

Abhishek vs The State (Nct Of Delhi) on 8 April, 2025

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 08.04.2025

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BAIL APPLN. 2500/2024

ABHISHEK

.....Petitioner

Through: Mr. Tarun Gahlot, Adv.

versus

THE STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Tarang Srivastava, APP

with Inspector Parshu Ram and

Inspector Ritesh, PS Raj Park.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

SHALINDER KAUR, J. (ORAL)

1. The present application is filed by the petitioner, seeking grant of Regular Bail in FIR No.585/2022 (subject FIR) for the offences punishable under Sections 302/34 of the Indian Penal Code, 1860 (IPC) & Sections 27/25 of the Arms Act, 1959 registered at the Police Station (P.S.) Raj Park.

2. The brief facts of the case are that the investigation was initiated upon a complaint lodged by the brother (complainant) of the deceased on 21.08.2022 alleging that around 10:30 PM, when he was at his house, the friends of his deceased brother, namely, Shravan and Pawan came and informed that his brother, i.e., deceased Krishnan is lying injured at House No. 1179, T block, Mangol Puri, Delhi. Upon hearing the news, the complainant, his mother as well as Shravan and Pawan reached at the place of the incident from where the complainant/brother and the friends of the deceased took the deceased to the Sanjay Gandhi Hospital in an auto rickshaw. On the way to the Hospital, the deceased told the complainant and his mother that Harshu, Prashant and two other persons attacked him. However, on reaching hospital, Krishnan was declared 'brought dead'. This led to registration of the subject FIR for offences under Section 302/34 IPC. Subsequently, the petitioner was arrested on 22.08.2022, on the basis of the disclosure statement of the co-accused Prashant. On conclusion of the investigation, the Chargesheet was filed under Section 302/34 of the IPC read with Section 25/27 of the Arms Act, 1959 and the Charges were framed and the trial is underway.

3. The learned counsel for the petitioner submits that the petitioner is entitled to be released on Regular Bail solely on the ground of parity that the co-accused, namely, Deepak @ Deepu, who has been assigned the same role, has been admitted to bail by this Court vide Order dated 22.12.2023. He further submits that the petitioner is in judicial custody since 22.08.2022, he is an innocent young student, studying the B.A. program semester Part -VI through the School of Open Learning, the University of Delhi and no further purpose will be served in keeping him in the judicial custody. He submits that the trial is unlikely to conclude in the foreseeable future, causing adverse impact

upon the career and the mental state of the petitioner which infringes his fundamental rights.

4. He submits that the learned Trial Court had rejected his bail application vide Order dated 12.03.2024, mainly on the ground that he may abscond and influence the witnesses. The learned counsel submits that none of the public witnesses including PW Shubham, PW Pushpa, PW Amit, PW Somawati, PW Sunil, PW Ashish, PW Pawan and PW Shravan have identified the petitioner. In fact, he submits, that the petitioner has not been named in the FIR. He was arrested, after 8-9 months of the incident, when the supplementary statements of the witnesses Amit and Somwati were recorded under Section 161 of the Code of Criminal Procedure, 1973 (Cr.P.C.). He submits that in the FIR only the names of accused Harshu and Prashant were mentioned apart from 2 unknown boys. The prosecution has claimed that the said 2 unknown boys were the petitioner and co-accused Deepak @ Deepu. However, the co-accused has already been enlarged on bail. The learned counsel further submits that neither the CCTV footage has been placed on record nor sent to the FSL.

5. The learned counsel further submits that the Test Identification Parade (TIP) of the petitioner was conducted to ascertain his identity before filing the Chargesheet. Thus, the identification of the petitioner, if by any of the witnesses, is for the first time in the Court. He also submits that as almost all the material witnesses have been examined except for 2 public witnesses, who remained to be examined, thus, the objection of the prosecution that the petitioner may tamper with the evidence or influence the witnesses, no longer survives. He also submits that no recovery of the weapon used for committing the said offence has been made nor at the instance of the petitioner and prays that the petitioner be granted bail.

6. Mr. Tarang Srivastava, the learned APP, while opposing the bail application, contends on the lines of the status report. He submits that it is not denied that neither the CCTV footage has not been placed on record nor the TIP of the petitioner was conducted. It is further not disputed that a number of material public witnesses have already been examined. He submits, that PW Shubham has named and identified the petitioner during the recording of his testimony. Therefore, the bail application is liable to be dismissed.

7. Having heard the learned counsel for the petitioner, the learned APP for the State and perused the record. At the outset, it is to be noted that the co-accused Deepak @ Deepu, who like the petitioner was not named in the FIR has been enlarged on bail.

8. It is also not disputed that the name of the petitioner surfaced after 8-9 months of the incident, when one of the witnesses had referred the name of the petitioner involved in the crime which led to his arrest of the petitioner. It is also not the case of the prosecution that the eye witnesses were known to the petitioner. The role ascribed to the petitioner is similar to that of the co-accused Deepak @ Deepu stating that the petitioner caught hold of the head of the deceased from his hair and the co-accused Deepak @ Deepu caught his legs, another co-accused held the hands of the deceased while co-accused Harshu stabbed the deceased in his chest. The petitioner is a young boy of 22 years of age, having no criminal record and clean antecedents and he is a permanent resident of Delhi and, thus, he is not a flight risk. As per the Nominal Roll, the petitioner is in custody since 22.08.2022 and his jail conduct is reported to be satisfactory.

9. Considering the aforesaid facts and circumstances, specifically that the co-accused Deepak @ Deepu having ascribed the similar role in the incident as that of the petitioner and has been enlarged bail vide Order dated 22.12.2023, the petitioner is admitted to the Regular Bail pending trial in the subject FIR, i.e., FIR No.585/2022 for the offences punishable under Sections 302/34 of the IPC & Sections 27/25 of the Arms Act, 1959 registered at the PS Raj Park, 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 the State of NCT of Delhi without prior permission of the learned Trial Court. ii. The Petitioner shall report at P.S. Raj Park twice in a month on every First and Fourth Saturday at 4:00 P.M. The concerned officer shall release the Petitioner at the most by 5:00 P.M. after recording his presence and post 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 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. vii. 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.

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

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

12. Accordingly, the petition is disposed of.

SHALINDER KAUR, J APRIL 8, 2025/ab/kp Click here to check corrigendum, if any