

28.07.2025

Present: Sh. Girish Giri, Ld. Addl. PP for State.
None for the applicant / accused.

1. This application u/s 483 BNSS has been moved seeking release of applicant / accused Rakesh @ Raka on regular bail.

2. Ld. Counsel for the applicant has submitted that no similar application is pending before any other court.

3. Reply filed. Copy supplied.

4. Brief facts of the case, as per reply of IO, are that on 04.02.2021, vide DD No. 107A, an information was received at PS Kanjhawala that one patient with bullet injuries was brought at MLS Cygnus Hospital, Rama Vihar and he was declared as brought dead. After receiving DD No.107A, ASI Rajender Singh alongwith Ct. Naveen reached at Main Karala to Begumpur Road, near Majri Mubarakpur, T-point crossing where one black colour Thar Jeep was found at the divider whose left side window glasses were broken and empty cartridges, bullet lead and broken pieces of glasses were scattered in and around Jeep. The identity of the deceased was subsequently revealed as Kulbir Mathur @ Golu who was opined brought dead with gun shots injury without cloth except underwear. Thereafter, the body was formally inspected by ASI Rajender Singh and

gunshot injury marks were found on the waist, chest, arms and shoulder of the deceased. Dead body was preserved at mortuary of SGM hospital. Thereafter, ASI Rajender reached the spot and total 9 empty cartridges and 3 bullet lead were found scattered on road and blood found on the road and a mobile phone with power bank and charging cable were also found. Accordingly, as per recovery, MLC and inspection of scene of crime, case u/s 302 IPC & 25/27/54/59 Arms Act was registered.

5. During course of investigation, one accused Ajay Rathi was arrested by Special cell vide FIR 52/21 u/s 25/54/59 Arms Act and further he was formally arrested in the present case FIR on 11.02.2021. During police remand, co-accused Ajay Rathi disclosed that, as per the direction given by Himmat @ Chiku and Sandeep @ Dhillu from Tihar Jail, he alongwith his associates namely Sultan @ Krishan, Deepk, Rakesh and Sumit @ Jhumka hatched a conspiracy to murder Kulbir @ Golu. He alongwith his abovementioned associates murdered Kulbir @ Golu on 04.02.2021 by firing on him while he was driving his Thar Jeep. Thereafter, during course of further investigation, applicant / accused Rakesh @ Raka was arrested in the present case and sent to JC. After completion of investigation charge-sheet was filed.

6. Ld. Counsel for applicant / accused has argued on the line of bail application and submitted that applicant / accused is in JC since 27.03.2022 i.e. more than three years. Ld. Counsel submitted that the charge-sheet has already been filed and prosecution has cited 49 witnesses out of which only 3 witnesses have been examined till date

and the trial will take a long time. Ld. Counsel submitted that there is no eye witness and the case of the prosecution is based on circumstantial evidence and chain of prosecution is highly broken and doubtful. PW-3, who projected himself as eye-witness during recording of his testimony, has failed to identify the applicant / accused and there is no other eye witness in the present case. Ld. Counsel submitted that prosecution has established its case only on the basis of disclosure statement of accused Ajay Rathi wherein he disclosed the name of 9 accused persons but the prosecution is completely silent on the omission of rest of the accused persons present on the spot as only four of the alleged accused persons have been charge-sheeted in the present matter. Ld. Counsel submitted that owner of flat and owner of the bike which was used in the commission of offence neither traced out nor interrogated. It is further submitted that neither the alleged arms nor the motorcycle has been recovered at the instance of applicant / accused.

7. Ld. Counsel submitted that the conspiracy was hatched a day prior to date of offence but the applicant / accused is not visible in the CCTV of the flat wherein the conspiracy was hatched. It was also submitted that applicant/accused is not visible in the CCTV footages near the place of incident collected by the Investigation Agency. Ld. Counsel submitted prosecution has mentioned in the charge-sheet that applicant / accused is seen on Splender bike at serial no. 7 & 12 of the CCTV footage analysis whereas as per disclosure of co-accused Ajay Rathi, the applicant / accused is alleged to be seen on Pulsar bike at the same time, which causes a doubt on the story of prosecution. It is submitted that prosecution has failed to place any witness on record

who could identify the applicant / accused in the CCTV footages which appears to be blur to the naked eye. Ld. Counsel has submitted that no explanation has been sought by any person who brought deceased to hospital regarding delay in reporting the matter to the police. Ld. Counsel submits that no grounds of arrest have been informed to applicant / accused. Ld. Counsel submitted that no motive has been attributed to applicant / accused for killing the applicant / accused. Ld. Counsel submitted that applicant / accused is a young individual having clean antecedents and keeping him in company of hardcore criminals would not serve any fruitful purpose. Ld. Counsel submitted that applicant / accused has been granted interim bail many times and the applicant / accused has timely surrendered before the jail authority after expiry of interim bail and has never violated the conditions of interim bail. Ld. Counsel submitted that applicant / accused already been granted bail in FIR bearing no.463/2020 and 05/22. Thus, the applicant / accused be also released on bail in this case.

8. Bail application is strongly opposed by Ld. Addl. PP for State and IO stating that allegations against the applicant / accused are serious in nature. Ld. Addl. PP submits that if applicant / accused is released on bail, he can influence the witnesses and jump the bail.

9. Submissions heard. Record Perused.

10. In *Prahlad Singh Bhati vs. NCT of Delhi & Ors.– (2001) 4 SCC 280*, the Hon'ble Supreme Court highlighted the aspects which are to be

considered by a court while dealing with an application seeking bail which are as follows:

“The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge.”

11. In *State of Orrisa v. Mahimananda Mishra –Crl. Appeal 1175 of 2018 (arising from SLP (Crl.) No. 6006/2017 decided on 18.09.2018,*

Hon’ble Supreme Court held that :

“.....It is by now well settled that at the time of considering an application for bail, the court must take into account certain factors such as the existence of a prima facie case against the accused, the gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering with the witnesses and obstructing the courts as well as the criminal antecedents of the accused. It is also well settled that the court must not go into deep into merits of the matter while considering an application for bail. All that needs to be established from the record is the existence of a prima facie case against the accused.”

12. In the present case, applicant/accused is charged for offence punishable under section 120B r/w Section 302 IPC and 302/34 & 27 Arms Act. The allegations against the applicant/accused are certainly grave. The case of the prosecution is that the applicant/accused alongwith other accused persons hatched a criminal conspiracy and committed murder of one Kulbir Mathur. It is well settled proposition that direct evidence of criminal conspiracy is rare and existence of criminal conspiracy has to be inferred from the fact and circumstances. The charges have been framed against the applicant/accused after considering the entire circumstances. The present matter is at the stage of prosecution evidence. At this stage, a detailed examination of evidence and elaborate documentation of the merit of case is not required to be taken. The evidentiary value of the CCTV footages collected during investigation and presence and visibility of the applicant/accused in those footages is a matter of trial and cannot be appreciated at this stage. No doubt, there are 49 prosecutions witnesses and their examination may take considerable time but it is not appropriate to release the applicant/accused on bail till the examination of public witnesses. The applicant/accused have not clean antecedents and therefore, considering his criminal previous record, the possibility of influencing or threatening the witnesses cannot be ruled out at this stage. Considering the aforesaid facts and circumstances, **the present bail application of the applicant / accused Rakesh @ Raka is dismissed.**

13. Observation made herein above shall not affect the merits of this case in any manner.

14. Application stands disposed off.

(MUNEESH GARG)
ASJ-03, N/W, ROHINI COURTS
DELHI/28.07.2025