

(2025) 05 DEL CK 0919

In the Delhi High Court

Case No : Bail Application NO. 3129 Of 2024

Rahul @ Moni @ Sannothiya

APPELLANT

Vs

State Govt. Of Nct Of Delhi

RESPONDENT

Date of Decision : 20-05-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161, 313, 439

Indian Penal Code , 1860 — Section 109, 114, 115, 120B, 302, 307, 379

Arms Act, 1959 — Section 25, 27, 39

Citation : (2025) 05 DEL CK 0919

Hon'ble Judges : Sanjeev Narula, J

Bench : Single Bench

Advocate : Jitender Sethi, Hemant Gulati, Shobit Demri, Keshav Sethi, Mukesh Kumar

Final Decision : Allowed

Judgement

Sanjeev Narula, J

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 "CrPC" seeks regular bail in FIR no. 566/2018 for offence under Section 302 of the Indian Penal Code, 1860 "IPC" registered at PS: Mukherjee Nagar. Subsequently, chargesheet was filed under Sections 307/302/120-B/109 read with Sections 114/115 of the IPC and 25/27 of the Arms Act, 1959.

2. Briefly stated, the case of the prosecution, is as follows:

2.1 On 10th October 2018, at approximately 9:40 PM, a PCR call was received at Police Station Mukherjee Nagar reporting a gunshot incident near Dheerpur, in the vicinity of Sisodia Tent House. The information was recorded vide DD No. 64-A and was assigned to Sub-Inspector Prempal for inquiry and necessary action.

2.2 SI Prempal, accompanied by other police personnel, reached the scene of crime. They were informed that the injured individual had been taken to BJRM Hospital, Jahangir Puri. At the hospital, he obtained the MLC of Shyam Sunder,

who had been declared dead during treatment.

2.3 The crime scene was examined and photographed by the Crime Team. One live cartridge and one spent cartridge were recovered from the scene and seized through a seizure memo. No eyewitnesses were located either at the hospital or at the spot. Based on the DD entry, an FIR was registered, and investigation was formally initiated.

2.4 On 11th October 2018, a post-mortem examination of the deceased, Shyam Sunder, was conducted. Exhibits handed over by the autopsy surgeon were seized through a seizure memo. Eyewitness Parvesh @ Bhola was examined and his statement under Section 161 CrPC was recorded. In his statement, he identified the assailants as Rahul @ Khera, Sonu @ Sam, Kamlesh, and Rahul @ Ganni, all of whom were known to him.

2.5 On 12th October 2018, accused Sonu @ Sam and Rahul @ Ganni were apprehended. Their disclosure statements were recorded, and pointing-out memos were prepared at their instance.

2.6 During interrogation, Rahul @ Ganni disclosed that Parvesh @ Bhola owed him a sum of INR 2.5 lakhs, which he had repeatedly demanded but remained unpaid. In September 2018, Rahul @ Ganni, along with the Petitioner (Rahul @ Moni) and others had visited Bhola's residence and issued threats. Despite repeated demands, no payment was made.

2.7 On 10th October 2018, all the aforementioned individuals gathered at Bhagwan Park, Burari, where they conspired to commit the offence, with Rahul @ Ganni, assuring monetary compensation to each participant as part of the agreement. It was decided that Sonu @ Sam, Kamlesh, and Rahul @ Moni (Petitioner) would confront Parvesh @ Bhola at his residence to demand repayment. In the event of refusal, Bhola was to be killed. It was further agreed that anyone attempting to intervene would also be eliminated. Further, it was agreed that Rahul @ Ganni and Pramod @ Pehlwan were to remain absent from the scene.

2.8 Acting on the plan, the three accused reached Bhola's residence. A confrontation ensued, and when the deceased tried to intervene, he was shot by the Petitioner. The Petitioner also allegedly fired at Bhola, who managed to escape unhurt.

2.9 On 15th October 2018, accused Kamlesh was arrested. His disclosure statement was recorded, and a pointing-out memo was prepared at his instance.

2.10 On 24th October 2018, the Petitioner was arrested in a separate Arms Act case. During interrogation, he disclosed that the weapon recovered from him was used in the commission of the offence in the present case. He was formally arrested in connection with the current FIR, and his statement was recorded, wherein he confessed to having fired upon both the deceased and Parvesh @ Bhola at the latter's residence in Dheerpur. A pointing-out memo was also

prepared at his instance.

2.11 The exhibits recovered during investigation were sent to the Forensic Science Laboratory (FSL), Rohini, Delhi for ballistic examination. The PCR call form was collected. Certified copies of the Call Detail Records and CAFs pertaining to the mobile numbers of the accused were obtained. The CDR analysis established the presence and connectivity of the accused persons with each other and their location at the scene of crime at the relevant time. As regards the Petitioner, it was established that mobile number xxxxxxx954 was registered in his name and was being used by him at the time of the incident. Although the mobile handset was not recovered, the accused disclosed during interrogation that it had been destroyed after the incident. The CDR details of the said number corroborate the Petitioner's proximity to other co-accused before and after the occurrence of the offence. Moreover, the eyewitness had also identified the Petitioner as one of the assailants.

2.12 As per the ballistic report, the deformed bullet recovered from the deceased's body had been fired from the weapon recovered from the Petitioner, thereby establishing a forensic link to the offence.

2.13 The Petitioner has also been previously implicated in four other criminal cases, namely: FIR No. 203/2017 under Section 379 IPC, P.S. Kanjhawla; FIR No. 183/2013 under Section 307 IPC and Section 27 of the Arms Act, P.S. Timarpur; FIR No. 487/2012 under Section 307 IPC and Section 27 Arms Act, P.S. Khajuri Khas; and FIR No. 264/2018 under Section 25 Arms Act, P.S. Crime Branch, Delhi.

2.14 Upon completion of investigation, a chargesheet was filed against all the accused persons and the matter is currently pending trial before the competent court.

2.15 A total of 39 prosecution witnesses have been cited in the present case, out of which 22 witnesses have been examined thus far.

3. Mr. Jitender Sethi, Senior Advocate representing the Petitioner, urges the following grounds for seeking bail:

3.1 The Applicant has been falsely implicated. There is no direct evidence linking him to the incident. The prosecution's case hinges primarily on the testimony of the alleged eyewitness, Parvesh @ Bhola (PW-7), who failed to support the prosecution version during his examination before the Trial Court and did not identify the Petitioner in court.

3.2. All co-accused persons namely Rahul @ Ganni, Sonu @ Sam, Pramod @Pehalwan and Kamlesh Kumar have been granted bail. Rahul @ Ganni, according to the prosecution, is the main accused with a motive to extort money from Pravesh @ Bholu and allegedly held a grudge against him. Given that the allegations against the Petitioner are not graver in degree than those against the co-accused, he is entitled to parity in the matter of bail.

3.3. The prosecution's reliance on Call Detail Records (CDRs) of mobile number xxxxxxx954, allegedly used by the Petitioner, to place him at the scene or in communication with co-accused, is insufficient in the absence of corroborative evidence. Particularly, when the sole eyewitness has failed to identify the Petitioner, CDR evidence, by itself, is not determinative. In this regard, it is noteworthy that while granting bail to co-accused Rahul @ Ganni, this Court has already observed that the evidentiary weight of CDR and location data must be evaluated during trial.

3.4. The Petitioner has been granted interim bail on 3 separate occasions and has never misused the liberty granted. There is no adverse report against the Petitioner during this period.

3.5. The Petitioner has remained in custody since 27th October, 2018. Over nearly six years, only 22 out of 39 prosecution witnesses have been examined, reflecting minimal progress in the trial. The prolonged pre-trial incarceration violates the Petitioner's fundamental right to a speedy trial under Article 21 of the Constitution of India, warranting his release on bail. 3.6. The alleged recovery of the pistol from the Petitioner occurred on 22nd October 2018, over 10 days after the date of the incident. While the ballistic report later linked the recovered weapon to the bullet extracted from the deceased, there is no explanation offered regarding the weapon's custody during the intervening period. No material evidence has been placed on record to show that the Petitioner retained possession of the weapon during that time, nor is there any ocular or forensic proof to establish that he fired the fatal shot. Reliance is placed on the judgment of the Supreme Court in *Pancho v. State of Haryana*, AIR 2012 SC 523 where, in a similar factual scenario involving delayed recovery, the Court found the evidence unreliable and acquitted the accused.

3.7. Furthermore, the ballistic report connecting the weapon to the bullet was issued only after nearly 10 months, on 08th September 2019. There is no evidence on record indicating where the said weapon was kept during this entire period or in whose custody it remained. Such unexplained delay and lack of proper custody cast serious doubt on the integrity of the prosecution's case. In similar circumstances, the Supreme Court in *Baldev Singh v. State*, AIR 1991 SC 31 has held that such evidence, in the absence of clear custody and chain of possession, is not sufficient for conviction.

4. Mr. Mukesh Kumar, APP for the State, strongly opposes the bail contending that the allegations against the Petitioner are of a grave and serious nature and are supported by substantial scientific and forensic evidence. He submits that the case of the Petitioner stands on a different footing from that of the co-accused who have been granted bail. In particular, he points out that the firearm used in the commission of the offence was recovered from the Petitioner, and this fact materially distinguishes his role from the others. Mr. Kumar further distinguishes the case of *Pancho*, AIR 2012 SC 523 relied upon by the Petitioner, by arguing that the delay in recovery of the weapon in the present case is limited to ten

days from the date of incident, whereas in Pancho, the recovery was effected nearly six months later. Therefore, the proximity of the recovery in the present case lends credibility to the prosecution's version and militates against the grant of bail.

Analysis

5. It is noted that co-accused persons, including the main accused namely Rahul @Ganni, at whose instance the alleged conspiracy was orchestrated, have already been granted bail. The principle of parity necessitates that similarly placed accused should receive similar treatment, barring any distinguishing factors. While the prosecution contends that the recovery of the weapon from the Petitioner distinguishes his case, it is necessary to assess the evidentiary value of such recovery, particularly in view of the Supreme Court's decision in Pancho, which dealt with the delayed recovery of a weapon of offence.

6. In the present case, the weapon in question was recovered more than ten days after the incident. In Pancho, the Supreme Court held that unexplained delay in recovery of a weapon weakens the probative value of such evidence. Though the delay in recovery in the present case may be comparatively shorter as compared to the case in Pancho, it nonetheless casts a shadow on the conclusiveness of the alleged recovery. The evidentiary value of such recovery, the uninterrupted chain of custody between the date of the incident and the date of seizure, the integrity of the seizure process, and the forensic linkage of the weapon, are matters that must be scrutinised at the stage of trial. At the present stage, the Court is not required to undertake such a detailed evidentiary analysis. What is relevant, however, is whether such recovery is sufficient to deny bail, especially when the main conspirator and other co-accused have already been enlarged on bail. In the Court's view, the alleged recovery, while forming part of the prosecution's narrative, is not of such conclusive weight at this stage as to disentitle the Petitioner from relief on the grounds of parity.

7. The prosecution also relies on CDRs of mobile number xxxxxxxx954 to establish the Petitioner's presence at the crime scene and his association with the co-accused. However, CDRs alone, absent corroboration, particularly when the sole eyewitness Parvesh @ Bhola (PW-7) has resiled from his previous statements and failed to identify the accused in Court, do not justify prolonged custody. This Court, while granting bail to Rahul @ Ganni, has already observed that the evidentiary relevance of location and CDR data is a matter for trial, not pre-trial incarceration.

8. Moreover, the Supreme Court has consistently held that prolonged pre-trial detention infringes upon the fundamental right to a speedy trial under Article 21 of the Constitution. In Tapas Kumar Palit v. State of Chhattisgarh, 2025 INSC 222 the Supreme Court granted bail to the accused, emphasizing that detaining an undertrial for an extended period, specifically six to seven years, without reaching a verdict violates the fundamental right to a speedy trial under Article

21 of the Constitution. The Court underscored that, regardless of the seriousness of the alleged offense, prolonged incarceration without conclusion of the trial infringes upon the accused's constitutional rights, thereby warranting consideration for bail. In the present matter, the Petitioner has been in judicial custody since 27th October 2018, amounting to over six years of pre-trial detention. Of the 39 prosecution witnesses, only 22 have been examined to date, reflecting a delayed pace in the trial proceedings. A report from the office of the Principal District and Sessions Judge, North Rohini Courts, attributes the delays to several factors: the unavailability of ballistic and FSL results, pending sanction under Section 39 of the Arms Act, non-availability of public witnesses during the prosecution evidence stage, non-production of the accused from judicial custody, and instances where the presiding officer was on leave. The report further indicates that 16 prosecution witnesses remain to be examined. Additionally, statements under Section 313 of the CrPC for all five accused are yet to be recorded, and the accused may choose to lead defence evidence. The trial, by all estimates, may take at least another one and a half years to conclude.

9. As regards the Petitioner's prior antecedents, it is pertinent to note that the Petitioner's brother namely Mr. Uday Prakash, has submitted an affidavit affirming that the Petitioner has neither been summoned nor charge-sheeted in connection with FIR No. 203/2017, registered at Police Station Kanjhawala. With respect to FIR Nos. 183/2017 and 487/2012, the Petitioner has already been granted bail. Furthermore, it is submitted that FIR No. 264/2018 arises as a consequence of the present case. Nonetheless, it is well-settled that mere pendency of criminal cases against the accused cannot be the sole ground for denying bail. *Prabhakar Tiwari Vs. State of UP* 2020 11 SCC 648

10. It is also relevant to note that the Petitioner was granted interim bail on multiple occasions during the pendency of the trial and complied with all conditions imposed upon him, including timely surrender upon expiry of such interim relief. No report of misuse or breach of bail conditions has been brought on record by the prosecution. This conduct indicates that the Petitioner does not pose a flight risk, nor has he attempted to interfere with the judicial process or influence witnesses during the period when he was not in custody.

11. In view of the foregoing, the Court is inclined to enlarge the Petitioner on bail. The Petitioner is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹ 25,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty Metropolitan Magistrate/ Jail Superintendent, on the following conditions:

(a) The Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;

(b) The Petitioner shall under no circumstance leave the country without the permission of the Trial Court;

(c) The Petitioner shall appear before the Trial Court as and when directed;

(d) The Petitioner shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/SHO;

(e) The Petitioner shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

12. In the event of there being any FIR/DD entry/complaint lodged against the Petitioner, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

13. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and should also not be taken as an expression of opinion on the merits of the case.

14. The bail application is allowed and disposed of in the afore-mentioned terms.