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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC010181782026

+ **BAIL APPLN. 1631/2026**

AJAY @ DAVID

.....Petitioner

Through: **Mr. Javed Alvi, Adv.**

versus

STATE GOVT OF NCT DELHI

.....Respondent

Through: **Ms. Shubhi Gupta, APP for State.**

(14)

CNR No. DLHC010198652026

+ **BAIL APPLN. 1769/2026**

RAHUL PARCHA

.....Petitioner

Through: **Mr. Gajraj Singh and Ms. Sakshi Sachdeva, Advs.**

versus

THE STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: **Ms. Shubhi Gupta, APP for State.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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17.08.2026

1. Since the present two applications arise out of the same FIR No. 347/2023, registered at Police Station Alipur, Delhi, under Sections 302/120-B/34 of the Indian Penal Code, 1860 ("IPC"), and involve common



questions of fact and law, this Court deems it appropriate to dispose of both the applications by way of the present common order.

2. Bail Appln. 1631/2026 has been filed by applicant Ajay @ David and Bail Appln. 1769/2026 has been filed by applicant Rahul Parcha, both under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”), which corresponds to Section 439 of the erstwhile Code of Criminal Procedure, 1973, seeking regular bail in connection with the aforementioned FIR. Both the applicants are stated to be in judicial custody since 19.05.2023, i.e., for a period exceeding three years and three months as on date.

3. The genesis of the prosecution case, as reflected in the status reports filed on behalf of the State, is that on the intervening night of 05/06.05.2023, a PCR call was received at Police Station Alipur, Delhi regarding a murder at Ambedkar Park, Bakhtawarpur, Delhi. On reaching the spot, the police found the body of the deceased, Saurabh @ Nishant, lying in a pool of blood with multiple stab injuries; a blood-stained knife, a pair of slippers and an Oppo mobile phone were recovered from the scene. The deceased was declared “brought dead” at BJRM Hospital. The statement of the deceased’s elder brother, Gaurav (“PW-2”), was recorded, wherein he attributed a prior threat to kill the deceased to co-accused Khushal @ Chintu, arising out of a quarrel approximately 25 days prior to the incident, and stated that he had last seen the deceased leaving with Khushal and co-accused Sahil @ Kachua on the evening of 05.05.2023. Neither the present applicants, nor any specific number of assailants are mentioned in this statement, based on which the FIR came to be registered.

4. During investigation, co-accused Sahil @ Kachua was apprehended on 06.05.2023 and, on interrogation, disclosed the role of Khushal @ Chintu



in stabbing the deceased on account of a suspected affront to the honour of Khushal's sister. Khushal @ Chintu surrendered on 07.05.2023, pursuant to which his blood-stained clothes, the scooty used in the offence, and his mobile phone were recovered. Neither of these disclosure statements, as reflected in the status reports, attributes any overt act to the present applicants.

5. It was only on 11.05.2023 that the present applicants approached the police station and were examined as prosecution witnesses under Section 161 Cr.P.C., their statements being subsequently recorded under Section 164 Cr.P.C. as well, wherein they stated that they had witnessed Khushal @ Chintu inflict knife blows upon the deceased and had fled the scene out of fear. It was only thereafter, based on a statement recorded on 16.05.2023, eleven days after the incident, of the deceased's mother, Smt. Kela Devi @ Babli ("PW-1"), that the present applicants came to be arrayed as accused and arrested on 19.05.2023.

6. Learned counsel appearing for the applicants submit that the applicants have been falsely implicated. It is contended that the applicants were never named in the FIR; that they in fact presented themselves before the Investigating Officer as witnesses to the occurrence, and their statements to that effect under Sections 161 and 164 Cr.P.C. were recorded before any suspicion attached to them; and that their subsequent implication rests entirely on the statement of PW-1 Kela Devi, recorded after an unexplained delay of eleven days.

7. It is submitted that the presence of PW-1 at the spot is itself doubtful, inasmuch as she did not disclose the occurrence either to her own son, PW-2 Gaurav, or to the deceased's uncle, Gajraj (PW-6), despite both of them



having been examined as witnesses. Neither PW-2 nor PW-6 has named the applicants as being involved in the incident. It is further submitted that the testimony of PW-1 is riddled with material contradictions on the specific role attributed to the applicants. While her statement under Section 161 Cr.P.C. attributed the act of stabbing solely to Khushal and Sahil, with the applicants alleged to have merely held the deceased.

8. Her subsequent statement under Section 164 Cr.P.C. enlarged the scope of the allegation to attribute knife blows to the applicants as well. However, before the Trial Court, PW-1 reverted to her original version, once again confining the infliction of knife injuries to Khushal and Sahil alone. It is submitted that this inconsistency on a material aspect, namely, the identity of the persons who actually used the knife, goes to the root of the prosecution's case *qua* the applicants. Lastly, it is submitted that the CCTV footage relied upon by the prosecution, even on the prosecution's own showing, merely depicts the applicants travelling along with the deceased and the co-accused shortly prior to the incident, and does not extend to the place of occurrence itself.

9. It is further submitted that no independent recovery, whether of a weapon or otherwise, has been effected at the instance of either applicant. On the question of custody, it is submitted that the applicants have been in judicial custody for over three years, that out of approximately 23 to 24 cited witnesses only about five to seven stand examined, and that the trial is not likely to conclude in the foreseeable future. It is submitted that applicant Ajay @ David has no other criminal antecedents, and that applicant Rahul Parcha, though earlier involved in three cases, stands discharged in all of them upon compounding, with no case presently pending against him. It is



submitted that both applicants have, on multiple occasions in the past, been enlarged on interim bail by the Trial Court and by this Court, including, in the case of Rahul Parcha, on seven separate occasions since 2023, and have, without exception, surrendered on expiry of the interim protection, demonstrating that there is no risk of abscondence or misuse of liberty.

10. These submissions are opposed by learned APP appearing for the State, as also by learned counsel appearing for the family of the deceased. It is submitted that the testimony of PW-1 Kela Devi is unequivocal in attributing to the present applicants the act of catching hold of the deceased while Khushal and Sahil inflicted knife blows, and that, the offence having been committed in furtherance of the common intention of all four accused, the applicants' role cannot be treated as any less culpable than that of the principal assailants. It is submitted that the CCTV footage corroborates the presence of all four accused persons together with the deceased shortly before the occurrence. It is submitted that the offence is heinous, twenty-four ante-mortem injuries having been found on the body of the deceased, and that several material witnesses remain to be examined, giving rise to a reasonable apprehension of the applicants influencing the course of the trial if released.

11. I have heard learned counsel for the parties and perused the record, including the status reports filed by the State.

12. It is well settled that the grant of regular bail, particularly in a case involving an offence under Section 302 IPC, calls for a cautious and circumspect exercise of discretion, guided by well-recognised parameters.



The Supreme Court in **Ram Govind Upadhyay v. Sudarshan Singh**¹, while summarising the considerations relevant to the grant of bail in a murder case, held as under:

“4. Apart from the above, certain other which may be relevant factors in the matter of grant of bail are as below:

(a) While granting bail, the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be prima facie satisfaction of the Court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

13. Similarly, the Supreme Court in **Prasanta Kumar Sarkar v. Ashis Chatterjee**², while cautioning against a detailed appraisal of evidence at the stage of bail, held that the discretion under Section 439 Cr.P.C. must nevertheless be exercised judiciously, having regard, *inter alia*, to whether there is a *prima facie* or reasonable ground to believe that the accused had committed the offence, the nature and gravity of the accusation, and the danger of the accused tampering with the evidence:

“9. ... It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character,

¹ (2002) 3 SCC 598.

² (2010) 14 SCC 496.



behaviour, means, position and standing of the accused in the society; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail.”

14. Tested against the above parameters, what distinguishes the present case from an ordinary case of a murder allegedly committed in furtherance of common intention is the manner in which the present applicants came to be arrayed as accused in the first place. The record, as reflected in the status reports themselves, shows that the applicants were treated as prosecution witnesses, and their statements under Sections 161 and 164 Cr.P.C. were recorded on that footing, before any material surfaced to suggest their complicity. The disclosure statements of the two principal assailants, Sahil @ Kachua and Khushal @ Chintu, both apprehended within a day or two of the incident, do not, on the record placed before this Court, attribute any overt act to the applicants. The sole basis for their subsequent arraignment as accused is the statement of PW-1 Kela Devi, recorded eleven days after the incident.

15. This Court is conscious that the credibility of a witness, and the weight to be attached to her testimony, is ordinarily a matter for trial and not for determination at the stage of bail. However, the exercise required at this stage, in terms of **Ram Govind Upadhyay** (supra), is not an assessment of guilt, but a more limited inquiry into whether a prima facie, genuine case is made out *qua* the applicants specifically. In the present case certain features on the face of the record cannot be overlooked: PW-1's own version of the applicants' role does not remain static across the three stages at which it was recorded. Her statement under Section 161 and 164 CrPC, and her deposition before the Trial Court, as relied upon by the applicants, with the



attribution to the applicants shifting from that of merely restraining the deceased to that of also inflicting knife blows, and back again.

16. Further, neither PW-2 Gaurav, the deceased's own brother in whose statement the FIR is rooted, nor PW-6 Gajraj, the deceased's uncle, both examined during trial, named the applicants at any stage, despite PW-1 being the mother of one and the sister-in-law of the other. The delay in PW-1 coming forward, and the absence of any explanation for it beyond the generality of shock, further compounds this difficulty. Taken together, and without in any manner discounting the case as it stands against Khushal @ Chintu and Sahil @ Kachua, who stand independently implicated by their own disclosure statements and consequent recoveries, these features render the case *qua* the specific role attributed to the present applicants attended with sufficient doubt as to its genuineness so as to entitle them to the benefit contemplated in ***Ram Govind Upadhyay*** (supra).

17. The CCTV footage relied upon by the prosecution does not, on the material presently on record, alter this assessment. It establishes, the presence of the applicants in the company of the deceased and the co-accused shortly before the occurrence, riding two-wheelers towards the spot. It does not depict the assault itself. Mere presence in proximity to an occurrence does not by itself furnish a *prima facie* basis for common intention under Section 34 IPC, particularly where the sole evidence of the specific overt act, that of restraining the deceased, is furnished by a witness whose account of that very role has not been consistent.

18. Independent of the above, the ground of long incarceration also weighs in favour of the applicants. Both applicants have been in judicial custody since 19.05.2023, a period exceeding three years and three months.



As per the status reports, 23 witnesses have been cited by the prosecution, of whom, per the record placed before this Court, only about five to seven stand fully examined, with at least two witnesses examined only in part. There is, at this stage, no indication that the trial is likely to conclude in the near future. The Supreme Court in **Union of India v. K.A. Najeeb**³, while dealing with a challenge to bail granted on the ground of prolonged incarceration, held as under:-

“17. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. ... owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.”

19. While the above observations arose in the context of a special enactment carrying a statutory embargo on bail, the underlying constitutional principle, that continued incarceration ceases to be justified once a timely trial is rendered improbable applies with equal force to an ordinary trial under the IPC, where no comparable statutory rigour attaches to the grant of bail in the first instance.

20. The Supreme Court has, in **Satender Kumar Antil v. Central Bureau of Investigation**⁴, reiterated the imperative of safeguarding the liberty of undertrial prisoners against the systemic delays attendant upon protracted trials, reaffirming that bail remains the rule and jail the exception. Bearing in mind that the applicants have already spent over three years in custody, with

³ (2021) 3 SCC 713.

⁴ (2022) 10 SCC 51.



the bulk of the prosecution evidence yet to be recorded, their continued incarceration pending trial is not warranted on this ground alone.

21. The conduct of the applicants while on interim bail on prior occasions is also a relevant circumstance. Applicant Rahul Parcha has been enlarged on interim bail on at least seven occasions since 2023, whether for academic examinations, preparation of assignments, or on medical grounds, and has, on each occasion, surrendered in time without any complaint of misuse. The impugned order dated 21.04.2025 itself does not record any violation of interim bail conditions by him. A similar position emerges *qua* applicant Ajay @ David from the impugned order dated 06.04.2026. This consistent compliance materially reduces the apprehension of the applicants absconding or fleeing from justice if enlarged on regular bail.

22. On antecedents, applicant Ajay @ David has no other criminal case registered against him. Applicant Rahul Parcha was earlier involved in three cases, all of which stand compounded, with the applicant having been discharged, and no case is presently pending against him. Neither applicant, therefore, demonstrates a continuing criminal propensity that would militate against release on bail.

23. As regards the apprehension of witnesses being influenced, it is relevant that the material witnesses, including PW-1 Kela Devi and, in part, PW-2 Gaurav, already stand examined. While certain witnesses remain to be examined, this Court is of the view that the apprehension articulated on behalf of the State can be adequately addressed by imposing suitable conditions on the applicants, rather than by continued incarceration.

24. Bearing in mind the overall facts and circumstances of the case, more particularly, the long incarceration of the applicants as well as on merits, this



Court deems it appropriate to enlarge both the applicants on regular bail, subject to such terms and conditions as may be imposed by the concerned Trial Court.

25. The applications stand disposed of.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 17, 2026

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