

IN THE COURT OF SH. JITENDRA SINGH,
SPECIAL JUDGE (PC ACT) (CBI)-23 (MPs/MLAs Cases), ROUSE
AVENUE DISTRICT COURTS, NEW DELHI

Bail Matter No. 26/2025
FIR No. 0097/2025
U/s(s) 221/121(1)/132/191(2)/190/263(b)/351(3)/111 of BNS, 2023

In the matter of :
AMANATULLAH KHAN
vs.
STATE OF NCT OF DELHI
CNR No. DLCT11-000120-2025

25.02.2025

ORDER

1. This order shall decide anticipatory bail application dated 12.02.2025, filed by **Amanatullah Khan** in connection with FIR bearing no. 0097/2025 registered under Sections 221/ 121(1)/ 132/ 191(2)/ 190/ 263(b)/ 351(3)/ 111 of Bharatiya Nyaya Sanhita, 2023 (hereinafter to be referred as, 'BNS').
2. Reply to the anticipatory bail application has been filed by the Investigating Officer. The same is kept on record. Copy supplied.

BRIEF FACTS

3. Briefly, the allegations against the applicant are that he alongwith his associates facilitated the escape of the accused Shahwez Khan, who was wanted in FIR bearing number 11/2018. While doing so, the applicant along with his associates manhandled the police team and caused obstruction in the discharge of their official duty.

SUBMISSION BY LD. COUNSEL FOR THE APPLICANT

4. Ld. Counsel for the applicant states that the State cannot take benefit of its wrong. Even if the allegations are assumed to be true, no offence appears to be made out against the applicant as accused Shahwez Khan was on bail in a case relating to FIR bearing no. 11/2018 and therefore the allegation of facilitating his escape cannot attract any offence under the penal code. Further, the alleged act of the applicant is protected u/s 34 of BNS. The police team failed to justify why they detained accused Shahwez Khan for more than 15 minutes if they had come just for his arrest. Ld. Counsel further argued that there is no CCTV footage with the prosecution to show the presence of the applicant near the scene of crime. Apparently, the endeavor of the Investigating Agency is to falsely implicate the applicant. Ld. Counsel further submitted that the applicant has already joined the investigation, therefore, he may be admitted to anticipatory bail. Reliance has been placed upon the case titled as ***Homi Rajvansh vs. Central Bureau of Investigation, Bail Application No. 1511/2011 & 1512/2011***, decided by the Hon'ble High Court of Delhi on 09.11.2011.

SUBMISSION BY LD. ADDITIONAL PP FOR THE STATE

5. It is submitted by Ld. Additional PP for the State that the applicant is a habitual offender and there exist serious allegations of facilitating the escape of accused Shahwez Khan. It is submitted that accused Shahwez Khan was declared as a Proclaimed Offender (hereinafter to be referred as, 'PO') on 04.04.2018. It is further submitted that while accused Shahwez Khan was on anticipatory bail, the applicant had no right to interfere in the discharge of official duty.

Ld. PP for the State also argued that the applicant is required for custodial interrogation, as he has denied his presence at the place of incidence. He further submitted that around 26 cases have been registered against the applicant, therefore, he should not be granted any benefit of anticipatory bail. Reliance has been placed upon the following judgments of *Homi Rajvansh (Supra)*, *UT of DNH and DAMAN and Dui vs. Suresh Jagubhai Patel @ Sukha Patel, Crl. Appeal No. 315/2024, decided by the Hon'ble Supreme Court on 19.01.2024*, *State of Orissa vs. Ram Bahadur Thapa, 1959 SCC OnLine Ori 22, Rajan Devi vs. State (GNCT of Delhi and Ors. (Crl. M.C. 2159/2020) decided by the Hon'ble High Court of Delhi on 13.09.2023, Ash Mohd. vs. Shivraj Singh @ Lalla Babu and Anr.; (2012) 9 SCC 446, Chirangi vs. State; 1952 SCC OnLine MP 68, State of Jharkhand vs. Sunny Kumar @ Sunny Kumar Sao; 2025 INSC 153 SLP No. 1953/2024 and Amanatullah Khan vs. State GNCT of Delhi, decided by the Hon'ble High Court of Delhi on 12.03.2018*.

FINDINGS

6. Record reveals that interim protection was granted to the applicant, vide order dated 13.02.2025. The relevant extract of the said order is reproduced below for ready reference :-

“FINDINGS”

5. *The order sheets which have been filed by the Ld. Counsel for the applicant has been duly verified by the Reader of this Court from the Server. The ordersheets reveal that vide order dated 18.07.2018, the direction were issued to the accused Shahwez Khan to join the investigation on 19.07.2018 in relation to FIR bearing no. 11/2018 and interim protection was also granted. The relevant extract of the said order is reproduced below :-*

“Applicant is directed to join investigation on 19.07.2018 at 5.30 p.m.. Till then no coercive steps shall be taken against applicant.....”

6. Thereafter, the said accused was admitted to anticipatory bail on 30.07.2018. The relevant extract of the said order is reproduced below :-

"The applicant has joined investigation and is cooperating in investigation. Accordingly, the application of the applicant for anticipatory bail is allowed and it is ordered that in the event of arrest of applicant Shahwez Khan, he shall be admitted to bail on furnishing personal bond in the sum of Rs. 25,000/- with one surety in the like amount to the satisfaction of IO/SHO"

7. The allegation of the police team that the applicant was instrumental in facilitating the escape of accused Shahwez Khan does not seem to carry weight as he (Shahwez Khan) was already on anticipatory bail in the case in which allegedly police had gone to arrest him.

8. This Court is of the considered opinion that applicant has made out a case for interim protection till the next date of hearing. In the meanwhile, the applicant is directed to join the investigation as and when required by the Investigating Officer. The IO is directed to procure and produce the CCTV Footage in and around the place of incident for determining the nature and gravity of the allegations.

9. *No coercive steps be taken against the applicant Amanatullah Khan till the next date of hearing.*

10. *Be listed on 24.02.2025.*

11. *It is clarified that nothing mentioned herein above shall tantamount to expression of opinion on the merits of the case."*

In compliance of the said order, the Investigating Officer has brought the CCTV footage of the cameras situated in and outside the shop where the alleged offence had taken place.

(a) Nature And Gravity of Accusation

7. The CCTV footage which is relied upon by the prosecution is from 14:00:00 hours (02:00 PM) till 14:29:58 hours (02:29 PM). The CCTV footage has been perused for determining the nature and gravity of the accusations. In CCTV footage, at about 14:07:42 hours, it is apparent that the accused Shahwez Khan is standing outside the shop and suddenly two police officials in civilian clothes surrounded him. At about 14:09:07 hours, one of the police official by way of gesture (pointing by hand) asked Shahwez Khan to get inside the shop alongwith the said police official. The CCTV

footage from the camera which is placed inside the shop shows that Head Ct. Roshan and accused Shahwez Khan are inside the shop and at about 14:13:41 hours, it is seen that Head Ct. Roshan did not allow the accused Shahwez Khan to move outside the shop which clearly shows that the accused Shahwez Khan remained confined and detained inside the shop. At around 14:15:20 hours, three to four persons also reached the spot (outside the shop).

8. There is nothing in the CCTV footage to show that accused Shahwez khan had tried to escape from the detention/custody of the police official. The allegation in the FIR that the applicant alongwith Mr. Laddan and Mr. Muneer came to the spot is not supported by the CCTV footage, as it is visible that at around 14:20:06 hours, Mr. Laddan came to the spot and remained there till 14:21:19 hours, while the applicant was not even present there. The CCTV footage after 14:29:58 hours is not available due to an alleged power cut in the area. The prosecution has failed to explain why the time of alleged offence was stated as 02:30 PM to 03:00 PM by the police team, even though accused Shahwez Khan was detained at 02:07 PM, as is apparently clear in the CCTV footage.

(b) Detention of the accused Shahwez Khan

9. The prosecution has not disputed the grant of anticipatory bail to accused Shahwez Khan on 30.07.2018, who was then sought to be arrested. In reply, the Investigating Officer had categorically admitted that the status of accused as PO, inadvertently, could not be cancelled. The relevant extract of the reply is reproduced below :-

“During further investigation, Notices U/s 35.3 have been served to co-accused persons namely Kesar Imam@ Laddan So Nizam Siddiqui, Shavez S/o Khursheed and Muneer were also served but none of them have joined the investigation. It has been revealed that vide order dtd 04.04.18 accused Shavez was declared absconder in case FIR No. 11/18 PS Jamia Nagar and PO Chargesheet was filed against him before the Hon’ble Court on 20.07.18. Thereafter, on 30.07.18 he was granted anticipatory bail by the Hon’ble Session Court, but his PO status could not be cancelled inadvertently.....”

10. It is informed by the Investigating Officer of the FIR bearing no. 11/2018 that he had intimated the then SHO regarding the grant of anticipatory bail to accused Shahwez Khan. On inquiry, it is submitted by the present SHO that as per their record, the accused is still shown as an absconder. Admittedly, Supplementary Chargesheet has not been filed by the Investigating Officer against accused Shahwez Khan. That is the reason the status of accused Shahwez Khan has been shown as PO in the order sheets of the Trial Court.

11. It is settled law that a Court may declare the direction of detention invalid if the grounds which lead to the subjective satisfaction of the detaining authority for arrest, are found to be nonexistent, misconceived, or irrelevant. Such irrelevant or nonexistent grounds of arrest in the order of detention is an infringement of the right to life and personal liberty as guaranteed under Article 21 of the Constitution of India. The Constitution safeguards the arbitrary arrest or detention and requires that a person must not be deprived of his or her liberty except on grounds, and in accordance with the procedure established by law. The expression ‘liberty’ is capable of taking within its sweep not only the right to move freely, guaranteed under Article 19(1)(d); but also each one of the other freedoms as mentioned. Under Article 19(1), personal liberty takes within its sweep right not to be subjected to physical restraints.

12. The conduct of the police team in detaining the accused Shahwez Khan inside the shop for about 20 minutes without any reason casts a cloud of doubt as they had the opportunity to immediately arrest accused Shahwez Khan. The police official cannot be allowed to justify their act of illegal detention as merely being mistake of fact and, thereafter, disentitle the accused of his right under the colour of performing official duty.

(c) **Right of Private Defence**

13. This case involves interplay of Section(s) 14¹, 35² and 37³ of BNS. It is not in dispute that the accused Shahwez Khan was on anticipatory bail when the police team had gone to arrest him. The argument that the police team was acting under a mistake of fact and, therefore, protected u/s 14 of BNS does not hold water as for invoking general exception, the police officials should act under '*good faith*'.

1. Section 14. Act done by a person bound, or by mistake of fact believing himself bound, by law.

Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations

- (a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.
- ((b)) A, an officer of a Court, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

2. Section 35. Right of private defence of body and of property

Every person has a right, subject to the restrictions contained in section 37, to defend-
(a) his own body, and the body of any other person, against any offence affecting the human body;

3. Section 37. Acts against which there is no right of private defence.

- (1) There is no right of private defence-
 - (a) against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law;
 - (b) against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law;
 - (c) in cases in which there is time to have recourse to the protection of the public authorities.
- 2) The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1. A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

Explanation 2.-A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

Section 2 (11) of BNS defines the expression ‘good faith’ as “*Nothing is said to be done or believed in “good faith” which is done or believed without due care and attention.*”

14. The police team acted on the basis of PO proceedings which dates way back in the year 2018. It was incumbent upon the police team to verify the status of the accused from the Investigating Officer before proceeding to arrest the accused. There is nothing on record to suggest that the police team has exercised due care and attention, entitling them to protection u/s 14 of BNS.

15. Similar situation arose before the Hon’ble High Court of Bombay in case titled as *Deoman Shamji Patil versus The State; AIR 1959 BOM 284*, where the accused inflicted two blows to the police constable who forced him to undergo medical examination of the arrested accused. The Hon’ble High Court of Bombay deemed that the act of the accused does not attract criminal liability as he exercised his right of private defence as he could not be compelled to undergo medical examination. Thus, the accused here could rightfully exercise his right to private defence. The relevant extract of the same is reproduced below for ready reference :-

“12.Now, the expression "good faith" as used in the Indian Penal Code has a technical meaning, for Section 52 of the Indian Penal Code says that "nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention". It is obviously the duty of all police officers to acquaint themselves with at least the general scope of their powers. Since the action of the police constables in this case was altogether outside the scope of their powers, it cannot be said that they acted with "due care and attention" and therefore in "good faith" generally

speaking, the exception contained in the first paragraph of Section 99 of the Indian Penal Code applies where a public servant acts irregularly in the exercise of his powers, and not where he acts outside the scope of his powers.

14. In the present case, the order of the head constable, if it is construed as an order authorising the police constables to use force against the accused, was wholly beyond the powers of the head constable, and the accused had the right of defending himself against the force sought to be illegally exercised against his person in pursuance of that order...."

(emphasis supplied)

16. The Hon'ble Supreme Court in case titled as *Darshan Singh versus State of Punjab & Another, Criminal Appeal No. 1057 of 2002, passed on 15.01.2010*, has laid down the principles governing the right of private defence. The relevant extract is reproduced below for ready reference:-

"..58 The following principles emerge on scrutiny of the following judgments:

- (i) *Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.*
- (ii) *The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.*
- (iii) *A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.*
- (iv) *The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.*
- (v) *It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.*
- (vi) *In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.*
- (vii) *It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the*

material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Indian Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened...”.

17. A mere reasonable apprehension is enough to put the right of self defence in operation. In the case in hand, the accused Shahwez Khan was in real danger of being in continuous wrongful confinement and, therefore, his alleged act and the act of applicant seems to be protected u/s 35 of BNS.

(d) Criminal Antecedents

18. It is vehemently argued that the applicant is a habitual offender and found to be involved in 26 criminal cases. To the contrary, the report filed by the Investigating Officer reveals that in 16 cases, the applicant had already been discharged/acquitted. Five cases are under investigation and in other five cases, the trial is pending against the applicant. It is an admitted position between the parties that the applicant has not been convicted in any of the matters. Undoubtedly, criminal antecedents need to be considered while, appreciating the application for anticipatory bail, however, facts circumstances are also taken into account. Here, no injury has been caused to any of the police official and taking into account the alleged role of applicant, I am of the opinion that anticipatory bail must not be denied, solely on the basis of criminal antecedents.

(e) Custodial Interrogation

19. The Investigating Officer is seeking custodial interrogation of the applicant on the ground that the applicant has denied his presence at the time of alleged offence and, therefore, is not cooperating with investigation. The Hon'ble Supreme Court in case titled as ***Santosh S/o Dwarkadas Fafat vs. State of Maharashtra (2017) 9 SCC 714***, held that custodial interrogation is not for the purpose of obtaining a 'confession' as the right against self-incrimination is protected by Article 20 (3) of the Constitution. It was also held that merely because an accused does not confess, it cannot be said that he was not cooperating with the investigation. A similar view is taken by the Hon'ble Supreme Court in case titled as ***Bijender vs. State of Haryana, arising from SLP (Crl.) No (s). 1079/2024***, wherein it was categorically held that the accused is not expected to give self incriminating statements during interrogation.

20. This Court finds force in the submission of Ld. Counsel for the applicant that the allegations do not support invocation of Section 111 of BNS by the Investigating Agency. Apparently, there appears to be no requirement of custodial interrogation. In this case, the applicant is accused of having committed offence(s) which are punishable for the imprisonment of less than seven years. Thus, taking into consideration the directions of the Hon'ble Supreme Court passed in the case ***Satender Kumar Antil vs. Central Bureau of Investigation and Ors., MANU/SC/0851/2022***, it appears that it would be appropriate to grant the privilege of anticipatory bail to the applicant.

21. Even if for the sake of argument, the allegations taken

against the applicant is taken to be true, the exercise of the right of private defence by the accused Shahwez Khan in escaping from the wrongful confinement and facilitation of the accused Shahwez Khan in exercise of this right by the applicant does not amount to obstruction in the so-called official discharge of duty by the police team. Therefore, I am of the opinion that applicant Amanatullah Khan deserves anticipatory bail in the instant matter, **therefore, in the event of arrest, applicant/accused Amanatullah Khan shall be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- (Rupees twenty five thousand only), with one surety in the like amount to the satisfaction of arresting officer**, subject to the following conditions :-

- (a) That the applicant shall join the investigation as and when required by the IO and shall cooperate in the investigation;
- (b) That the applicant shall not flee from the justice;
- (c) That the applicant shall not tamper with the evidence;
- (d) That the applicant shall not threaten or contact in any manner to the prosecution witnesses,
- (e) That the applicant shall not leave country without permission;
- (f) That the applicant shall convey any change of address immediately to the IO and the Court;
- (g) That the applicant shall also provide his mobile number to the IO;

22. It is clarified that nothing mentioned herein shall tantamount to expression of opinion on the merits of the case. Any observations made in this order touching directly or indirectly upon the merits of the case shall not construed as expression of finding by the Court.

23. With these observations, anticipatory bail application stands disposed of.

24. Copy of this order be given *dasti* to both the parties.

JITENDRA
SINGH

Digitally
signed by
JITENDRA
SINGH
Date:
2025.02.25
16:45:18
+0530

(Jitendra Singh)
Special Judge (PC Act) CBI-23
(MPs/MLAs Cases)
Rouse Avenue Court Complex,
New Delhi; 25.02.2025