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

CNR No. DLHC010789742025

+ **BAIL APPLN. 3957/2025**

SHAHIRUKH

.....Petitioner

Through: Mr. Ashutosh Bhardwaj and
Mr. Anmol Singh, Advocates.

versus

STATE OF NCT DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for State with
Insp. Vipin Kumar, SI Rajender
Singh, PS Nangloi.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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20.08.2026

1. The instant application has been filed on behalf of the applicant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (erstwhile Section 439 Cr.P.C.) seeking grant of regular bail in connection with FIR No.115/2021 registered at PS Nangloi, Delhi *qua* offence punishable under Section 302/34/174A/120B of the Indian Penal Code, 1860 ('IPC') and Section 27 of Arms Act.

2. Learned counsel appearing on behalf of the applicant submits that the applicant is innocent and has been falsely implicated in the instant case. He also submits that the name of the applicant is not mentioned in the FIR and there is no description or identification of the assailants. The evidence of



PW-3, who is the star witness of the prosecution, is full of contradictions. PW-4 and PW-6 have also not fully substantiated the prosecution story. The applicant is in custody since 07.08.2021. There is no possibility of early completion of trial. There is no other criminal antecedents of the applicant.

3. Submissions made on behalf of the applicant are vehemently opposed by learned APP for the State. She also submits that the deceased's family was informed, however, no one appears.

4. I have considered the submissions made by learned counsel for the parties and also perused the record.

5. It appears that the deceased namely, Zakir was the witness against one of the accused namely, Arif @ Ikram. Owing to the said reason, it is attributed that said Arif @ Ikram had has conspiracy to kill deceased. In order to commit the offence, the main accused Arif @ Ikram, present applicant namely Shahrukh, Mobin @ Tunda and Junaid conducted recce of the victim one day before the incident i.e. 28.02.2021. The date of incident is 01.03.2021. It is alleged that all 4 accused including the present applicant were seen following deceased. All accused persons were flew from the spot after committing the offence.

6. The overall facts and circumstances would indicate that the name of the petitioner is not mentioned in the FIR. PW-3 namely, Razia, the sister of the deceased has stated that the deceased when was being taken to the hospital had disclosed to her that Arif @ Ikram and other accused persons have fired on him. The name of the present applicant was not disclosed to PW-3 by the deceased. The prosecution, however, sought to connect chain of circumstances on the basis of identification of the present applicant during Court testimony by PW-3. It is, thus, contended that PW-3 had



identified the present applicant.

7. The overall facts and circumstances do not fully connect the chain of circumstances to *prima facie* establish the guilt of the applicant. Even otherwise all those aspects will have to be considered by the concerned Court at the time of rendering final judgment. The deceased was sought near Ambedkar community centre and was declared dead at Sanjay Gandhi Hospital. The alleged dying declaration is the only testimony and there is no eye witness.

8. The prosecution case against the present applicant rests upon circumstantial evidence. The circumstances relied upon by the prosecution are required to form a complete and unbroken chain, pointing towards the guilt of the applicant and excluding every hypothesis consistent with his innocence. The law governing the appreciation of a case resting upon circumstantial evidence is well crystallised. The locus classicus is ***Sharad Birdhichand Sarda v. State of Maharashtra***,¹ wherein the Supreme Court formulated the five “*Panchsheel*” conditions which must be satisfied before guilt can be said to be established on the basis of circumstantial evidence:-

“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]

¹ (1984) 4 SCC 116



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 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."

9. It is trite that the object of bail is not to inflict punishment by way of pre-trial detention. In ***Dataram Singh v. State of U.P.***,² the Supreme Court reiterated that the presumption of innocence remains in favour of the accused and that bail is the rule, while in ***Prasanta Kumar Sarkar v. Ashis Chatterjee***,³ the Court delineated the relevant considerations which must guide the exercise of discretion in matters of bail. The same principle was reiterated in ***Sanjay Chandra v. CBI***,⁴ wherein the Supreme Court emphasised that incarceration before conviction ought not to be punitive in character.

10. More recently, in ***Satender Kumar Antil v. CBI***,⁵ the Supreme Court has emphasised that prolonged incarceration pending trial, particularly

² (2018) 3 SCC 22

³ (2010) 14 SCC 496

⁴ (2012) 1 SCC 40

⁵ (2022) 10 SCC 51



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.

11. The Supreme Court in ***Union of India v. K.A. Najeeb***,⁶ held that an under trial cannot be subjected to indefinite incarceration pending trial and that, where it becomes evident that a timely conclusion of the trial is not possible and the accused has already undergone a substantial period of incarceration, constitutional Courts would ordinarily be obligated to enlarge the accused on bail, notwithstanding the statutory restrictions governing the grant of bail.

“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]

12. Without commenting on the merits of the allegations, it is undisputed that the applicant has already suffered incarceration for more than 5 years. The continued incarceration of the applicant, in the facts and circumstances of the present case, would have to be balanced against his fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution

⁶ (2021) 3 SCC 713



of India.

13. The trial is at the stage of prosecution evidence and only 25 out of the total 36 prosecution witnesses have been examined so far. The trial is, therefore, not likely to conclude in the near future. There is no material on record to attribute the delay in conclusion of the trial to the applicant.

14. Bearing in mind the long incarceration of about more than 5 years, the nature of the offence which is circumstantial in nature, the Court is of the opinion that the applicants are entitled for grant of regular bail.

15. Accordingly, the applicants are directed to be released on regular bail on such terms and conditions as may be imposed by the concerned Trial Court.

16. Nothing stated, hereinabove, shall be construed as an expression on the merits of the case. The observations made herein are confined solely to the adjudication of the present bail application. The Trial Court shall adjudicate the matter independently and in accordance with law, on the basis of the evidence adduced before it.

17. The application stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 20, 2026

Nc/nk