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

CNR No. DLHC010223762026

+ **BAIL APPLN. 1951/2026**

SUMIT KUMAR

.....Petitioner

Through: Mr. Anil Sharma, Mr. Arpit Sharma
and Mr. Tushar Kaushik, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Naresh Kumar Chahar, APP for
the State.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **18.08.2026**

1. By way of the present application filed under Section 483 read with Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the applicant seeks regular bail in connection with FIR No. 312/2023, registered at Police Station M.S. Park, Delhi, for the offences punishable under Sections 109 and 115(1) read with Section 3(1) of the Bharatiya Nyaya Sanhita, 2023.
2. The case set up by the prosecution, is that on 14.09.2023, upon receipt of information regarding the admission of the injured Rohit and Tarzen at GTB Hospital, the Investigating Officer collected their respective MLCs, whereupon it emerged that the complainant Rohit had sustained a stab injury, while the injured Tarzen had sustained blunt injuries. The FIR came to be registered on the statement of the injured Rohit. It is the case of the



prosecution that Rohit and his associates had proceeded towards SKV No. 1 School, Mansarovar Park, upon receiving information that certain boys were teasing 'M' and 'P', pursuant to which an altercation ensued in the course of which the accused persons are alleged to have assaulted the complainant party.

3. It is the specific case of the prosecution that the co-accused, Amit, inflicted a knife injury upon Rohit, while the present applicant is alleged to have assaulted the injured Tarzen and to have shared common intention with the co-accused. The injured Rohit succumbed to his injuries on 21.05.2024, approximately eight months after the incident. It, however, deserves notice that upon a query addressed under Section 91 of the Code of Criminal Procedure, 1973 to GTB Hospital, it has been indicated that the cause of death was not directly attributable to the injuries recorded in the MLC.

4. Upon completion of investigation, a chargesheet, and thereafter a supplementary chargesheet, came to be filed before the court of competent jurisdiction. The matter is presently registered as SC No. 76/2024, **State v. Sumit**, pending before the court of the Additional Sessions Judge (POCSO), Shahdara District, Karkardooma Courts, Delhi. Charge was framed on 19.09.2025, and the trial is presently at the stage of recording of prosecution evidence. It is not in dispute that out of 52 witnesses cited by the prosecution, only 4 have been examined till date, and that the two witnesses projected by the prosecution as the principal eyewitnesses to the incident, PW-1 and PW-2, have, in the course of their cross-examination, resiled from their examination-in-chief and have failed to identify the applicant as being present at, or having participated in, the alleged occurrence.

5. The applicant's first application for regular bail came to be dismissed



by the Trial Court *vide* order dated 02.05.2026. While dismissing the application, the Trial Court, though it noted that PW-1 and PW-2 had not supported the case of the prosecution, proceeded to hold that the chargesheet attributed a material role to the applicant and that he had acted in furtherance of common intention with the co-accused, that charge had been framed against him on that very basis, and that other eyewitnesses of the incident remained to be examined. The Trial Court also took note of the apprehension expressed on behalf of the State that the applicant, if enlarged on bail, may influence the material witnesses yet to depose.

6. Learned counsel for the applicant submits that the applicant has been falsely implicated and that the very foundation of the prosecution's case stands considerably shaken, inasmuch as four of the prosecution witnesses, including the two star eyewitnesses PW-1 and PW-2, have turned hostile and have candidly deposed that the accused persons were not present at the spot and had not committed any of the acts attributed to them, and that their earlier statements came to be recorded on the instance and under the pressure of police officials. It is submitted that of the 52 witnesses cited by the prosecution, only 4 have been examined in the period that has elapsed since the framing of charge, and that at such a pace, the conclusion of trial cannot realistically be envisaged in the foreseeable future.

7. It is further submitted that the co-accused Amit Kumar, who is alleged to have inflicted the fatal stab injury and who, on the case of the prosecution itself, played the more direct and culpable role in the incident, has already been enlarged on regular bail. Whereas the applicant, whose role, even on the prosecution's own showing, is confined to that of assisting the main accused, continues to remain incarcerated. It is submitted that the applicant



is in judicial custody since 15.09.2023, i.e., for a period exceeding two years and eleven months, and that such prolonged pre-trial incarceration, when considered alongside the enfeebled state of the prosecution's evidence and the parity available on account of the co-accused's release, offends the applicant's right to a speedy trial guaranteed under Article 21 of the Constitution of India. It is lastly submitted that the applicant has no criminal antecedents, is the sole bread earner of his family, and undertakes to abide by any conditions this Court may impose, including a specific undertaking not to contact or influence any witness.

8. Per contra, learned APP for the State, relying upon the status report filed on record, opposes the grant of bail. It is submitted that the incident was a pre-planned assault in which the applicant actively participated in assaulting the injured Tarzen in furtherance of common intention shared with the co-accused. The prosecution's case is sought to be corroborated by CCTV footage of the vicinity, by the applicant's identification through a Judicial Test Identification Parade conducted after his arrest, and by statements recorded under Sections 161 and 164 of the Code of Criminal Procedure, 1973; and that the FSL/DNA report concerning the seized exhibits remains awaited. It is submitted that the release of the applicant at this stage would amount to prejudice the prosecution, insofar as material witnesses are yet to be examined and there exists a reasonable apprehension of them being influenced.

9. This Court has considered the rival submissions and perused the material on record, including the impugned order and the status report. The parameters that must guide the exercise of discretion in an application for regular bail are well settled. In **Prasanta Kumar Sarkar v. Ashis**



Chatterjee¹, the Supreme Court held as under:

“9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. 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, behaviour, means, position and standing of the accused; (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.”

10. Tested against the first of the aforesaid factors, namely, whether a *prima facie* or reasonable ground exists to believe that the applicant committed the offence, this Court notes that the very witnesses on whose identification the prosecution's case against the applicant principally rested have, in cross-examination, disowned his presence at the spot. It is no doubt correct, as held by the Supreme Court in **Sat Paul v. Delhi Administration**², that the testimony of a witness who has been cross-examined by the party calling him does not stand automatically washed off the record, and that it remains open to the court to accept such part of the testimony as is found creditworthy:-

“52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited

¹(2010) 14 SCC 496.

²(1976) 1 SCC 727.



or can still be believed in regard to a part of his testimony.”

11. However, the aforesaid principle governs the appreciation of evidence at trial and does not, by itself, answer the distinct question that arises at the stage of bail, namely, the *prima facie* strength of the case as it presently stands. In the present case, it is not merely that PW-1 and PW-2 have been contradicted on peripheral aspects; both have, in terms, denied the presence and participation of the applicant at the spot, which was the very foundation on which his implication rested. The remaining material relied upon by the State, the CCTV footage, the Test Identification Parade and the awaited FSL/DNA report, is yet to be proved and tested during trial and cannot, at this stage, be treated as furnishing the same degree of *prima facie* satisfaction that the Trial Court appears to have drawn from the chargesheet allegations alone.

12. On the question of parity and the role attributed to the applicant, it is relevant to note that the co-accused Amit, who is alleged to have inflicted the stab injury that eventually proved to be a contributing circumstance leading to the death of Rohit, and who therefore stands attributed a more direct and graver role than the applicant has already been enlarged on regular bail. The applicant's role, even on the case set up by the prosecution, is that of having assisted the main accused. In **Ram Govind Upadhyay v. Sudarshan Singh**³, the Supreme Court, while laying down the parameters that govern the grant of bail, held as under:-

“3. Grant of bail though being a discretionary order, but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. The nature of the offence is one of the basic considerations for the grant of bail, more heinous is the crime, the greater is the chance of

³(2002) 3 SCC 598.



rejection of the bail, though, however, dependent on the factual matrix of the matter.”

“4. ... it is necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are: (a) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, (c) prima facie satisfaction of the court in support of the charge, and (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.”

13. Applying the aforesaid, when the co-accused who is attributed the more culpable and direct role stands already enlarged on bail, and the applicant’s role is confined to that of assistance, the continued incarceration of the applicant, particularly in the changed evidentiary landscape brought about by the hostility of PW-1 and PW-2, cannot be sustained on considerations of parity alone.

14. On the question of prolonged incarceration and the pace of trial, it is not disputed that the applicant has remained in judicial custody since 15.09.2023, i.e., for a period exceeding two years and eleven months, and that of the 52 witnesses cited by the prosecution, only 4 stand examined till date. In ***Sanjay Chandra v. CBI***⁴, the Supreme Court held as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.”

“... The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of

⁴(2012) 1 SCC 40.



detention, had they been convicted. It is not in the interest of justice that the accused should be in jail for an indefinite period.”

15. Similarly, in ***Dataram Singh v. State of U.P.***⁵ the Supreme Court held as under:-

“2. ... Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods.”

16. These principles have since been reiterated and consolidated by the Supreme Court in ***Satender Kumar Antil v. CBI***,⁶ underscoring that gravity of accusation cannot, by itself, be allowed to override the constitutional guarantee against unreasonably prolonged pre-trial detention, particularly where the trial is unlikely to conclude within a reasonable time.

17. In the facts of the present case, this Court is of the view that continued incarceration of the applicant is not warranted.

18. In view of the aforesaid, it is directed that the applicant be enlarged on regular bail subject to such conditions as may be imposed by the concerned Trial Court.

19. Application stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 18, 2026/p/nk

⁵(2018) 3 SCC 22.

⁶(2022) 10 SCC 51.