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

CNR No. DLHC010288882026

+ **BAIL APPLN. 2568/2026**

SHIV KUMAR

.....Petitioner

Through: Mr. Aakarsh Gupta, Mr. R.K. Gupta, Mr. Vikrant Singh, Ms. Shreya Kulshrestha, Advocates.

versus

STATE

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP. Insp. Manish Bhati, P.S. Bhalswa Dairy.
Ms. Pallavi Garg, DHCLSC with Ms. Sanjana Sharma, Advocates for the family of the deceased.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

18.08.2026

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1. By way of this application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the applicant seeks regular bail in connection with FIR No. 62/2019 dated 12.02.2019 registered at Police Station Bhalswa Dairy, Outer North District, Delhi, under Section 365 of the Indian Penal Code, 1860 ["IPC"]. Upon completion of the investigation, the chargesheet was filed under Sections 365/302/34 of the IPC.

2. I have heard Mr. Aakarsh Gupta, learned counsel for the applicant, Mr. Yudhvir Singh Chauhan, learned Additional Public Prosecutor, and



Ms. Pallavi Garg, learned counsel nominated by the Delhi High Court Legal Services Committee, on behalf of the complainant.

3. The prosecution has filed a status report, which is on record.

4. The prosecution case concerns the alleged murder of the complainant's brother. The complainant stated that his brother, who was an auto driver, had gone to work on 11.02.2019 at 03:30 PM, but did not return. His dead body was recovered on 12.02.2019. The two accused persons, the applicant and his sister – Neelam, were arrested on 20.02.2019, and it is alleged that they confessed to the murder of the deceased. The status report filed by the prosecution contains the following narrative with regard to the material available against the accused:

“3. On 20.02.2019, accused Shiv Kumar and his sister Neelam were arrested by the Special Staff, Rohini. During interrogation, they confessed to hiring Sanjay's auto, taking him to Ramjaanpur Village on the pretext of paying the fare, strangulating him with a chunni, robbing his mobile phone and case, slitting his throat with a knife, and abandoning the auto on G.T. Karnal Road.

4. CDR analysis established that the accused and the deceased were at the same location at the relevant time. The deceased's mobile phone (IMEI No. 862067046160570) was used with the accused's SIM (9354722992) from 14.02.2019 to 20.02.2019. Further, the key of auto of the deceased was got recovered by the accused persons from their house.”

5. It is also stated in the status report that 6 out of 34 witnesses have been examined so far, and that the applicant is accused in another case under Section 302 of the IPC [FIR No. 69/2019 at Police Station Keshav Puram], which is also pending at the stage of prosecution evidence.

6. In support of the present application, Mr. Gupta states that this is the applicant's first bail application before this Court, and it is premised



primarily on the ground of parity with co-accused Neelam, who was granted bail by a judgment of this Court dated 27.11.2025 in BAIL APPLN. 3320/2025 [hereinafter, “Neelam”].

7. While dealing with the bail application of Neelam, this Court recorded as follows:

“17. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a prima facie case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, the period of incarceration is also a relevant factor that is to be considered.

18. The allegations in the present cases are grave in nature. It has been alleged that the main accused/brother of the applicant strangled Sanjay Kumar and then the two of them decapitated his dead body.

19. As per the prosecution, there is one witness, who has seen the applicant and the other accused person with the victim, prior to his death.

20. However, undisputedly, there is no public witness or CCTV footage to ascertain the role of the applicant herein. Neither is there any person who has witnessed the applicant committing the murder of the victim.

21. Though it is alleged that the recovery of the mobile phone of the victim and the key of the Auto Rickshaw was at the instance of the applicant, the same is controverted by the applicant, who has stated that the mobile phone and keys were planted, she has been falsely implicated and the alleged recovery was also not witnessed by any independent witness.

22. Hence, the veracity of the allegations and the defence raised would be tested during the course of the trial and cannot be commented upon at this stage.

23. Admittedly, the applicant is in custody since 21.02.2019 i.e. almost 7 years. The investigation is already complete and the chargesheet has also been filed.

24. The Hon’ble Apex Court in the case of Union of India v. K.A. Najeeb : AIR 2021 SC 712 held that 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.

25. While it cannot be denied that the allegations in the present case are grave in nature, the Hon'ble Apex Court in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra and Another : Crl.A.2787/2024 has observed as under:

*“19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.
20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”*

26. The continued incarceration of the applicant will result in the denial of her fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India, when the trial is not likely to conclude in near future.

27. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

28. Admittedly till date only 05 out of 24 witnesses have been examined and thus, the trial even at this stage is not likely to conclude in near future considering that almost 20 witnesses still remain to be examined.

29. It has also been informed that the examination of the witnesses is likely to take further time as the FSL report is awaited. Despite almost six years having elapsed since the chargesheet was filed, the FSL report is yet to be obtained. Considering there is no timeline for the FSL report to be provided, the applicant cannot be made to suffer an indefinite incarceration because of the same.

30. It is also argued by the learned APP that the applicant is involved in another case of a similar nature and the applicant is a habitual offender. Insofar as the other antecedent of the applicant is concerned, it is also settled law that criminal antecedents of an accused cannot be a basis for refusal of bail [Ref. Prabhakar Tewari v. State of U.P. : (2020) 11 SCC 648]. Further, the Applicant was already released on bail in the previously filed FIR No. 69/2019 at Police Station Keshav Puram.

31. Further, the applicant being a woman is undeniably entitled to special consideration while dealing with the question of bail as enshrined in provisions of Section 437(1) of Cr.P.C.



32. *In view of the above, I find no cogent reason for keeping the applicant in further incarceration.”*

8. Disputing the ground of parity, Mr. Chauhan and Ms. Garg submit that the principal distinction between the case of Neelam and the present applicant is that, Neelam, being a woman, was entitled to the benefit of the first proviso to Section 437(1) of the Code of Criminal Procedure, 1973. It is further submitted, relying upon paragraph 4 of the status report, that the applicant’s involvement is supported by Call Detail Record [“CDR”] analysis, which shows that his mobile and the deceased’s mobile phone were at the same place and, in fact, the applicant’s mobile SIM was operated in the deceased’s mobile handset after the incident, from 14.02.2019 to 20.02.2019.

9. Mr. Chauhan and Ms. Garg have also emphasised the seriousness of the crime, including the gruesome nature of the allegations, and the fact that the applicant has another ongoing prosecution in a murder case.

10. Having heard learned counsel for the parties, and particularly having regard to the fact that the applicant has already been incarcerated for a period of almost seven and a half years, I am of the view that his continued pre-trial incarceration is no longer justifiable. The allegations against the applicant are no doubt grave and the nature of the offence, on the basis of the prosecution case, is gruesome. However, this Court while dealing with the bail application of the co-accused has referred to the period of custody, and the judgments of the Supreme Court in *Union of India v. K.A. Najeeb* [(2021) 3 SCC 713] and *Javed Gulam Nabi Shaikh v. State of Maharashtra and Anr.* [CRL.A. 2787/2024, decided on 03.07.2024]. The position, as far as the present applicant is concerned, in



this respect, is no different to that of Neelam. In fact, the applicant has been incarcerated for a further period of eight months after the judgment in *Neelam*, during which only one more witness has been examined. 28 out of 34 witnesses are thus yet to be examined, although all public witnesses have already been examined. It was noted in paragraph 29 of the judgment in *Neelam* that an FSL report was also awaited. This position also remains the same today. The expeditious conclusion of the trial, therefore, seems illusory, even at this stage.

11. Viewed in this context, I am not in a position to accept the submission of Mr. Chauhan and Ms. Garg with regard to the distinctions between the case of the applicant and that of Neelam. Doubtless, Neelam was entitled to special consideration in the matter of bail as a woman, but the applicant has also undergone seven and a half years of custody, and it would be incongruous to deprive him of his fundamental right to life and liberty further. The CDR connectivity between the present applicant and the deceased, and the recovery of the deceased's mobile phone with the applicant's SIM are also matters of evidence, which the Trial Court will consider at the conclusion of the trial. In other respects, the factual material asserted against the applicant and against Neelam are virtually the same.

12. Mr. Chauhan raises one further argument with regard to the jail conduct of the applicant. The Nominal Roll refers to one punishment on 23.04.2022 for abusing and quarrelling within the Court lock-up. I do not find this to be a significant ground for continued deprivation of the applicant's liberty. One incident, which took place more than four years ago, in the course of seven and a half years of incarceration, is not



sufficient for such a disproportionate consequence. The Nominal Roll reports the applicant's jail conduct for the last one year to have been satisfactory.

13. Although the applicant is involved in one other criminal case, I am informed that the position of Neelam is the same. She is also an accused in the said case. In any event, criminal involvements in other cases, by themselves, do not always necessitate the denial of bail, as held by the Supreme Court in *Prabhakar Tewari v. State of U.P.* [(2020) 11 SCC 648].

14. Having regard to the aforesaid factors, the application is allowed, and it is directed that the applicant be released on regular bail in connection with FIR No. 62/2019 dated 12.02.2019 registered at Police Station Bhalswa Dairy, Outer North District, Delhi, subject to furnishing a personal bond in the sum of Rs. 30,000/-, with one surety in the like amount, to the satisfaction of the Trial Court/Duty Magistrate, and subject to the following further conditions:

- a. The applicant shall appear before the Trial Court on each and every date of hearing;
- b. The applicant shall furnish his mobile number to the concerned Investigating Officer ["IO"]/Station House Officer ["SHO"], and shall keep the said mobile phone running and always switched on. The mobile number shall not be changed or switched off without prior intimation to the IO/SHO;
- c. I am informed that the applicant is a resident of Akrabad, District Aligarh, Uttar Pradesh. He shall provide his residential address to the Trial Court as well as the IO/SHO, and shall not change his



residential address without prior intimation to the IO/SHO;

- d. The applicant shall also report to the jurisdictional Police Station at his place of residence once a week on every Saturday at 10:00 AM, and shall be released within one hour after completion of all formalities;
 - e. The applicant shall not leave his district except for the purpose of attending the trial proceedings, either in this case or the other criminal case in which he is involved;
 - f. The applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
 - g. The applicant shall not commit any other offence during the period of his release.
15. The bail application is disposed of in terms of the above.
16. It is clarified that any observations made in the present order are solely for the purpose of deciding the present bail application, and shall neither influence the trial proceedings, nor be construed as an expression of opinion on the merits of the case.
17. Copy of the order be communicated to the concerned Jail Superintendent electronically for information and necessary compliance.

PRATEEK JALAN, J

AUGUST 18, 2026
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