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

CNR No. DLHC010282182026

+ **BAIL APPLN. 2498/2026**

ARUN

.....Petitioner

Through: **Mr. C. M. Sangwan and Mr. Saksham Aggarwal, Advs.**

versus

THE STATE (GOVT. OF NCT DELHI)

.....Respondent

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

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **20.08.2026**

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 369/2022, registered at Police Station Shahbad Dairy, Delhi for offences punishable under Sections 302/365/201/120-B/34 of the Indian Penal Code, 1860, pending trial as SC No. 733/2022 before the court of the Additional Sessions Judge/Special Judge (NDPS): North, Rohini Courts, Delhi.

2. The prosecution states that on 24.05.2022, an information vide DD No. 12A, regarding a quarrel, was received at Police Station Shahbad Dairy, Delhi. The concerned Investigating Officer (I.O.) had reached the place of



occurrence, where they met Ajay (Complainant) and recorded his statement, wherein the complainant alleged that on 23.05.2022, at about 10:30 PM he along with Sandeep@Paji (deceased), Chetan@Chintu, Deepak, Prakash were walking on the road near Akhara in Murga Market, Shahbad Dairy, when Co-accused Kishan along with his brothers Rajkumar and Mukesh, and their nephews (*Bhanje*) Arun (present applicant), Rohit with their friends had came in one Wagon-R car. They stopped the deceased and his friends and threatened the deceased that earlier they had warned him to stay away from one Shivani and now they will not leave him alive. Upon this the complainant along with his friends fled from the place of occurrence. They later heard the sound of firing from the said place. Thereafter, the deceased was missing since the time of the incident. Accordingly, the present FIR was registered and investigation was taken up.

3. During investigation, on 25.05.2022, the body of the deceased was recovered from a canal near Haiderpur, Delhi. Thereafter, Section 302/201/120B of the Indian Penal Code, 1860 were added in the present case.

4. Learned counsel appearing for the applicant submits that the applicant is innocent and has been falsely implicated. There is no evidence against the applicant. He further submits that the case of the applicant is better situated than the case of co-accused Rohit, against whom, there are direct allegations. Even PW1 Ajay (complainant), who happens to be the star witness, has deposed against co-accused Rohit, who has been enlarged on bail by this Court *vide* order dated 07.05.2026 in BAIL APPL. 3797/2025. The Applicant is, therefore, entitled for regular bail.

5. This Court in the case ***Rohit v. The State (Govt. of NCT Delhi)*** in



BAIL APPL.3797/2025 vide order dated 07.05.2026, has granted regular bail to co-accused Rohit. The Court in paras. 6 to 9 has rendered the following findings:

“6. The case against the present applicant, at this stage, appears to rest primarily on circumstantial evidence. No direct prima facie incriminating material has been brought on record connecting the applicant with the commission of the alleged offence.

7. This Court further notes that out of six public witnesses, two material/star witnesses examined by the prosecution have already turned hostile. It is also pertinent to note that out of total 59 prosecution witnesses, only 30 witnesses have been examined till date and, therefore, a substantial part of the prosecution evidence is yet to be recorded. In view thereof, the trial is likely to take a considerable period of time to conclude.

8. Another factor which weighs with this Court is that the applicant has remained in judicial custody since 19.07.2023, i.e., for nearly three years. The applicant is stated to have clean criminal antecedents and his overall jail conduct has remained satisfactory. Furthermore, the co-accused persons have already been enlarged on bail by the learned Trial Court.

9. Accordingly, having regard to the totality of the facts and circumstances of the case, the period of custody undergone by the applicant, the nature of evidence presently available on record, the likelihood of delay in conclusion of trial, this Court is inclined to grant bail to the applicant on his furnishing a personal bond in the sum of ₹15,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court/Successor Court/Link Court/Duty Judge concerned, on the following terms and conditions:

- i) The applicant shall not leave the country without prior permission of the concerned Court, and if the applicant has a passport, he shall surrender the same to the concerned Trial Court.*
- ii) In case of change of residential address/contact details, the applicant shall promptly inform the same to the concerned Court and IO/SHO concerned.*
- iii) The applicant shall appear regularly before the learned Trial Court, unless exempted.*
- iv) The applicant shall not communicate with, or come into contact with the complainant or any of the prosecution witnesses, or tamper with the evidence of the case.”*

6. The aforesaid submissions are strongly opposed by learned APP appearing for the respondent, State and the sister of the complainant who has appeared in person. He further relied on the statement of last-seen witness



PW1.

7. The testimony of PW1 Ajay is extracted as under :

“On 23.05.2022 after or at around 10.30 pm, I alongwith my friends namely Prakash, Deepak, Chetan, Sandeep @ Paaji were walking at Murga Mandi, Shahbad Dairy near Akhara. Initially a grey colour i20 car passes from there and thereafter, a white colour Wagon-R comes there and stop near us. From that Wagon-R car, accused Shri Kishan, Raj Kumar and Rohit gets down. They were also accompanied with Rakesh (brother of Shri Kishan). All of them told deceased Sandeep and we had asked you to remain away from Shivani Hijda but you did not listen to us and today we would finish you (hamne tujhe Shivani Hijde se dur rehne ke liye kaha tha lekin tumne hamri baat nahi suni, aj hum tujhe khatm kar denge). By that time, some more boys joined them including Ganga Ram, Sachin, Arun, Sohail and Keshav. I also saw one Deepak @ Vipin @ DK standing there but I cannot say whether he accompanied those boys or he was already present there. All the aforesaid accused persons surrounded the deceased Sandeep @ Paaji. On sensing threat, I alongwith my friends Prakash, Chetan and Deepak ran away from there as we were afraid of the accused persons. After some time, we looked for Sandeep @ Paaji and we also visited his house but could not be traced. When we were running from the spot, we overheard noise of bursting of cracker (patake jaise awaz sunai di) but I cannot tell whether it was the sound of bursting of cracker or firing. We also tried to contact him on his mobile phone but it was was reporting ‘switched off’. Thereafter, we went to house of our another friend namely Vikas @ Sucha. We knocked at his door and we took his mobile phone and called the police at 112 number. Thereafter, the police came outside the gali i.e. a little ahead of Roop Krishna School. IO Ghanshyam came there and he took us to the place of incident and we tried to search deceased Sandeep @ Paaji but he could not be traced. Thereafter, my statement was recorded, same is now Ex. PW-1/A bearing my signature at point A. As I was nervous and perplexed, I had wrongly stated the name of accused Rakesh as Mukesh in my statement Ex. PW-1/A but I corrected the same and told the police that name of Rakesh has wrongly been stated as Mukesh and my further statement was recorded in this regard on the same day after some time. Initially no CCTV footages were recovered near the spot but later CCTV footages were shown to me by IO Virender in the month of August and I identified the accused Rakesh taking the deceased Sandeep @ Paaji on his shoulder. As per my knowledge, the CCTV footages were taken from a little back from Akhara. The accused Rakesh was accompanied by accused Keshav at that time. I also saw accused Raj Kumar who was wearing green colour shirt and accused Rohit who was wearing white colour shirt or Tshirt and jeans pant. I can identify the accused persons in CCTV footages, if shown to me.



At this stage, pendrive kept in a white colour envelope is taken out from the judicial file and it is played in the system of the court.

The pendrive is not working for want of some software which is not available in the computer installed in the court. Ld. Defence Counsel submits that he will arrange a laptop post lunch so that CCTV footage will be displayed.”

8. On the question of custody, it is submitted that the applicant has remained in custody since 29.05.2022. He has already suffered more than four years of incarceration, and that of 42 witnesses cited by the prosecution, only 13 stand examined, with no material on record to attribute the resultant delay to the applicant.

9. 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***,¹:

“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.”

¹ (1984) 4 SCC 116.



(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 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.”

10. With respect to criminal antecedents, which is one of the reasons cited by the prosecution against the applicant, it is pointed out that in FIR No. 114/2021 registered at PS Shahbad Dairy, Delhi for the offence punishable under Sections 307 & 34 of the Indian Penal Code, 1860, the applicant has already been acquitted and in other FIR 113/2021, the trial is going on. The maximum punishment is up to three years. The applicant is already on bail.

11. Bearing in mind the aforesaid and long incarceration, and the overall facts and circumstances, the applicant is entitled to regular bail.

12. Accordingly, the applicant is directed to be released on regular bail on the terms and conditions as may be imposed by the concerned Trial Court.

13. Application stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 19, 2026/P/ksr