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

+ **BAIL APPLN. 3370/2024**

BHARAT LAL

.....Petitioner

Through: Mr. Abhinav Dubey, Mr. P. Pratap
Singh and Mr. Durgesh Chaudhary,
Advocates.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State
with Inspector Arvind Kumar,
DIU/South East Distt.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

11.12.2024

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By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No. 476/2010 dated 21.11.2010 registered under sections 363/365 of the Indian Penal Code, 1860 ('IPC') at P.S.: Kalkaji, Delhi.

2. As recorded in order dated 18.09.2024, since the petition was filed *after 01.07.2024* and there was no earlier petition for the same relief pending before the court, the petition was treated as one under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), by reason of section 531 BNSS *viz.* the repeal and savings clause in the BNSS.
3. Notice on this petition was issued on 18.09.2024; pursuant to which Status Report dated 06.11.2024 has been filed on behalf of the State.



4. Nominal Roll dated 04.11.2024 has also been received from the Jail Superintendent.
5. The court has heard Mr. Abhinav Dubey, learned counsel appearing for the petitioner, as well as Ms. Shubhi Gupta, learned APP appearing on behalf of the State at length.
6. Though intimation about the pendency of the present proceedings was sought to be served on the next-of-kin of the deceased *i.e.*, his mother, the Investigating Officer ('I.O.'), who is present in court, states that despite best efforts they have not been able to trace the mother of the deceased; and accordingly, it has not been possible to serve intimation upon her.
7. Mr. Dubey submits, that the petitioner was the driver of a bus plying from Old Delhi Railway Station to DDA Flats, Kalkaji and on 26.08.2010 the deceased- Rahul *alias* Chandan - a school boy aged about 17 years, is alleged to have had an altercation with the conductor/helper of the bus - Mohd. Dilshad.
8. Learned counsel submits, that the prosecution case as put by the Investigating Officer is that as a continuation of the quarrel from the previous day *i.e.*, 26.08.2010, the deceased wanted to take revenge from Mohd. Dilshad; and in that process the deceased along with his classmates beat-up the conductor on 27.08.2010, whereafter the boys ran away.
9. As per the case of the prosecution, subsequently, the bus conductor caught the deceased and took him to a police booth, whereafter the deceased was dropped by the bus conductor at a bus stop before the red light of Hemkund Colony (Park Royal) which is next to Nehru



Place Flyover, at about 3:30 p.m. The prosecution says that thereafter the deceased crossed the railway track near CNG Pump situate in front of the CRI Railway Track at which point he was hit by a train.

10. Mr. Dubey points-out, that the prosecution has cited one witness - Ram Dayal, who was a gangman with the Railways, who states that he had witnessed the incident where the deceased was hit and run-over by the Rajdhani Express from the back leading to his death.
11. Learned counsel submits, that by reason of the aforesaid the Investigating Officer had filed a closure report; and that in the chargesheet as well as in the supplementary chargesheet filed in the matter, the present petitioner was placed in column No.12 and was not sent-up for trial.
12. It is submitted however, that subsequently while deciding the protest petition filed by the deceased's mother, the learned Metropolitan Magistrate, Saket District Courts, Delhi has rejected the closure report filed by the I.O.; and *vide* order dated 05.03.2015 has opined that there was sufficient material on record to take cognizance of the offence under sections 302/34 of the IPC.
13. Mr. Dubey submits, that to show his *bona-fides*, the petitioner had in fact offered himself up for a lie-detector test, which was conducted on 19.05.2014; and report dated 30.05.2014 of the polygraph test, the Senior Scientific Officer, FSL, Rohini, Delhi has opined that upon an analysis and evaluations of the polygraphs, *no deceptive responses are revealed* to the questions put to the petitioner and that the petitioner has been found to be '*truthful*'.



14. Learned counsel further points-out, that report dated 14.03.2012 issued by the Medical Board constituted by the Maulana Azad Medical College, New Delhi records that the cause of death is the “... *... combined effect of shock and hemorrhage due to craniocerebral damage associated with injury to the abdominal viscera consequently upon blunt force impact.*”; and upon a specific opinion being sought as to whether the blunt force impact could be of a train or by human beating, the doctors have opined that since there is crush injury to the head and to the right hand alongwith fractures of the ribs, pelvis and femur with lacerations of underlying organs, the injury sustained by the deceased *are consistent with the impact of blunt force of a train.*
15. In light of the above submission, Mr. Dubey prays that the petitioner be released on regular bail.
16. Opposing the grant of bail, on the other hand learned APP submits, that there is compelling ‘last seen’ evidence against the petitioner, since as per the statement of other students who were also riding on the same bus at the same time, the petitioner and the conductor had confined the deceased to the bus while allowing the other students to de-board the bus.
17. Upon being queried however, Ms. Gupta submits, that the time at which the petitioner was last seen with the deceased in the bus is unclear since *none* of the witnesses whose statements have been recorded have indicated as to when the two were last seen together.
18. The nominal roll shows that the petitioner has been in judicial custody for more than 01 year and 09 months as an undertrial; that his jail



conduct has been 'satisfactory' and that he has no other criminal involvements.

19. The record shows that 55 witnesses have been cited by the prosecution; and though charges have been framed, trial is yet to begin; and evidently therefore, the trial will take a significant time to conclude.
20. Upon an overall conspectus of the facts and circumstances of the case, and in particular the fact (i) that one of the witnesses – Ram Dayal, being a gangman with the Railways - has stated that he saw the deceased being hit by a train from the back, which is also consistent with the opinion contained in the medical report as to the cause of death; and(ii) that the petitioner's polygraph test reads in his favour and he has been found to be truthful in that test, this court is persuaded to grant the petitioner – ***Bharat Lal s/o D Raut*** – regular bail pending trial, subject to the following conditions:
 - 20.1. The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Rs. Twenty-five Thousand Only) with 02 sureties in the like amount from the family members, to the satisfaction of the learned trial court;
 - 20.2. The petitioner shall furnish to the Investigating Officer ('I.O.') a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
 - 20.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;



- 20.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and
- 20.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
21. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.
22. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
23. A copy of this order be sent to the concerned Jail Superintendent *forthwith*, for information and compliance.
24. The petition stands disposed-of.
25. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

DECEMBER 11, 2024

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