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

Reserved on: 18.03.2025

Pronounced on: 24.03.2025

+ BAIL APPLN. 1034/2025
MOHD RASHID

.....Petitioner

Through: Mr. Hum Nashin Ahmed, Mr.
Imran Alam, Mr. Akshay K.
Singh, Ms. Sharaf Hasan, Ms.
Farkhunda Kaunain, Mr.
Prakhar Singh, Mr. Javed Saifi
and Mr. Aniket Singh, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastava, APP

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. This is a first Regular Bail Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 filed on behalf of the Petitioner seeking grant of Regular Bail in FIR No. 17/2022 dated 07.01.2022 (Subject FIR) registered at the Police Station Sarai Rohilla for the offences under Sections 302, 201 and 34 of the Indian Penal Code, 1860 (IPC).

2. The Subject FIR is premised on information received regarding a male dead body found wrapped in a bedsheet and tied with a rope near Tikona Park Old Rohtak Road, near Railway Line underpass Jakhira, Delhi, whereupon Sub-Inspector Deepak Lohchab along with



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others, reached the place of incident. After an inspection of the dead body of the deceased, the scene of crime and upon opening the knot of the bedsheet and the rope, it was found that two polybags covered his mouth, tied by another rope, and also found injuries behind the head of the deceased along with several other injury marks on his body. Afreen, the wife of the deceased, who appeared on the spot identified the body of the deceased to be of her husband namely Abhishek, a 26 year old individual who resided in Pratap Nagar, Andha Mughal, Delhi.

3. It is stated that the Post Mortem report dated 08.01.2022 opined the cause of death to be *'asphyxia resulting from manual strangulation and cerebral damage, subsequent to blunt force impact over the head'*. The date of offence is alleged to be 06.01.2022 at about 04:30 PM, when he was last seen alive, whereas the body of the deceased is stated to have been recovered on 07.01.2022 at around 01:30 PM.

4. The Prosecution alleged that the investigation has revealed that the deceased had certain disputes with the accused persons who had been running a Bakery, namely, Golden Bakery situated in Gali No. 3, Padam Nagar, Delhi. The role ascribed to the Petitioner is that he had slapped the deceased and Israfil and the co-accused Savjal Ansari held his legs due to which the deceased fell on the ground. Thereafter, the Petitioner started throttling the deceased and subsequently, the other co-accused Afzal Ansari and Israfil strangulated the deceased with a Gamchha, whereafter, the accused persons wrapped the body of the



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deceased with polybags, bedsheet and tied it with a rope and the Petitioner and co-accused Afzal Ansari threw the body of the deceased at Tikona Park, Inderlok, Delhi.

5. Further, it was alleged that the investigation has revealed that the bed-sheet and the polythene bags present in the Bakery resembled to the ones which were used to wrap the dead body of the deceased. Thereafter, all the accused persons were arrested on 09.01.2022.

6. Upon completion of the investigation, the Chargesheet was filed on 19.05.2022 against the four accused persons, namely, (A1) Mohd. Rashid, (A2, Petitioner) Savjal Ansari, (A3) Afjal Ansari and (A4) Mohd. Abrar under Sections 302, 201 and 34 of the IPC.

7. The Prosecution attempted to connect the presence of the deceased at the Bakery shop at the relevant time through a Mobile No. 9667071528 which was used by the deceased, which allegation finds mention in the statement of Afreen, wife of the deceased, recorded under Section 161 of the Code of Criminal Procedure, 1973 (CrPC).

8. During the course of proceedings in the trial, the Petitioner had preferred a bail application before the learned Special Judge, NDPS-02, Central, Tis Hazari Court, Delhi (Trial Court), which was withdrawn with a liberty to file afresh. Availing of the said liberty, the Petitioner filed the second bail application which came to be dismissed *vide* Order dated 04.03.2025. Thus, being aggrieved, the Petitioner has preferred the present bail application before this Court.

9. Learned counsel for the Petitioner submitted that the Petitioner has not been named in the FIR and has been falsely implicated in the



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present case. He submitted that the entire case is based on the disclosure statements of the Petitioner and of the other accused persons. There are also no independent witnesses or even an eyewitness.

10. He submitted that the Mobile No. 9667071528, alleged to be of wife of the deceased, through which the last location of the deceased was traced was not registered in the name of the deceased nor his wife, rather the said number is registered in the name of one, namely, Roopa.

11. As per the Post Mortem Report dated 08.01.2022, he submitted, the deceased is stated to have sustained 15 injuries, several of which were incised wounds, however, no recovery of the weapon of offence has been recovered from or at the instance of the Petitioner nor the Prosecution has explained the said injuries. Moreover, no time of death has been mentioned in the Post-Mortem report.

12. The learned counsel for the Petitioner submitted that the co-accused persons, namely, Mohd. Abrar *vide* Order dated 24.02.2025 passed in Bail Appln. 1822/2024 and Afzal Ansari *vide* Order dated 03.09.2024 in Bail Appl. 2980/2022 have been granted Regular Bail by this Court and on this sole ground, the Petitioner is entitled to be granted Bail. He submitted that the present Petitioner has been incarcerated for a period of 3 years and 3 months and the said co-accused had suffered 2 years and 2 months as on the relevant date.

13. He further submitted that the Petitioner joined the investigation from the very first day of the incident itself and has never absconded



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or evaded the investigation. He submitted that the Petitioner lives with his old aged parents and he has to look after them.

14. Moreover, the Prosecution has cited 36 witnesses and of which only 1 witness has been examined till date. The Petitioner has no criminal antecedents and belongs to a well reputed family who are permanent residents of Delhi. He further submitted that the Petitioner undertakes not to tamper with the evidence and influence the witnesses the Prosecution seeks to examine. In these circumstances, the petitioner be enlarged on bail subject to conditions deemed fit by this Court.

15. On the other hand, the learned APP appearing on behalf of the respondent/State vehemently opposed the bail application by urging that the Petitioner had played an active role in the cold blooded murder of the deceased with the help of co-accused persons specifically Afzal Ansari, who along with the Petitioner were responsible for committing the murder of the deceased and subsequent thereto for disposal of his dead body. Moreover, to ensure that the deceased should meet his death, they had covered his mouth with polythene and plastic packing thread so as to ensure that there is no chance of his survival.

16. The learned APP submitted that the role of the Petitioner is, thus, similar to that of co-accused Afzal. Moreover, the role of the Petitioner is not only confined to the disclosure statements, but also that the Petitioner can be seen in the CCTV footage before and after the commission of the offence alongwith co-accused persons. From



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the CCTV footage, it can be seen that the accused persons have entered the Bakery and when it is turned off and switched on again, the accused persons can be seen but the deceased person cannot be located.

17. Learned APP submitted that the act of switching off the CCTV proves that it was a planned act and they did so deliberately for committing the murder and for disposal of the body. Moreover, all the accused persons were present at the spot, as can be clearly seen from the CCTV footage, as also from the location of the accused persons as per the CDR analysis of their mobile phones.

18. Learned APP submitted that the Petitioner remains involved in committing the murder of the deceased and moreover, the purse of the deceased and the Gamchha were recovered at the instance of the Petitioner. He strenuously submitted that the polybags and bedsheet used to strangle the deceased also belonged to their Bakery, as per the investigation, which was ran by him along with other co-accused persons.

19. Learned APP further submitted that the burden under Section 106 of the Evidence Act, 1872 is on the Petitioner to prove the exculpatory evidence, which can be done so only during the course of the trial. Thus, in these circumstances, he submitted, Petitioner cannot seek parity with the co-accused persons, who were granted Bail and the petition be dismissed.

20. Having heard the learned counsel for the parties and perused the record, on overall consideration of the facts and circumstances of the



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case, this Court considers, at this stage, that the co-accused Mohd. Abrar and Afjal Ansari have been granted the benefit of Bail by the Coordinate Bench while they were incarcerated for more than three years and two years & two months, respectively. Moreso, another co-accused Savjal Ansari has been granted bail by this Court.

21. Most importantly, the role assigned to the Petitioner is similar as had been assigned to the co-accused Afzal Ansari, as rightly both participated in committing the murder of the deceased Abhishek and thereafter, disposed the dead body of the deceased. It is not disputed that the Petitioner has been in incarceration for about 3 years 3 months and out of 36 witnesses, only one witness has been examined and he has no previous criminal antecedents. The co-accused Afzal Ansari has been admitted on bail by the Coordinate Bench of this Court *vide* Order dated 03.09.2024 in Bail Appln. 2980/2022 and the relevant extract thereof are reproduced hereinbelow:

“19. On a prima-facie view of the material on record, it would appear that the only incriminating evidence recovered at the Petitioner’s instance is the DVR containing certain CCTV footage relating to the Petitioner’s bakery. The Prosecution alleges that at the relevant time, i.e. around 04:30 p.m. on 06.01.2022, the Petitioner was present at the bakery and so was the deceased, though the Petitioner disputes his presence at the bakery at that time. In any event, the presence of the Petitioner at the bakery at the relevant time, and the recovery of the DVR and the CCTV footage on the Petitioner’s disclosure statement, would not by itself prove the Petitioner’s guilt.

20. Furthermore, the earlier incident of



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16.09.2021, leading-up to the registration of DD No. 6A dated 16.09.2021 against the Petitioner and the deceased would again, in and of itself, not be conclusive of the Petitioner's involvement in the offence of murder.

21. Other things apart, it is not disputed that despite lapse of about more than 2-2 years; only 01 out of the 36 Prosecution witnesses have so far deposed before the learned trial court; and that the Petitioner has been in custody throughout. It is therefore highly unlikely that the trial would be completed anytime soon."

22. In view of the consideration of the above circumstances as well as on parity with co-accused Afzal Ansari, Md. Abrar Ansari & Savjal Ansari, the Petitioner, **Mohd. Rashid** is admitted to regular bail pending trial in the subject FIR, on his furnishing a personal bond in the sum of ₹30,000/- with one surety bond of the like amount, subject to the satisfaction of the learned Trial Court / CMM / Duty Magistrate and further subject to the following conditions:

- i. The Petitioner shall not leave India without prior permission of the Learned Trial Court.
- ii. The Petitioner shall report at P.S. Sarai Rohilla every Saturday at 4:00 P.M. The concerned officer shall release the Petitioner after recording his presence and after completion of all the necessary formalities.
- iii. The Petitioner shall immediately intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change of residential



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address.

- iv. The Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- v. The Petitioner is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
- vi. 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 also 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.

23. A copy of this Order be sent to the Jail Superintendent concerned for information and necessary compliance.

24. It is made clear that observations made hereinabove shall not tantamount to be an expression of merits of the Petitioner's case and have been made for the consideration of bail alone.

25. Accordingly, the petition is disposed of.

SHALINDER KAUR, J

MARCH 24, 2025

KM/ab