

(2025) 07 DEL CK 0836

In the Delhi High Court

Case No : Bail Application NO. 990 Of 2025

Mustkeen @ Mota

APPELLANT

Vs

State Govt. Of Nct Of Delhi

RESPONDENT

Date of Decision : 08-07-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161
Indian Penal Code, 1860 — Section 34, 109, 114, 120B, 147, 148, 149, 186, 188,
302, 307, 332, 353, 427, 436
Arms Act, 1959 — Section 25, 27

Citation : (2025) 07 DEL CK 0836

Hon'ble Judges : Dr. Swarana Kanta Sharma, J

Bench : Single Bench

Advocate : Urvashi Bhatia, Manoj Pant

Final Decision : Dismissed

Judgement

Dr. Swarana Kanta Sharma, J

1. By way of the present application, the applicant is seeking regular bail in case arising out of FIR bearing no. 208/2022, registered at Police Station IP Estate, Delhi for the commission of offences punishable under Sections 302/307/120B/34 of the Indian Penal Code, 1860 [hereafter 'IPC'] and Sections 25/27 of Arms Act, 1959.

2. Brief facts of the case, as per prosecution, are that on 13.06.2022, information regarding the murder of one Farman was received at PS IP Estate, Delhi vide DD No. 3A. The complainant, Md. Idreesh, father of the deceased, stated that his son Farman was married to one Aliya, but their marital life was strained due to interference by Aliya's sister, Samreen. It was alleged that Samreen instigated her husband, Raj Kumar @ Bhola, against the complainant's family, leading to several altercations between Raj Kumar and the deceased. The complainant alleged that on 12.06.2022, he and his son Farman were present at their house, when the co-accused Raj Kumar @ Bhola came outside, and called

out Farman. As soon as Farman stepped out, he was attacked by Raj Kumar, who also stabbed him multiple times with a knife. When the complainant went outside to help save his son, Raj Kumar had allegedly called the present applicant Mustkeen and asked him to ensure that neither Farman nor his father (i.e. the complainant) survives. Thereafter, Mustkeen had allegedly started hitting Farman, who was already injured, while Raj Kumar had started attacking the complainant Md. Idreesh, who also sustained facial injuries. On the basis of these allegations, the FIR was registered. During investigation, statement of one eye-witness Sonu @ Mogli was recorded, who revealed that Raj Kumar @ Bhola and Mustkeen, with the help of their associates, had murdered Farman by stabbing him and had also tried to murder Md. Idreesh and had later fled away from the spot. His statement under Section 161 of Cr.P.C. was also recorded wherein he specifically revealed that both Raj Kumar @ Bhola and Mustkeen had stabbed the deceased, while other accused persons (their accomplice) had blocked the road/ lane.

3. During investigation, the post-mortem of Farman revealed death due to haemorrhagic shock resulting from multiple ante-mortem stab injuries. Accused Raj Kumar, Mustkeen, and Samreen were arrested and, during custodial interrogation, disclosed their involvement in the crime. Raj Kumar admitted that he and his wife Samreen had conspired to kill Farman and the complainant due to personal enmity. The conspiracy was allegedly hatched on the same day at Haldiram Restaurant, Janpath, and relevant CCTV footage and call recordings between the accused were recovered. Blood-stained clothes and shoes were recovered from the accused's car, and the weapons of offence were recovered at the instance of Raj Kumar and Mustkeen. CCTV footage from the PWD captured the incident, showing six individuals arriving at the spot, and Raj Kumar and Mustkeen stabbing Farman.

4. It is alleged that after the incident, all the accused fled from the scene. Co-accused Sabir and Salman were subsequently arrested. The main charge sheet and two supplementary charge sheets have been filed, and the matter is pending trial before the Sessions Court. Charges have been framed against Raj Kumar @ Bhola, Mustkeen, and Samreen vide order dated 27.04.2023. Investigation is ongoing in respect of two unidentified accused persons who remain untraced.

5. The learned counsel for the applicant submitted that the applicant has been in custody since 13.06.2022 and has undergone more than two years and six months of incarceration. It is argued that the applicant was arrested primarily on the basis of the statement of the complainant, Md. Idreesh, who has since passed away. Apart from the applicant's disclosure statement, which is not admissible in evidence, no incriminating material was recovered from or at his instance during the investigation. It is further contended that the prosecution case is based largely on the testimony of a sole eye-witness, PW-1 Sonu @ Mogli. However, during his deposition before the Court, the said witness clearly stated that he could not identify any of the persons shown in the CCTV footage

as the footage was blurred, nor could he identify the applicant during the trial. Therefore, it is argued that the only eye-witness has not supported the prosecution's case qua the applicant. The learned counsel also submitted that co-accused Samreen, who is alleged to have played a significant role in the conspiracy to commit the offence, has already been granted regular bail by this Court vide order dated 20.09.2024, and the applicant is therefore entitled to parity. Attention was also drawn to the testimony of PW-4 "S", who stated that the applicant did not inflict any injury or stab the deceased but had allegedly held the deceased from behind while the main accused Raj Kumar gave the fatal blows. It is submitted that the applicant's role is, at best, secondary and not of direct involvement in the act of murder. On these grounds, it is prayed that the applicant be released on regular bail.

6. The learned APP for the State opposes the bail application, and argues that the applicant was actively involved in the conspiracy to murder the deceased Farman, in collusion with co-accused Rajkumar @ Bhola. It is submitted that several call recordings between Rajkumar and Samreen, recovered during investigation, reveal their intent to seek revenge against Farman and the complainant Idreesh. It is further submitted that blood-stained clothes and shoes were recovered from the accused persons' car at the instance of Rajkumar and the present applicant. The weapons of offence i.e. knives were also recovered at their instance. Additionally, CCTV footage of the incident shows six individuals arriving at the scene, where Rajkumar and the applicant are seen stabbing Farman. Rajkumar also attempted to kill the complainant, and all accused fled thereafter. In view of the gravity of the offence, the nature of evidence collected, and the applicant's active role in the incident, it is submitted that no ground for grant of bail is made out.

7. This Court has heard arguments addressed on behalf of both the parties and has perused the material available on record.

8. As per prosecution, the present applicant, along with co-accused Rajkumar @ Bhola and others, was involved in a pre-planned conspiracy to murder the deceased Farman. On 12.06.2022, the accused persons had allegedly come to the complainant's house, where Rajkumar and the applicant had stabbed Farman to death, while others had facilitated the crime.

9. The prosecution has also placed reliance on CCTV footage allegedly capturing the incident, asserting that the applicant is clearly visible along with co-accused Rajkumar @ Bhola at the scene of crime. This Court also notes that as per chargesheet, two knives were recovered at the instance of both accused Rajkumar and Mustkeen from the sunroof cover of a car bearing registration number DL12C0192 on 14.06.2022 at about 12:30 AM. The said knives are alleged to be the weapons used in the commission of the offence. Further, as per the subsequent medical opinion, the injuries mentioned in the post-mortem report are opined to be possible by the weapons of offence, i.e., the knives recovered in the case. Furthermore, the post-mortem of the deceased opined the

cause of death to be haemorrhagic shock resulting from multiple ante-mortem stab injuries.

10. It is a matter of fact that PW-1 and PW-3 have not supported the prosecution case on the material aspects. However, this Court attention was drawn to the testimony of PW-4 by the learned counsel for the accused. This Court notes that PW-4 has deposed before the learned Trial Court that at the time of incident, Rajkumar @ Bholu had called out Farman, and grabbed him by his collar. Rajkumar had then called out to Mustkeen saying, "come quickly". At that time, four individuals stood at a distance, surrounding the area, with handkerchiefs tied around their faces. Rajkumar had then punched Farman on the nose and then took out a knife and started stabbing him. At that point, Mustkeen (the present applicant) came from behind and held Farman's hands, restraining him while Rajkumar continued to stab him. The witness stated that Farman was screaming for help but was unable to free himself.

11. Thus, even if the contention of the learned counsel, that the applicant did not inflict stab injuries on the deceased, is accepted, his act of restraining the deceased from behind while the co-accused Rajkumar repeatedly stabbed him, as deposed by PW-4, prima facie reflects active participation and facilitation in the commission of the offence. The role attributed to the applicant cannot be seen as merely peripheral or passive in nature. Had the present applicant not restrained the deceased, the victim might have been able to defend himself or escape the fatal assault.

12. This Court has also perused the nominal roll of the applicant/accused, which reflects that he has been in judicial custody for about three years. However, his jail conduct has been reported as unsatisfactory, with multiple jail punishments having been awarded to him for prison offences such as possession of prohibited articles, recovery of a sharp piece of tile, and misbehaviour with jail staff. He is also involved in another case, i.e., FIR No. 98/2020, registered at P.S. Khajuri Khas, for offences under Sections 109/114/147/148/149/186/188/332/353/427/436/34 of the IPC.

13. The Hon'ble Supreme Court in the case of X v. State of Rajasthan: 2024 SCC OnLine SC 3539 has held that in cases involving serious offences like rape, murder, dacoity, etc., the Courts should be loath in entertaining the bail application – once the trial commences and the prosecution starts examining its witnesses.

14. Thus, considering the seriousness of the allegations, the specific role attributed to the applicant by PW-4 in her examination before the learned Trial Court – of facilitating the commission of the offence by physically restraining the deceased, the alleged recovery of the weapon of offence at his instance, his unsatisfactory jail conduct as well as his involvement in another criminal case, and the fact that trial is at a crucial stage and material witnesses are being examined, this Court does not find any ground to grant the regular bail to the

applicant at this stage.

15. Accordingly, the present bail application is dismissed.

16. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

17. The order be uploaded on the website forthwith.