

State Vs. Saad Mirza @ Fardin
CNR No.: DLCT01-013471-2023
SC No.: 525/2023
FIR No.: 579/2023
PS: Kotwali

29.05.2025

Present: Mr. Amit Dabas, Ld. Addl. PP for the State.
Mr. Ayub Ahmed Qureshi, Ld. Counsel for the
applicant, namely, Saad Mirza @ Fardin.

ORDER

1. The present application has been moved on behalf of applicant, namely, Saad Mirza @ Fardin (*'applicant/accused'* for short), in terms of the provisions under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'BNSS'*) seeking regular bail.

2. Learned Counsel for the applicant outrightly submitted that the applicant is innocent and has been falsely implicated in the present case by the police officials in connivance with the complainant. Ld. Counsel further submitted that nothing was recovered from the possession of the applicant or at his instance and the recovery, if any, has been planted upon the applicant by the police officials. Ld. Counsel further submitted that the applicant has been languishing in judicial custody since 18.07.2023, without there being any fault on his part. Further, as per Ld. Counsel, the complainant and other witnesses have tendered their respective affidavits for filing quashing petition before the Hon'ble High Court of Delhi for disposal of the present FIR. It was further submitted that, even otherwise, the applicant is no longer required for custodial interrogation or for any other purpose. Ld. Counsel further submitted that the applicant has clean antecedents and there are

no chances of his absconding/fleeing from justice, if released on bail. Further, Ld. Counsel submitted that the applicant is sole bread earner of his family and his continued incarceration has put his family under grave hardships. Lastly, it was submitted by the Ld. Counsel that applicant is ready to abide by the terms imposed by this Court while granting bail, including cooperating with the investigating authorities for further investigation, as and when summoned/ requisitioned.

3. *Per contra*, learned Addl. PP for the State vehemently opposed the present application on the ground that the applicant was actively involved in the commission of offence in the instant case, being grave in nature. Further, as per Ld. Addl. PP for the State, the allegations levelled against the applicant are quite serious in nature. Ld. Addl. PP for the State further submitted that the applicant along with his associates committed robbery upon the complainant. Ld. Addl. PP for the State further submitted that part robbed amount was recovered from the possession of the applicant. Ld. Addl. PP for the State further submitted that in case bail is granted, there are chances of applicant inducing, threatening and/or coercing the witnesses, besides damaging material evidence. Further, as per the Ld. Addl. PP for the State, there is a reasonable likelihood of flight risk of the applicant, making the present application liable to be rejected to the outset.

4. The arguments of Ld. Counsel for the applicant as well as that of Ld. Addl. PP for the State have been heard as well as case record(s), thoroughly perused.

5. The quandary that surrounds the determination of bail is replete with multitudinous factors, involving establishment

of a balanced approach between the conflicting interests. While on one hand, such an adjudgment involves safeguarding the right to liberty of an individual, while preventing harassment, humiliation, and unjustified detention of the accused, on the other hand, it entails ensuring free, fair and full investigation. Undeniably, liberty of an individual is valuable right, however, it is trite law¹ that such a protection cannot be absolute and there may be instances where the collective interest of the community may predominate the right² of personal liberty of an individual. Ergo, it is quite understandable that while exercising the discretion to grant or refuse bail the Court will have to take into account various considerations³, such as; *“the nature and seriousness of the offence; the circumstances in which the offence was committed; the character of the evidence; the circumstances which are peculiar to the accused; a reasonable apprehension of witnesses being influenced and evidence being tampered with; the larger interest of the public or the State; the position and status of the accused with reference to the victim and the witness; the likelihood of the accused fleeing from justice; the likelihood of the accused repeating the offence; the history of the case as well as the stage of investigation, etc...”* Further, strikingly, it is a settled law⁴ that where there are sufficient reasons to have reasonable apprehension that the accused would flee from justice and/or tamper with prosecution evidence, such an accused can be refused bail. Apposite to further note that though, the courts are required to give reasons at

¹ *Masroor v. State of U.P.*, (2009) 14 SCC 286

² *Shahzad Hasan Khan v. Ishtiaq Hasan Khan*, (1987) 2 SCC 684

³ *Anil Mahajan v. Commissioner of Customs*, 2000 SCC OnLine Del 119; and *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496

⁴ *Anil Mahajan v. Commissioner of Customs*, 84 (2000) DLT 854

the stage of determination of bail, however, a detailed examination of evidence and elaborate documentation of the merits of the case is not required⁵ at such a stage. Further, court(s) cannot go into the question of credibility and reliability of the witnesses/evidence put up by the prosecution, which can only be tested during the trial⁶. Apposite to note in this regard that while considering an entreaty for bail, court(s) cannot be oblivious to the impact of grant thereof on the witnesses or the complainant. In fact, in this regard the superior courts⁷ have persistently cautioned that the impact of grant on bail on the witnesses, yet to be examined and/or victim is required to be duly considered by court(s), at the stage of such determination. Even otherwise, the superior courts⁸ have also avowed that the impact of an offence on the society, equally needs consideration while determining on an entreaty for bail.

6. Therefore, wary of the principles hereinunder noted, this Court outrightly observes that the primary contention of the Ld. Counsel for the applicant is that he has been wrongly roped into the present proceedings. However, in this regard it is outrightly asserted that a detailed scrutiny of the evidence or evaluation of their truth/veracity cannot be undertaken at the stage of bail, so as to prejudice either the prosecution's or the defence's case. Suffice it is for the present purpose to note that from a perusal of the documents placed on record, in particular, from the statements of the witnesses, the applicant's complicity and active role in the commission of offence *prima facie* stands

⁵ *Jagjeet Singh v. Ashish Mishra*, (2022) 9 SCC 321

⁶ *Satish Jaggi v. State of Chhattisgarh*, (2007) 11 SCC 195

⁷ *Sudha Singh v. State of U.P.*, (2021) 4 SCC 781

⁸ *Neeru Yadav v. State of U.P.*, (2016) 15 SCC 422.

established, in so far as the applicant along with his co-accused persons committed robbery upon the complainant. Further, part robbed amount of Rs. 2 Lacs was also recovered from the possession of the applicant. Pertinent to note that the applicant has been correctly identified by the complainant, during his evidence before the Court, as one of the perpetrators of the offence in question, besides specific and active role in the commission of robbery has been attributed by the complainant *qua* the applicant.

7. In so far as the contention of the Ld. Counsel regarding applicant's length of custody is concerned, this court deems it apposite to observe that firstly there has been no delay, as alleged attributed to this Court. Even otherwise,⁹ that a delay in conclusion of trial cannot be a sole ground for bail nor can it be considered in isolation. Apposite to note in this regard, besides the aforementioned *prima facie* complicity and active role of the applicant in the present incident, there is a reasonable apprehension of the applicant fleeing from justice, if released on bail, considering the rigorousness¹⁰ of the punishment involved as well as the stage of the proceedings, being quite nascent as the evidence of public witness is yet to be concluded. Accordingly, when the said factors are considered in conjunction, this Court finds itself difficult to be convinced that any indulgence or relief can be granted in favour of the applicant at this stage. Needless to mention that the argument that the matter has been settled between the parties is, in the considered opinion of this Court, no

⁹ *Jaibunisha v. Meharban*, (2022) 5 SCC 465; *Rajesh Ranjan Yadav v. CBI*, (2007) 1 SCC 70 and *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528

¹⁰ *Kuldeep v. State (NCT of Delhi)*, 2021 SCC OnLine Del 4218 and *Rahul Kumar v. State (UT of J&K)*, 2023 SCC OnLine J&K 323

ground for grant of bail considering that the allegations/charges leveled against the applicant are non compoundable in nature.

8. Consequently, in conspectus of the above and further keeping in view the nature and gravity of the allegations; the fact of applicant is involved in a crime of heinous nature; severity of the punishment which may be inflicted on conviction; evidence of public witness is yet to be concluded; the role and complicity of the applicant as well as the *prima facie* incriminating evidence brought on record against him; manner of commission of offence; reasonable apprehension regarding the applicant's fleeing from justice, considering the seriousness of offence; as well as further considering the impact of the offence on the society, this Court does not deem it fit to grant bail to the applicant at this stage.

9. Accordingly, the present application under Section 483 BNSS for regular bail *qua* the applicant Saad Mirza @ Fardin is ***dismissed***.

10. It is clarified herein that the observations made in the present order are only limited for the purpose of deciding the present application of the applicant herein and would have no bearing on the factual matrix of the present case.

11. A copy of the present order be given ***dasti*** to the Ld. Counsel for the applicant, namely, Saad Mirza @ Fardin. Further, a **copy of this order be sent to the concerned Jail Superintendent with the direction to hand over** a copy of order to the applicant.

(Abhishek Goyal)
ASJ-03, Central District,
Tis Hazari Courts, Delhi
29.05.2025