



\$~20

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

CNR No. DLHC010273812026

+ **BAIL APPLN. 2420/2026**

HARENDER @ SURAJ @ SARBU

.....Petitioner

Through: **Mr. Abhinav Sekhri and Mr. Shalanki Prasad, Advocates.**

versus

STATE (NCT OF DELHI)

.....Respondent

Through: **Mr. Naresh Kumar Chahar, APP for State.
Insp. Kaushlesh Kr. Jha, PS Swaroop Nagar.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **19.08.2026**

1. The applicant, by way of the present second application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (equivalent to Section 439 of the erstwhile Code of Criminal Procedure, 1973), seeks regular bail in connection with FIR No. 410/2019, registered at Police Station Swaroop Nagar, Delhi for the offence punishable under Section 302 of the Indian Penal Code, 1860, pending trial as SC No. 30/2020 before the court of the Additional Sessions Judge-03, North District, Rohini Courts, Delhi.

2. The prosecution case, briefly stated, is that on 01.10.2019 a PCR call was received at Police Station Swaroop Nagar, Delhi, intimating a murder at Kh. No. 17/25, Gali No. 1, A-Block, IP Colony. On reaching the spot, the police found the deceased, Charan Singh, aged about 65-70 years, lying in



an injured and bleeding condition on a cot; he succumbed to his injuries. Since no eyewitness to the actual assault was available, investigation proceeded on the basis of the circumstances emerging from the spot and from the statement of the deceased's son, Tejpal (PW-2).

3. Tejpal's version, as it stood at the threshold of investigation, was that the deceased, a plumber by profession, and the applicant, who worked with him, had returned together after a day's labour and that an altercation ensued between them over payment of wages, which Tejpal sought to defuse. He thereafter stepped away for a short duration; and that upon his return, he found the applicant leaving the premises and his father lying injured and unresponsive. It was on this basis that the applicant came to be arrested on 02.10.2019.

4. During investigation, an iron pipe, said to be the weapon of offence, was recovered pursuant to a disclosure statement attributed to the applicant, and his clothes were separately seized. The relevant exhibits, together with material collected during the post mortem examination, were forwarded to the Forensic Science Laboratory for examination. Upon completion of investigation, a chargesheet, followed by a supplementary chargesheet incorporating the FSL findings, was filed before the Trial Court. Charges under Section 302 IPC were framed against the applicant on 25.03.2021, and the matter presently stands at the stage of recording of prosecution evidence.

5. The applicant's first attempt at regular bail before the Trial Court did not succeed. *Vide* order dated 25.03.2025, the ASJ-02 dismissed the application, essentially on the ground of the gravity of the offence and the existence of a last seen witness, without entering into a deeper examination of the record.



6. The applicant's first application before this Court, being BAIL APPLN. 3321/2025 was not dismissed on merits; rather, noting that Tejpal (PW-2) was the witness of last seen and the most relevant witness for the prosecution. Therefore, this Court, *vide* order dated 08.12.2025, disposed of the application with a direction that his examination be completed by the Trial Court, granting the applicant liberty to file a fresh application thereafter.

7. Pursuant to the aforesaid liberty, PW-2 was recalled; his further examination-in-chief was conducted, and his cross-examination was completed on 09.01.2026, during which the relevant case property was also produced before and identified by him.

8. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated. It is submitted that there being no eyewitness to the assault, the prosecution case rests entirely on circumstantial evidence, with the last seen circumstance resting solely on the testimony of Tejpal (PW-2). Reliance is placed on ***Kanhaiya Lal v. State of Rajasthan***,¹ for the proposition that:

“18. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.”

9. It is also submitted that no independent or public witness was associated with the recovery of the iron pipe or the applicant's clothes,. Reliance is placed on the observations of a coordinate Bench in ***Krishan @***

¹(2014) 4 SCC 715.



*Babu v. State*² that the absence of independent witnesses, particularly where recovery is effected from a public place, is a relevant consideration at the bail stage. Learned counsel additionally points to an alleged discrepancy in the road certificate concerning the seal affixed on the case property, and to the absence of any malkhana register to account for the safe custody of the exhibits between seizure and their dispatch to the FSL. It is additionally submitted that, as per the case set up in the chargesheet, no DNA profile could be generated from the blood found on the iron pipe, a position said to be at odds with the State's present assertion, in the supplementary chargesheet and status report, of a DNA match.

10. On the question of custody, it is submitted that the applicant has, as on date, remained incarcerated for over 6 years and 10 months, that charges were framed more than five years ago, and that of 23 witnesses cited by the prosecution, only 13 stand examined, with no material on record to attribute the resultant delay to the applicant.

11. The aforesaid submissions are strongly opposed by learned APP for the respondent, State. It is submitted that Tejpal is not merely a witness of last seen but, as this Court itself recorded in its order dated 08.12.2025, the most relevant witness of the prosecution. That his account of the altercation over wages stands supported by his deposition; and that the applicant was seen leaving the premises hurriedly shortly before the deceased was discovered injured.

12. It is further submitted that the iron pipe, recovered at the applicant's instance, and the FSL report, which, according to the State, establishes that the blood/DNA profile on the applicant's clothes and on the iron pipe is

²BAIL APPLN. 2804/2023 order dated 16.11.2023.



consistent with that of the deceased, furnish forensic corroboration of the applicant's complicity, such that the prosecution case is not one of suspicion alone but rests on a combination of ocular, circumstantial and forensic material. It is submitted that the offence is of grave nature, involving the death of an elderly man, that the trial has progressed substantially with 13 of 23 witnesses examined and all public witnesses discharged, and that release of the applicant at this stage, when only official witnesses remain, may adversely affect the fair and uninterrupted conduct of the trial.

13. It being common ground that there is no eyewitness to the assault itself, the prosecution case necessarily rests on circumstantial evidence, and its appreciation must be guided by the well-settled "*Panchsheel*" principles enunciated by the Supreme Court in *Sharad Birdhichand Sarda v. State of Maharashtra*³:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on

³(1984) 4 SCC 116.



any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

14. Tested against this yardstick, the ‘last seen’ link in the present chain rests solely on the testimony of Tejpal, and the applicant has drawn pointed attention to material inconsistencies between his statement under Section 161 Cr.P.C. and his deposition in court, as also to the apparently divergent account furnished by PW-7. To that extent, and bearing in mind the observations in ***Kanhaiya Lal*** (supra) that last-seen evidence does not by itself establish guilt, it cannot presently be said that this limb of the prosecution’s case is free from dispute.

15. Learned APP seeks to meet this by placing reliance on the recovery of the weapon at the applicant’s instance and on the FSL findings, which the State contends establish a match between the blood on the iron pipe and the applicant’s clothes, on the one hand, and the deceased, on the other. This, however, sits in direct tension with the applicant’s assertion, presented in the original chargesheet itself, that no DNA profile could be generated from the exhibits. Which of these two competing readings of the forensic record is correct is not a matter capable of resolution by this Court at the bail stage on the strength of rival assertions alone. It is a disputed question of fact that must await the exhibiting and proving of the FSL report before the Trial



Court in accordance with law.

16. Equally, the objections regarding the absence of independent witnesses to the recovery, and the alleged irregularities concerning the road certificate and malkhana register, go to the weight and reliability of that evidence rather than to its threshold admissibility, and their true impact can only be gauged once tested in cross-examination and weighed in the final judgment of the Trial Court. This Court, exercising jurisdiction under Section 483 BNSS, is not required, and ought not, to undertake a meticulous reappraisal of such contested testimony at this stage, a course of restraint consistent with the caution administered by the Supreme Court in ***Prasanta Kumar Sarkar v. Ashis Chatterjee***,⁴ where it was observed:

“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.”

17. What emerges, therefore, is not a case where this Court can, even *prima facie*, treat the prosecution’s chain of circumstances as free from controversy. At the least, the reliability of the sole last seen witness, the true import of the forensic material, and the manner of recovery are all matters that stand contested and will require full trial for their resolution. This



assumes significance when considered alongside the duration of the applicant's custody and the pace at which the trial has progressed.

18. It is well settled that the grant of bail is the rule and refusal the exception, and that the presumption of innocence continues to enure in favour of an accused until he is found guilty. In ***Dataram Singh v. State of U.***,⁵ the Supreme Court held:

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. ... 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. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner.”

19. The same principle was reiterated in ***Sanjay Chandra v. CBI***,⁶ wherein it was emphasised that incarceration before conviction ought not to be punitive in character and observed that:-

“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.”

20. It is not lost upon this Court that the offence alleged is one of the gravest known to law, involving the death of an elderly man. Gravity of the offence does weigh as a consideration and cannot be brushed aside. It is, however, equally well settled that gravity and seriousness of the offence, by

⁴(2010) 14 SCC 496.

⁵(2018) 3 SCC 22.

⁶(2012) 1 SCC 40.



themselves, cannot constitute the sole or decisive ground for refusal of bail as was held in *Prabhakar Tewari v. State of U.P.*⁷. Nor, on the facts of this case, do the other traditional apprehensions retain the force they may once have possessed: investigation stands completed; the applicant has no criminal antecedents and has maintained good conduct in custody; and the apprehension of tampering, which was the very basis on which the earlier bail application was kept pending, has substantially receded now that Tejpal, described by this Court itself as the most relevant witness, has been fully examined and cross-examined.

21. This brings the matter to what this Court considers the pivotal circumstance. The order dated 08.12.2025 did not shut the door on the applicant; it kept it open, conditioned expressly on the completion of PW-2's testimony. That condition has now been fulfilled. The very foundation on which the earlier application was deferred, rather than dismissed, therefore stands removed, and it is this changed circumstance, not merely the continuing passage of time, that justifies a fresh look at the question of bail.

22. Turning to the length of incarceration, the applicant has remained in judicial custody since 02.10.2019, amounting, as on date, to a period exceeding 6 years and 10 months. Charges were framed as far back as 25.03.2021, over five years ago, and of the 23 witnesses cited by the prosecution, only 13 have been examined thus far. There is no material on record to suggest that this pace is attributable to any conduct on the part of the applicant. In *Satender Kumar Antil v. CBI*,⁸ the Supreme Court has

⁷Criminal Appeal Nos. 153-154 of 2020, decided on 24.01.2020.

⁸(2022) 10 SCC 51.



emphasised that prolonged incarceration pending trial, particularly where the trial is not likely to conclude within a reasonable period, has to be viewed in the light of the guarantee of personal liberty under Article 21 of the Constitution. Likewise, in *Union of India v. K.A. Najeed*,⁹ it was held that an undertrial cannot be subjected to indefinite incarceration, and that once it becomes evident that a timely conclusion of trial is not possible, constitutional Courts would ordinarily be obligated to enlarge the accused on bail. In *Najeed* (supra) it was held that:-

“15. 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. In Supreme Court Legal Aid Committee (Representing Under trial Prisoners) v. Union of India, it was held that under trials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter.

However, 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, the 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, the Courts would ordinarily be obligated to enlarge them on bail.”

[Emphasis Supplied]

23. Weighing the gravity of the offence against the constitutional guarantee under Article 21 and the settled bail jurisprudence discussed above, this Court is of the view that continued incarceration of the applicant, pending a trial whose conclusion is not presently in sight, would amount to a punishment imposed before conviction. The disputes surrounding the reliability of the last-seen witness, the forensic material and the manner of recovery, remain open for trial and shall be adjudicated thereupon.

⁹(2021) 3 SCC 713.



24. Bearing in mind the aforesaid circumstances, the applicant is directed to be released on regular bail subject to such conditions as may be imposed by the concerned Trial Court.

25. The application stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 19, 2026/aks/nk