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

Reserved on: 12.11.2025
Date of Decision: 28.11.2025

+ **BAIL APPLN. 1851/2025****DINEET**

.....Petitioner

Through: Mr. Tushar Mahajan,
Mr. Bhaavan Mahajan and Mr. Tanmay
Surana, Advs.

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Satish Kumar, APP for
State with Ms. Upasna Bakshi, Adv. with
Sub. Insp. Pankaj Kumar, PS Jyoti Nagar
with Smt. Sumitra (mother of deceased)

CORAM:**HON'BLE MR. JUSTICE AJAY DIGPAUL****J U D G M E N T**

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1. The present second bail application has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, on behalf of the petitioner seeking grant of regular bail in connection with FIR no. 248/2018¹ registered at Police Station Jyoti Nagar, Delhi under Section 302/34 of the Indian Penal Code, 1860.

2. The brief facts as contained within the subject FIR are that on 18.07.2018 at 5.50 pm, GTB hospital had informed the police that one Gaurav aged 17 years and a resident of Babar Pur, Delhi, was found in an unconscious state outside West Jyoti Nagar Boys Senior School



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and was admitted to GTB Hospital where he was declared as having been brought dead.

3. It is further recorded that the complainant as per the details in the FIR– SI Javinder Singh, met Govinda, the brother of the deceased, who mentioned that around one week ago the deceased had fought with the petitioner and the petitioner's friends.

4. The petitioner was arrested on 23.07.2018. Charges were framed on 09.09.2019 and the trial is reported to be at the stage of prosecution evidence with 8 out of 37 witnesses having been examined so far.

5. The petitioner moved an application for regular bail which came to be dismissed by the learned ASJ Shahdara, Karkardooma Courts, Delhi, *vide* order dt. 01.05.2024, noting the heinous nature of the allegations levelled and that only 7 of 29 witnesses had been examined at the time, and that bail applications of co-accused persons were dismissed on merits on 26.04.2024.

6. The petitioner's first petition for bail before this Court was dismissed as withdrawn *vide* order dt. 02.09.2024, after which a bail application filed by the petitioner before the learned ASJ, Shahdara, Karkardooma Courts, was dismissed *vide* order dated 05.05.2025 on the grounds of gravity of offence, coupled with the significant period from 10.08.2020 to 05.04.2023 being spent by the petitioner on bail due to the ongoing COVID-19 exigency.

7. Mr. Tushar Mahajan, learned Counsel appearing on behalf of the petitioner, submits that the case of the prosecution does not *prima facie* establish the petitioner's involvement in the commission of the crime which led to the registration of the subject FIR, and that PW2/



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Raj (cousin brother of the deceased) is a planted witness who is the only eyewitness to the crime and has also turned hostile.

8. He begins by pointing out contradictions of PW2/Raj, in his statements under 161 CrPC and examination in chief/cross examination. He submits that in PW2's statement under 161 CrPC, he stated that he had informed the assailants that the deceased had a history of fits/seizures to which the assailants responded with their intention to kill the deceased. Further, his statement records that the petitioner was clearly visible in the CCTV footage obtained by the police.

9. *Per contra*, as submitted by Mr. Mahajan, PW2 states in cross examination that PW2 did not inform the assailants of the deceased's medical history of fits and specifically denied that the petitioner was visible in the CCTV footage. Mr. Mahajan submits that beyond this, PW2 provides additional information when compared to what was mentioned in his statement under Section 161 of the CrPC to the extent of saying that the deceased was lying in a park with foam around his mouth, and that he was not able to identify himself in the CCTV footage and his identification of the accused was not confirmatory but doubtable.

10. He also argues that PW2 was not in a position to even recall the colour of the *panni* (plastic bag) used to suffocate the deceased while he received fist and leg blows from the assailants.

11. Mr. Mahajan submits that in connection with this contradiction, no *panni* nor weapon was recovered from the accused persons or at the scene of the alleged crime.

12. Beyond contradictions in the statement of PW2 under Section 161 of the CrPC when compared to his examination in chief/ cross



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examination, Mr. Mahajan argues that the CCTV footage is time stamped with “5.08 pm – 5.16pm” while the MLC on record is time stamped as having been written at 5.00 pm, indicating a visible discrepancy.

13. Mr. Mahajan then brings this Court’s attention to the fact that PW2 was not at the spot during the preparation of the siteplan by the IO, evidenced by the IO’s testimony, and that PW2’s position was not indicated on the siteplan.

14. Lastly, he submits that the petitioner has undergone a lengthy incarceration period of nearly 5 years and almost 30 witnesses are yet to be examined.

15. Learned APP who appears on behalf of the State, Mr. Satish Kumar, opposes grant of bail to the petitioner. He submits that 29 witnesses are yet to be examined, and that the CCTV footage on record is corroborative of the petitioner’s involvement in the crime. Furthermore, he argues that CDR locations of the petitioner corroborate with the location of the alleged crime, and that the gravity of the offence precludes any consideration for grant of bail.

16. Heard and perused.

17. Addressing Mr. Mahajan’s submissions, it is pertinent to note that nearly the entirety of the petitioner’s case rests upon the assumption that this Court may enter into witness testimonies and evidence to determine contradictions and the hostility of witnesses at the stage of bail.



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18. However, it is trite that the same is not within the power of this Court at the stage of bail, as laid down in *Satish Jaggi v. State of Chhattisgarh*², paragraphs 11 and 12 of which merit reproduction:

“11. On the aforesaid reasoning, the learned Chief Justice thought it fit to grant bail. Mr A.K. Ganguli, learned Senior Counsel appearing on behalf of the appellant complainant, Mr Amarendra Sharan, learned ASG appearing on behalf of CBI and Mr Rajiv Dutta, learned Senior Counsel appearing on behalf of the State of Chhattisgarh strenuously contended that having regard to the observations and findings of the learned Chief Justice as recorded above, it clearly shows that the learned Chief Justice while granting bail to the accused virtually decided the case on merit which amounts to acquitting the accused of the criminal charge levelled against him without trial. Per contra, Mr Vivek Tankha, learned Senior Counsel contended that now evidence is closed so there is no question of the accused tampering with the prosecution witnesses or fleeing from justice. He further contended that now the arguments in the case have finally started and the arguments of the prosecution are over and only the defence is to give its reply. He, accordingly, contended that the bail granted by the learned Chief Justice need not be disturbed.

12. Normally if the offence is non-bailable also, bail can be granted if the facts and circumstances so demand. We have already observed that in granting bail in non-bailable offence, the primary consideration is the gravity and the nature of the offence. A reading of the order of the learned Chief Justice shows that the nature and the gravity of the offence and its impact on the democratic fabric of the society was not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned Chief Justice has virtually acquitted the accused of all the criminal charges levelled against him even before the trial. The trial is in progress and if such findings are allowed to stand it would seriously prejudice the prosecution case. At the stage of granting of bail, the court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial.”

²(2007) 11 SCC 195



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19. By virtue of the aforementioned paragraphs from the Hon'ble Supreme Court's decision in **Satish Jaggi**, it is evinced that this Court, at the stage of Bail, cannot look into the allegations of PW2 being a witness who has turned hostile, nor apply its mind to alleged contradictions in his statement under Section 161 of the CrPC when compared with his testimony in Court, as the same would amount to appreciation of the evidentiary value of his statement and testimony, and this is an exercise that is only to be conducted during the course of trial.

20. The same has been relied upon by the Hon'ble Supreme Court in the judgment of **State of Karnataka v. Sri Darshan**³, with the following paragraphs of this decision reproduced for ready reference:

*“20.2.5. Further, such an approach of the High Court is contrary to the judicial precedents of this court, including **Satish Jaggi v. State of Chhattisgarh** (supra), **Kanwar Singh Meena v. State of Rajasthan**⁴, wherein, it was held that courts, while considering bail, should not assess the credibility of witnesses, as this function squarely lies within the domain of the trial Court. Thus, the impugned order of the High Court violates this principle by commenting on the delay in the witness statements and imputing lack of credibility at this stage”*

(emphasis supplied)

“20.3.6. In the present case, the High Court also proceeded to analyse and discount the credibility of certain prosecution witnesses and forensic material. It observed contradictions in the eyewitness statements concerning the overt acts of the accused (para 26). It expressed doubts about the prosecution's explanation for the delay in recording the statements of CW. 76 and CW. 91 (para 27). It questioned the timing of the doctor's supplementary opinion and weighed its evidentiary worth (para 31). As already pointed out, the credibility or reliability of witnesses is a matter for the trial Court to determine after full-fledged cross examination. It is a trite law that statements recorded under section 161 Cr. P.C. are not substantive, and their evidentiary value can only be

³2025 SCC OnLine SC 1702

⁴(2012) 12 SCC 180

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determined after cross examination during trial. Any opinion rendered at the bail stage risks prejudging the outcome of the trial and must be avoided. Thus, the court's assessment of these aspects amounts to a premature appreciation of the probative value of prosecution evidence.”

(emphasis supplied)

“24. On a cumulative analysis, it is evident that the order of the High Court suffers from serious legal infirmities. The order fails to record any special or cogent reasons for granting bail in a case involving charges under Sections 302, 120B, and 34 IPC. Instead, it reflects a mechanical exercise of discretion, marked by significant omissions of legally relevant facts. *Moreover, the High Court undertook an extensive examination of witness statements at the pre-trial stage, highlighting alleged contradictions and delays – issues that are inherently matters for the trial Court to assess through cross-examination. The trial Court alone is the appropriate forum to evaluate the credibility and reliability of witnesses.* Granting bail in such a serious case, without adequate consideration of the nature and gravity of the offence, the accused’s role, and the tangible risk of interference with the trial, amounts to a perverse and wholly unwarranted exercise of discretion. The well-founded allegations of witness intimidation, coupled with compelling forensic and circumstantial evidence, further reinforce the necessity for cancellation of bail. Consequently, the liberty granted under the impugned order poses a real and imminent threat to the fair administration of justice and risks derailing the trial process. In light of these circumstances, this Court is satisfied that the present case calls for the exercise of its extraordinary jurisdiction under Section 439(2) Cr.P.C.”

(emphasis supplied)

21. Drawing inspiration from the judgment in ***Darshan***, the hostility of a witness cannot be interpreted as an automatic declaration of the prosecution’s case as unconvincing, and thereby, in essence, result in the conduction of a mini trial at the stage of bail and return findings upon the *ex-facie* merit of the accused’s innocence/guilt.

22. PW2 has identified the petitioner in Court at the time of his examination in chief as one of the assailants who attacked the deceased. The learned ASJ has rightly observed in both of his dismissal orders dated 05.05.2025 and 01.05.2024 that the allegations



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against the petitioner are that he played a central role in the violence against the deceased, and that the offence alleged, i.e., murder, is a heinous offence and PW2 has, *prima facie*, supported the case of the prosecution to the extent of the role of the present petitioner.

23. Considering the unequivocal stance of PW2 on the limited point of the alleged role of the petitioner, minor contradictions outside of this ambit do not persuade this Court to completely discard the testimony of PW2 at the stage of bail.

24. Furthermore, the lengthy custody of the petitioner is to be weighed against the maximum sentence for the offence alleged, which is life imprisonment. It is trite that while delay in trial is unfortunate and is a direct contravention of one's right to personal liberty, it cannot be, *per se*, a pass guaranteeing bail, as noted by the Hon'ble Supreme Court in *Dipak Shubashchandra Mehta v CBI*⁵.

25. It must be weighed against other factors, such as the accused's ability to influence/tamper with witnesses/evidence, his likelihood of being present during trial, and whether a *prima facie* case exists to the extent of his/her involvement in the commission of a crime and the gravity of the offence in question, measurable by the quantum of punishment prescribed.

26. Considering that the prosecution's case is centred around the petitioner's past rivalry with the deceased, the quarrel between them that preceded the date of the deceased's death by one week, the testimony of PW2 supporting the case of the prosecution insofar as the alleged role of the petitioner in the commission of the crime, and the nature of the offences alleged, this Court is not inclined to enlarge the petitioner on bail at this point in time.



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27. For the aforesaid reasons, this petition stands dismissed.
28. Pending applications, if any, do not survive and are disposed of accordingly.

AJAY DIGPAUL, J.

NOVEMBER 28, 2025/AS/av