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

% **Date of decision: 13.05.2025**

+ BAIL APPLN. 287/2025

HAFIZULLAH

.....Petitioner

Through: Mr. I.A. Alvi, Adv.

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Ms. Meenakshi Dahiya, APP
for State.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

SHALINDER KAUR, J (ORAL)

1. By way of the present petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner seeks Regular Bail in FIR No. 0420/2016 dated 01.04.2016 for the offences punishable under Sections 302, 212, 120B and 34 of the Indian Penal Code, 1860 ('IPC') and Section 14 of the Foreigners Act, 1946, registered at Police Station, Malviya Nagar, Delhi.

PROSECUTION'S CASE

2. The genesis of the present case lies in the events of the intervening night of 31.03.2016 and 01.04.2016, at approximately 12:50 a.m., a telephonic communication was received at Police Station Malviya Nagar, intimating that two individuals had assaulted a young man with a knife near the footpath at Press Enclave



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Road, in front of Lagoona Banquet Hall, adjacent to the Taxi Stand. It was further reported that one of the assailants had been apprehended at the scene, while the other had managed to flee. The injured individual, later identified as Sayed Azmarai, was transported to Max Hospital, Saket by his companion. This information was duly recorded and ASI Ramlal, who, accompanied by Constable Kishan Lal, proceeded to the scene of occurrence.

3. Upon arrival at the spot, ASI Ramlal found ASI Shyam Lal, along with Constable Shaukat Ali, holding a person who was later identified as Mumtaz, a resident of Masjid Lane, Bhogal, New Delhi. ASI Shyam Lal informed them that the injured had already been shifted to Max Hospital for medical attention.

4. At Max Hospital, ASI Ramlal ascertained the identity of the injured as Sayed Azmarai, a 25-year-old resident of 4/17, 2nd Floor, Jangpura, Bhogal, New Delhi. Medical documentation under MLC No. 4663/16 indicated that the victim had been brought to the Emergency Room in an unconscious and unresponsive state, bearing multiple stab wounds. The attending physician opined that the injured was "not fit for statement," and the same was endorsed on the MLC.

5. While at the hospital, ASI Ramlal met the eyewitness, Shafiq Ahmad. Shafiq Ahmad, in his statement, narrated that on 01.04.2016, he, along with his friend Sayed Azmarai (victim), had parked their Scooty near Lagoona Banquet Hall, Hauz Rani, Malviya Nagar, around 12:30 a.m., while waiting for their friends to arrive. It was at this juncture that two men approached them from the direction of



Hauz Rani and began assaulting the victim. One of the assailants, identified as Hafizullah (petitioner), wielded a knife-like object and inflicted multiple injuries on the victim, targeting his chest, head, abdomen, and thigh. Shafiq Ahmad, in his attempt to intervene, pursued the assailants, raising an alarm, and managed, with the assistance of the police, to apprehend co-accused Mumtaz. While the petitioner escaped, co-accused Mumtaz was arrested at the scene on 01.04.2016.

6. During treatment at Max Hospital, the victim succumbed to his injuries, and consequently, Section 302 of the IPC was added to the FIR. The post-mortem examination conducted at AIIMS concluded that the cause of death was "*shock due to haemorrhage consequent upon a penetrating injury to the heart (Injury No. 6),*" which, according to the medical opinion, was "*sufficient to cause death in the ordinary course of nature.*" All injuries were noted to be ante mortem in nature, and viscera samples were preserved for further analysis.

7. Investigative efforts led to the apprehension of the petitioner on 13.05.2016 from Rajhans Lodge, Pune, Maharashtra. Upon interrogation, the petitioner got his disclosure statement recorded.

8. What transpired during the investigation is that the co-accused Abdullah had provided shelter and assistance to the petitioner in evading arrest, moving from Delhi to Panipat, then to Goa, and finally to Pune. The co-accused Abdullah was subsequently apprehended under Section 212 of the IPC and Section 14 of the Foreigners Act. During their transit remand from Pune to Delhi, both the petitioner



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and co-accused Abdullah escaped custody, leading to the registration of a separate FIR No.25/16 under Section 224 of the IPC at Police Station Railway, Chalise Gaon (GRP), Maharashtra.

9. On 10.12.2016, co-accused Abdullah was arrested from Wazirabad, Delhi, and the petitioner was re-arrested on 13.12.2016 from the Immigration Detention Centre at Sewa Sadan, Lampur, New Delhi. The petitioner had provided a false identity as 'Ishmat Khan' to the Timarpur Police to evade arrest.

10. The petitioner moved a bail application before the learned Additional Sessions Judge-03, South, Saket Courts, Delhi, which came to be dismissed on 31.08.2024, compelling the petitioner to file the present bail application.

11. The learned counsel for the petitioner submits that the prosecution's case against the Petitioner is primarily based on the testimony of Shafiq Ahmad (PW-1), the alleged eyewitness. It is urged that the said witness has proven to be wholly unreliable and inconsistent in his statements. The learned counsel submits that while the FIR categorically implicates co-accused Mumtaz, Shafiq Ahmad, in his testimony as PW-1 entirely exonerates Mumtaz of any role in the attack on the deceased. He further submits that Shafiq Ahmad has further made substantial improvements in his testimony, which diminishes the case of the prosecution.

12. The learned counsel contends that the Test Identification Parade (TIP), which is a critical procedural safeguard when the accused is not



previously known to the witness, was not conducted in the present case. In the present matter, it is urged, Shafiq Ahmad did not know the petitioner prior to the incident, and yet, no TIP was carried out.

13. It is further urged that co-accused Mumtaz, who was apprehended at the spot, and from whose person bloodstains matching the blood of the deceased were recovered as per the FSL report, was granted bail by the learned ASJ on 16.10.2018. It is argued that the petitioner stands on a better footing, as no such forensic evidence connects him to the scene of the crime.

14. The learned counsel further emphasizes that the trial has been inordinately delayed. It is submitted that the petitioner has been in custody since 13.12.2016 and the matter is currently pending trial before the learned Additional Sessions Judge - 03, South, Saket Courts, and is at the stage of prosecution evidence. Out of the 27 witnesses, 20 witnesses have been examined. Further, as per the Supplementary Charge-Sheet, 10 more witnesses have been added.

15. The learned counsel submits that the material witnesses have been examined, and given the stage of the trial, the number of witnesses yet to be examined, no purpose would be served by continuing the petitioner's incarceration. It is argued that the prolonged detention of the petitioner offends the principles of personal liberty under Article 21 of the Constitution of India.

16. At the outset, the learned APP for the state submits that intimation regarding this application, coming up for hearing before this Court, to the brother of the deceased. However, this Court has



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been informed that the brother, being an Afghani national, has let the country and cannot be contacted.

17. While seeking dismissal of the bail application, the learned APP for the State submits that the allegations against the petitioner are grave and serious in nature, wherein the petitioner inflicted multiple knife wounds on the deceased. He submits that the post-mortem report confirms that the death was caused due to these wounds inflicted by the petitioner.

18. Further, the conduct of the petitioner shows that he had previously escaped from police custody, and provided a false name when he was apprehended by the Timarpur Police. Thus, apparently, the petitioner has tried to evade arrest and has escaped from the hands of the law.

19. The learned APP submits that the petitioner, being a foreign national, possesses a flight risk, which may frustrate the remaining trial. To conclude, the learned APP submits that keeping in view the gravity of the offence along with the risk of absconding, the bail application be dismissed.

20. The learned APP brought to the notice of this Court that the petitioner is involved in another criminal case, registered as FIR No. 102/2015 dated 21.04.2015 under Sections 399 and 402 of the IPC, indicative of his criminal antecedents.

21. Having heard the learned counsel for the petitioner, the learned APP for the State and perused the record, this Court notes that the allegations against the petitioner are grave and serious in nature. It is



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alleged that on the intervening night of 31.03.2016 and 01.04.2016, the petitioner brutally assaulted the victim with a knife, resulting in his death a few hours later at Max Hospital, Saket. The post-mortem, conducted at AIIMS, unambiguously opines that the cause of death was "shock and haemorrhage consequent upon a penetrating injury to the heart," which, in the ordinary course of nature, is sufficient to cause death.

22. The motive for the crime, as per the investigation, stems from a monetary dispute, wherein the petitioner had purportedly paid ₹40,000 to the deceased, for purposes of deportation back to Afghanistan, a promise that was neither fulfilled nor refunded.

23. The learned APP has strongly urged that the complainant has named the petitioner in the FIR and has categorically identified the petitioner as the assailant at the scene of the crime.

24. The plea of parity with co-accused Mumtaz is unconvincing. The co-accused, although granted bail, was apprehended at the scene with bloodstains on his clothes, and as per the prosecution version, he did not participate in inflicting injuries on the person of the deceased, which had been a sole attempt by the petitioner.

25. Above all, the major concern before this Court is that the petitioner is a significant flight risk, specifically when the petitioner not only fled the scene of crime, but also successfully absconded during police custody, while being on transit remand, coupled with the fact that subsequently, he also changed his identity to avoid arrest. Being a Foreign National, in these peculiar circumstances, there is a



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significant possibility of his fleeing from the trial, which is now at its fag end and would jeopardize the trial.

26. While the petitioner has raised the plea of inordinate delay, the record reflects that the trial is at an advanced stage, with 20 out of 27 witnesses already examined. Further, in the Supplementary Charge-Sheet, 10 more witnesses are cited and there is a possibility that the remaining witnesses to be examined are formal witnesses. The next date of hearing is fixed for 22.05.2025.

27. In light of the foregoing discussion, this Court finds no cogent reason to accede to the prayer for bail. The gravity of the offence, the risk of abscondence, the proven act of evasion during custody, changing his identity and the seriousness of the allegations render the petitioner unfit for release on bail at this stage.

28. For the reasons stated above, the bail application is dismissed. The learned Trial Court is, however, requested to expedite the examination of remaining witnesses and to conclude the trial at the earliest.

SHALINDER KAUR, J

MAY 13, 2025/sds/FRK

Click here to check corrigendum, if any