

(2025) 12 DEL CK 0042

Delhi HC

Case No: Bail Application No. 4698 Of 2025 & Criminal Miscellaneous Application No.
36192 Of 2025

Nitin @ Chota

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision: Dec. 4, 2025

Acts Referred:

- Bharatiya Nagarik Suraksha Sanhita, 2023, Section 84, 482
- Bharatiya Nyaya Sanhita, 2023- Section 3(5), 110

Hon'ble Judges: Amit Mahajan, J

Bench: Single Bench

Advocate: Ramesh Gupta, Shailendra Singh, Anshul Pratap Singh, Utsa Sharma, Durga Pratap Singh, Ritesh Kumar Bahri, Divya Yadav, Lalit Luthra

Final Decision: Dismissed

Judgement

Amit Mahajan, J

1. The present application is filed seeking pre-arrest bail in FIR No.154/2025 dated 09.03.2025, registered at Police Station Mukherjee Nagar, for offence under Sections 110/3(5) of the Bharatiya Nyaya Sanhita, 2023 ('BNS').

2. Briefly stated, the FIR was registered for the offence under Sections 110/3(5) of the BNS on the statement of the complainant, namely, Amit Kumar (victim's friend). Subsequently, after death of the victim, Section 105 of the BNS was added. It was alleged that on the intervening night of 07.03.2025 and 08.03.2025, at around 2:30AM, the victim had gone to the PG where the complainant was staying, and requested him to shelter the victim from the accused Sourabh and his friends. Allegedly, after some time, around 4 AM, the accused Sourabh came to the spot with his friends in search of the victim. Hearing a voice calling out to find the victim for teaching him a lesson, the victim became terrified and ran towards the stairs to escape by crossing over to the other terrace. The accused persons allegedly came inside the PG of the complainant and searched furiously for the victim. It is alleged that the accused persons also threatened the complainant of dire consequences if he protected the victim. After leaving the complainant's room, the accused persons went towards the stairs. A PCR call was subsequently received around 4:56AM regarding the victim lying in a pool of blood after falling from the roof.

3. During investigation, all four accomplices of the accused Sourabh (who had accompanied the said accused to the PG of the complainant), including the applicant, were identified from the CCTV footage. It was also found during investigation that the victim and the accused Sourabh had a spat around 2AM on 08.03.2025 near Batra Cinema, whereafter, the accused Sourabh made calls to several persons to teach a lesson to the victim. It was found that the accused Sourabh had chased the victim with his accomplices for over two hours, and he had gone to the victim's house as well before going to the complainant's PG.
4. The learned senior counsel for the applicant submits that the applicant has been falsely implicated in the present case and he is innocent.
5. He submits that the present case at best is one of accidental death and the offence under Section 105 of the IPC is not made out against the applicant. He submits that there is no direct evidence against the applicant and he appears to have been implicated essentially on the basis of the disclosure of the accused Sourabh, which is inadmissible as evidence. He submits that there is no material to show common intention in the present case.
6. He further submits that it is impossible to identify the applicant from the purported CCTV footage, and even otherwise, it cannot be asserted that he was one of the individuals who had accompanied the accused Sourabh upstairs to the room just because he may have been seen entering the building.
7. He submits that the applicant is not seen in the CCTV footage and his phone location is also not found to be near the spot where the initial quarrel took place between the applicant and the main accused Sourabh. He submits that the applicant did not chase the victim and he is only alleged to have accompanied the main accused to the complainant's PG.
8. He submits that the applicant is ready to join the investigation and no purpose will be served by subjecting him to incarceration.
9. Per contra, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that the applicant's presence at the spot is established by his CDR as well as the CCTV footage. He further submits that the main accused Sourabh had called the victim on multiple occasions on the night of the incident and the applicant had also received a call from co-accused Deepak.
10. He submits that the applicant has been identified by the complainant in his supplementary statement and also by an independent witness- Ankit. He further submits that NBWs have been issued against the applicant.
11. I have heard the counsel and perused the record.
12. It is trite law that the power to grant a pre-arrest bail is extraordinary in nature and is to be exercised sparingly. The Hon'ble Apex Court, in the case of *State of A.P. v. Bimal Krishna Kundu* : (1997) 8 SCC 104, held as under:
"8. A three-Judge Bench of this Court has stated in *Pokar Ram v. State of Rajasthan* [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)
"5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal."
9. Similar observations have been made by us in a recent judgment in *State v. Anil Sharma* [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)
"The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest."

xxxx xxxx xxxx

12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the

prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on "the career of millions of students", learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order."

13. Grave allegations have been made by the prosecution against the applicant in the present case. It is alleged that pursuant to a quarrel between the victim and the main accused Sourabh, the accused persons chased the victim to teach him a lesson, which led the victim to seek shelter at his friend's place and terrified him to such an extent that he fell to his death while attempting to escape the assailants by crossing over to the other terrace.

14. It is the case of the applicant that his presence at the spot of the incident is dubious as the CCTV footage does not clearly show his face. The prosecution has contested the assertion by emphasising that the applicant's location on the spot is established by his CDR.

15. Pertinently, the complainant in his supplementary statement has explicitly identified the applicant from the CCTV footage. Similarly, the witness Ankit alias Shastri has also identified the applicant from the CCTV footage.

16. Considering the identification of the applicant by the said witnesses coupled with the applicant's CDR location showing his presence at the concerned spot with other accused persons and his CDR connectivity with the main accused Sourabh, the applicant's involvement in the commission of the offence cannot be ruled out at this stage.

17. The same requires further investigation and the investigating agency ought to be provided some play in the joints to investigate the matter in the manner that they deem appropriate. Undoubtedly, custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 482 of the BNSS [Ref. State v. Anil Sharma : (1997) 7 SCC 187].

18. Furthermore, having perused the Case Diary and the material on record, it does not appear at this stage that the investigation is being carried out with the intention to injure or humiliate the applicant and the facts do not indicate that the applicant is being falsely implicated.

19. It is also relevant to note that NBWs have been issued against the applicant and proclamation has been published against him in terms of Section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Although it is stated that the applicant has joined investigation albeit belatedly, however, it is stated by the prosecution that the applicant has not cooperated with the investigation and given replies that are contrary to the record. While an accused is not expected to give self-incriminatory statements, considering that the applicant also did not join investigation for a prolonged period of time, this Court is of the opinion that granting pre-arrest bail to the applicant would undoubtedly impede further investigation. It is well-settled that an order of bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

20. In the opinion of this Court, the gravity of the offence and stage of investigation qua the applicant does not entitle the applicant to the extraordinary relief of pre-arrest bail.

21. The present bail application is therefore dismissed. Pending application also stands disposed of.

22. 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 also not be taken as an expression of opinion on the merits of the case.