP conducted. The cause of death as per the post mortem report of the deceased Jitender Kumar Yadav was stated to be "Hemorrhagic shock as a result of injury to the lungs and asphyxia due to ante- mortem manual throttling". There were six injuries caused by sharp and pointed object while one injury was caused by blunt force impact.

12. The Applicant is involved in seven earlier cases in the year 2020. His Bail Application has been dismissed by the Sessions Court.

13. The Bail Application is thus, opposed.

14. Submissions Heard. Record perused.

15. As per the case of the prosecution, the body of the deceased was discovered on 29.07.2021 by the PCR van and the initial FIR was This is a digitally signed order.

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16. The offences under Sections 302/392/394/395/396/397 IPC were subsequently added and the Chargesheet was accordingly filed.

17. The prosecution has relied upon 28 witnesses out of whom only 9 have been recorded. The most material witness is PW-3, the eye witness, Sh. Ram Pravesh Yadav who in his cross-examination has failed to support the case of the prosecution, but had identified all the accused in his examination-in-chief.

18. The other material available against the Applicant is the CDR location records with the other persons. According to the prosecution the motive for commission of offence was robbery but there are no allegations of it being a planned robbery.

19. The Apex Court in Union of India v. K.A. Najeed (2021) 3 SCC 713 has observed that courts are obligated to release the undertrial prisoners on bail if there is a delay in trial. It was further observed that fundamental right of liberty provided under Article 21 of the Constitution is superior to statutory restrictions and reiterated the This is a digitally signed order.

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20. Considering that the accused is in judicial custody since 31.07.2021 and the material eye witness has already been recorded and that further recording of witnesses may take a longer time with the FSL Report still being awaited, the Petitioner is admitted to Regular Bail upon his furnishing a personal bond in the sum of Rs. 25,000/- and one surety of the like amount to the satisfaction of the learned Trial Court, subject to the following conditions: -

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing;
- b) Petitioner shall provide his mobile number to the IO concerned, which shall be kept in working condition at all times;
- c) Petitioner shall inform the IO and the Jail Superintendent the address where he shall be available in Delhi;
- d) Petitioner shall not try to contact, threaten or influence any of the witnesses of this case; and
- e) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

21. The Registry is further directed to communicate this Order to the learned Trial Court and as well as to the concerned Jail Superintendent.

22. Accordingly, the present Petition is disposed of.

NEENA BANSAL KRISHNA, J FEBRUARY 20, 2025 rk This is a digitally signed order.

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