

(2025) 04 DEL CK 1071

In the Delhi High Court

Case No : Bail Application NO. 264 Of 2025

Ashwani Khatri

APPELLANT

Vs

State Govt. Of Nct Of Delhi

RESPONDENT

Date of Decision : 25-04-2025

Acts Referred:

Bhartiya Nagrik Suraksha Sanhita, 2023 — Section 483
Indian Penal Code , 1860 — Section 34, 302, 308, 323

Citation : (2025) 04 DEL CK 1071

Hon'ble Judges : Shalinder Kaur, J

Bench : Single Bench

Advocate : Pardeep Khatri, Pranjal Kr. Bhaskar, Satish Kumar

Final Decision : Disposed Of

Judgement

Shalinder Kaur, J

1. By way of the present petition under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, (BNSS) the petitioner seeks grant of regular bail in FIR no. 269 of 2022 dated 12.03.2022 registered for offences under 308/323/34 of the Indian Penal Code, 1860 (IPC) at Police Station Hari Nagar, Delhi.

2. It is the case of the prosecution that the present case was registered on the basis of a statement made by the complainant, Rahul @ Sunny. In his statement, the complainant has stated that he is presently lodged in Jail No. 4, Ward No. 7, Barrack No. 2 of Tihar Jail, along with his brother Rahul @ Khatte and one Ramniwas, another inmate. It was alleged that on 23.02.2022, a verbal altercation took place between Ramniwas and another inmate, Rupender @ Nanhe, arising out of a minor issue. At that time Rupender is stated to have issued threats of dire consequences to Ramniwas. On the following day, i.e., 24.02.2022, Rupender, along with another inmate, Arjun, called them and again threatened them, stating that they have supremacy within the jail premises and that the petitioner and Ramniwas have to follow their command. Upon their

objection to this, Rupender, along with his associates, namely, Abhishek @ Banti, Arjun @ Majboori and Rajiv, started assaulting them, using fists and sticks, and that Ramniwas was kicked on his chest and struck on the head with sticks. They were saved by other fellow inmates.

3. Pursuant to the registration of the FIR, investigation was taken up. During the course of investigation, the MLCs of the injured victims were obtained, and it came to light that Ramniwas continued to remain under treatment at Safdarjung Hospital, vide MLC No. 1557/22. On 13.03.2022, information was received from Safdarjung Hospital that the said inmate, Ramniwas had succumbed to the injuries. Consequent thereto, Section 302 of the IPC was added in the present case.

4. During the further course of investigation, the victims, Rahul @ Sunny and Rahul @ Khatte, were enquired about the incident and they disclosed that deceased Ramniwas and they were mercilessly assaulted by their co-inmates, namely, Rupender @ Nanha, Arjun @ Majboori, Abhishek @ Banti, Rajiv, Ashwani Khatri, Ashif, Rahul, Ankit Langarpuria, Robin, Ajay @ Diljale, Rakesh @ Tinku, Anil Joon, Rahul @ Baba, Sachin Chhikara, Rohit Rahul, Aman, Rakesh, Rahul Fogat, and Akash (@) TT.

5. In the course of further investigation, the CCTV footage pertaining to the place of incident was also obtained from the jail authorities and the accused persons were arrested.

6. The dandas used in the assault upon the victims have been seized during the course of investigation, along with other material exhibits pertaining to the case. The said exhibits have been sent to the FSL for expert opinion. Upon completion of investigation, a Charge-Sheet has been filed before the learned Trial Court. The matter is presently pending trial and is at the stage of recording of prosecution evidence.

7. The learned counsel for the petitioner submits that the co-accused in this case Rahul has been granted a regular bail by the Co-ordinate Bench of this Court vide order dated 01.07.2024 after a period of incarceration of two and a half years and claims parity.

8. He submits that from the CCTV footage it is clear that the co-accused, Rahul is holding a danda and playing a grave role in the incident, whereas the petitioner is merely watching, he did not actively participate in the commission of the offence. It is further submitted that the petitioner has been in custody in connection with the said offence since 03.04.2022.

9. He further submits that PW-1, PW-2, and PW-3 are the main eye witnesses in the present case but the said witnesses are not supporting the case of the prosecution.

10. The learned counsel submits that the prosecution has relied upon 41 witnesses in the Charge-Sheet, of whom only 4 have been examined till date,

and that the examination of the remaining witnesses is likely to take considerable time.

11. Lastly, the learned counsel for the petitioner submits that the petitioner has a family and has to take care of his four-year-old daughter. He further points out that the petitioner had earlier been granted interim bail on two occasions, in both of which he duly surrendered within the stipulated time and did not misuse the interim bails. Therefore, he prays that the petitioner be released on bail in the present matter.

12. Learned APP appearing on behalf of the State vehemently opposed the bail application though admitting that the three PWs have not supported the case of the prosecution, urged that in the CCTV footage the petitioner is clearly visible and is one of the assailants, as he is seen handing over a stick to his associates for the purpose of assaulting the complainant as well as the deceased. The petitioner, identifiable by his yellow T-shirt, can also be seen kicking both the complainant and the deceased. It is, thus, contended that the petitioner has played an active role in the commission of the offence.

13. He further submits that the petitioner does not have clean antecedents and is involved in multiple criminal cases, one of which pertains to an offence of murder. Further, the petitioner is a member of a gang, which reflects a consistent criminal tendency. It is contended that releasing such an individual on bail would pose a serious threat to public order and peace. Accordingly, the learned APP prays for dismissal of the present bail application.

14. Apart from hearing the arguments on behalf of the petitioner and the State, this Court has perused the record as well as the CCTV footage. The case of the prosecution primarily rests on the statement of three prosecution witnesses who have been already examined as PW1, PW2 and PW3 and the CCTV footage. All the three witnesses are stated to have not supported the prosecution's case. No doubt in the CCTV footage the presence of the petitioner is shown, however, he does not appear to be a main assailant being actively involved in giving beatings to the victims. The allegation against the petitioner is that he had handed over a stick to the other co-accused thereby instigating him to give beatings to the victims.

15. No doubt the allegations are serious in nature and the accused is involved in other criminal cases also, though stated to be on bail. Nonetheless, the co-accused who has been admitted to bail by Coordinate Bench of this Court had a graver role and was also stated to be involved in other criminal cases.

16. As per the Nominal Roll, the petitioner is in custody since the date of his arrest being 03.04.2022 in the present case and has undergone more period of incarceration than the co-accused Rahul.

17. In view of the above and on the ground of parity, the petitioner is admitted to regular bail on furnishing a personal bond in the sum of Rs. 50,000/- with two

surety in the like amount, to the satisfaction of learned Trial Court / CMM / Duty Magistrate, 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 is directed to give all his mobile numbers to the Investigating Officer and keep it operational at all times.

iii. The Petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other person 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.

iv. The Petitioner shall report at the Police Station Hari Nagar, Delhi on every Wednesday and Saturday between 4:00 PM to 6:00 PM. The concerned officer shall release the Petitioner after recording his presence and after completion of all the necessary formalities.

v. The Petitioner shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change of residential address.

vi. The Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.

24. Needless to state, any observation made hereinabove shall not tantamount to be an expression on the merits of the case before the learned Trial Court and has been made for the consideration of the present bail application alone in the prevailing circumstances.

26. Copy of the Order be sent to the concerned Jail Superintendent.

27. Accordingly, the petition, along with the pending application, is disposed of.