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

+ BAIL APPLN. 2450/2025 & CRL.M.A. 19321/2025, CRL.M.A.
19322/2025
YOGESHPetitioner

Through: Mr. M. L. Yadav, Mr. Prashant and
Mr. Shivashish Karnani, Advocates.

versus

STATE OF NCT OF DELHIRespondent
Through: Mr. Ajay Vikram Singh, APP.
IO/ Insp. Rishikesh, PS: Fatehpur
Berli.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **25.07.2025**

1. This is the second application filed by the Applicant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 439 of the Code of Criminal Procedure, 1973²) seeking regular bail in the proceedings arising from FIR No. 504/2022 registered under Sections 302/201/34 of the Indian Penal Code, 1860³ at P.S. Kalyanpuri.

2. Briefly stated, the case of the Prosecution is as follows:

2.1 The present case was registered *vide* DD No. 15A dated 11th June, 2022 at P.S. Kalyanpuri based on information received by SI Navdeep, P.S. New Ashok Nagar, regarding an unidentified dead body found lying in a sewer near Mother Mary School, Trilokpuri, Delhi. The police reached the

¹ "BNSS"

² "Cr.P.C."

³ "IPC"



spot, recovered the necessary evidence from the vicinity and sent the dead body to LBS Hospital, where it was preserved for identification.

2.2. Subsequently, a missing report *vide* DD No. 117A dated 10th June, 2022 was registered by the mother of the deceased. During the course of investigation, the deceased was identified as Naresh Kumar by his wife Mrs. Pooja and his mother Mrs. Rajbala. Both these persons expressed suspicion against Yogesh (the Applicant) and co-accused Sanjeev, citing previous animosity with the deceased.

2.3. One Charan Singh, the maternal uncle of the deceased, informed the police that on the intervening night of 9th and 10th of June, 2022, the Applicant had called the deceased to his house, after which, he did not return home. The following day, police officials informed the deceased's family that they had found the body of the deceased.

2.4. On further investigation, CCTV footage from cameras installed in the area, including a private camera near MCD Primary School (3 Block, Trilokpuri), revealed the deceased being physically assaulted with a *danda* and dragged by three persons. These persons were identified by the deceased's family members as Sanjeev, Sajan Pal @ Sukhvair and CCL 'V'. The footage further shows the three accused persons dumping the deceased, who appeared to be in a half-dead state, near the school gate. Subsequently, CCL 'V' is seen bringing a rickshaw. The footage allegedly captures the involvement of the Applicant, who arrived on a two-wheeler and assisted the co-accused in placing the deceased onto the rickshaw cart. Another CCTV footage, captured from a camera installed at some distance, shows CCL 'V' placing the body of the deceased onto the rickshaw cart, while co-accused



Sanjeev and Sajan Pal are seen seated on a scooter. The Applicant is seen pushing the rickshaw forward using one leg.

2.5. Based on the footage and statements of the witness, the police arrested the Applicant and co-accused Sanjeev on 11th June, 2022. A stick purportedly used in the assault and blood-stained clothes were recovered at the instance of the Applicant and co-accused Sanjeev. The two-wheeler used to transport the body of the deceased was also recovered from the Applicant.

2.6. CCL 'V' was found to be a juvenile, and accordingly, the proceedings against him were separated and referred to the Juvenile Justice Board. Co-accused Sajan Pal was also arrested in relation to this case.

2.7. During the course of investigation, post-mortem and FSL reports were obtained. The post-mortem report explained the cause of the death as *“shock due to ante-mortem cranio-cerebral damage consequent upon heavy blood force impact on head and face and sufficient to cause death in ordinary course of nature. All injuries ante-mortem in nature and could be possible to produce by blunt force impact/blunt object.”* The FSL report further indicated that the injuries sustained by the deceased could have been caused by the recovered weapons, which included a cemented tile, blood-stained tile, concrete stone, and wooden *danda*. On the basis of the material collected during investigation, the police filed a charge sheet under Sections 302/201/34 IPC against co-accused Sanjeev and the Applicant.

3. Counsel for the Applicant seeks regular bail urging the following grounds:

3.1 The Applicant has been falsely implicated and has no involvement in the alleged offence. It is the admitted case of the Prosecution that the



Applicant is not visible in the CCTV footage, at the time of the commission of the alleged offence, thereby casting serious doubt about his presence at the scene of the alleged offence.

3.2 The two primary public witness of the Prosecution, i.e., PW-2 (Rajbala) and PW-4 (Charan Singh) were only partly examined-in-chief, and deceased before they could be cross-examined. As such, their statements remain incomplete and they cannot be relied upon as credible evidence against the Applicant.

3.3 The other public witnesses, i.e., PW-5 (Dinesh @ Neetu) and PW-6 (Gaurav Bharti), who were cited as spot witnesses, have not supported the case of the Prosecution, thereby weakening the Prosecution's version and raising significant doubts regarding the Applicant's role in the alleged incident.

3.4 As per the FSL report dated 1st March, 2025, the CCTV footage does not depict any alteration and due to low resolution, poor camera orientation and inadequate video quality, no conclusive facial identification could be carried out. This renders the identification of the Applicant by the wife of the deceased, i.e., PW-8 (Pooja), unreliable and unsupported by scientific evidence.

3.5 All material eyewitnesses, including PW-8, stand examined. The Applicant has remained in custody for nearly three years, and in the absence of any compelling reason for continued detention, his incarceration at this stage would amount to punitive detention.

3.6 The Applicant is ready to abide by all terms and conditions imposed by this Court.



4. On the other hand, Mr. Ajay Vikram Singh, APP for the State, opposes the bail application on the following grounds:

4.1. The Applicant has been implicated in a brutal murder case, which entails capital punishment or life imprisonment. Considering the gravity of the offence, the Applicant's long period of incarceration cannot serve as the sole ground for his release on bail.

4.2. The role of the Applicant is clearly established during the investigation. He is alleged to have called the deceased from his house to the place of the incident and handed him over to the other accused persons, who subsequently assaulted and murdered him. CCTV footage corroborates the sequence of events, wherein CCL 'V' is seen riding the rickshaw on which the deceased's body is kept, with the Applicant riding a two-wheeler with the other co-accused persons as pillion riders.

4.3. Furthermore, based on the disclosure made by the Applicant, a *danda* allegedly used in the assault was recovered, along with the two-wheeler used to transport the deceased's body.

4.4. The Applicant is a repeat offender with a history of involvement in serious crimes. In addition to the present FIR, he is involved in two other cases being FIR No. 370/2015, under Sections 20/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at P.S. Sabzi Mandi and FIR No. 159/2012, under Sections 302/34 of IPC at P.S. Kalyanpuri.

4.5. The Applicant resides in close proximity to the family of the deceased. There exists a reasonable apprehension that if enlarged on bail, the Applicant may influence or intimidate key prosecution witnesses, particularly when the trial is ongoing. Furthermore, the apprehension that



the Applicant may abscond cannot be ruled out, given the seriousness of the offence and his prior conduct.

5. The Court has considered the contentions of the parties. Pertinently, the Applicant had previously approached this Court seeking bail, however, that application was withdrawn with liberty to approach the Sessions Court for seeking bail in light of the evidence that had come on record, i.e., the FSL report of the CCTV footage and the examination of PW-8. However, following the rejection of his bail application by the Sessions Court, the Applicant has now approached this Court by way of a second bail application.

6. It is well-settled that at the stage of deciding the question of bail, the Court is not to conduct a mini-trial by analysing the evidence led by the parties, nor would it be appropriate to render findings that might prejudice either party. However, for the limited purpose of adjudicating the present bail application, it is relevant to take into consideration the newly surfaced evidence and whether there is a material change in circumstances since the rejection of previous application that entitles the Applicant to be released on bail.

7. *Prima facie*, the case of the Prosecution against the Applicant is premised on Section 34 of IPC, that he had a common intent with the other accused to kill the deceased. The Prosecution's case against the Applicant primarily hinges on crucial three pieces of evidences: (i) the CCTV footage where the accused persons are seen dragging the deceased whilst beating him with a *danda*; (ii) the CCTV footage where the Applicant is allegedly seen pushing the rickshaw, in which the body of the deceased was being



carried; and (iii) the statement of Charan Singh (PW- 4) under Section 161 of Cr.P.C who stated that he had last seen the deceased with the Applicant. Apart from this, the Prosecution also places reliance on a stone allegedly used to inflict the injuries resulting in the death of the deceased.

8. As regards the CCTV footage purportedly depicting three individuals dragging and assaulting the deceased, it is neither the Prosecution's case that the Applicant is one of them, nor does the footage establish his presence at the scene. Significantly, PW-8 (the deceased's wife) who testified with reference to the said footage, did not identify the Applicant as one of the persons involved. Further, the FSL report relating to the CCTV footage, where the Applicant is allegedly seen pushing the rickshaw carrying the body of the deceased, has been inconclusive; the facial matching of the Applicant could not be carried out due to low pixel resolution and camera orientation in the CCTV footage. While the prosecution asserts that the deceased's wife has identified the Applicant in the said footage, this claim, at the present stage, stands diluted by the FSL findings. *Prima facie*, the footage does not clearly depict the Applicant nor establish his presence with any degree of certainty. In any event, the evidentiary value of the said footage, and the veracity of the identification, are matters to be tested at trial.

9. It is also pertinent to note that Charan Singh (PW-4), who is stated to have last seen the deceased proceeding towards the Applicant's residence, was only partly examined in chief and could not be cross-examined, having passed away prior to such opportunity being afforded to the defence. It is well-settled that the statement of a witness recorded in examination-in-chief,



which was otherwise admissible at the time of its recording, does not become inadmissible merely because the witness subsequently dies before cross-examination. However, it is equally well-settled that the absence of cross-examination affects the weight to be attached to such testimony and the ultimate assessment depends on various factors, including the nature of the testimony, its probative value, the relationship of the witness with the parties and whether there are circumstances suggesting that the testimony might have been shaken in cross-examination. In the present case, even the examination-in-chief of PW-4 remained incomplete, and thus, the probative value of this testimony is a matter that must be evaluated by the Trial Court during trial, in light of the overall evidence. At the stage of bail, therefore, this Court is not required to make any conclusive observations in this regard.

10. Moreover, whether the Applicant shared the common intention required under Section 34 of IPC, in light of the allegation that he called the deceased from his house and acted as an accomplice of the co-accused who later assaulted and murdered him, is also a matter that will fall for determination on the basis of evidence that the parties will adduce during trial.

11. The Applicant has been in judicial custody in connection with the present case since 11th June, 2022, and has remained incarcerated for a period exceeding 3 years. At this juncture, it must be emphasized that scope of scrutiny, while deciding bail is limited to a *prima facie* assessment of the case, without delving into a detailed evaluation of evidence so as to ascertain the probability of the conviction of the accused.⁴ The material public

⁴ *State of Orissa v. Mahimananda Mishra*, 2018 (10) SCC 516



witnesses have already been examined, substantially eliminating any apprehension that the Applicant may influence or tamper with their testimony. The conclusion of trial is likely to take time which cannot be estimated with certainty. The concerns regarding the possibility of the Applicant absconding or fleeing from justice can be effectively addressed by imposing appropriate and stringent conditions while granting bail. In view thereof, considering the totality of circumstances and the well-established principles governing grant of bail, the continued incarceration of the Applicant, when no longer necessary for the purpose of investigation or custodial interrogation, would amount to punitive detention.

12. In light of these principles, and having regard to the totality of facts and circumstances of the case, the Applicant is directed to be released on bail on furnishing a personal bond for a sum of INR 50,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:

- a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;
- b. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- c. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;
- d. The Applicant shall appear before the Trial Court as and when directed;



- e. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
 - f. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
 - g. The Applicant shall report to the concerned PS on the first Friday of every month;
13. In the event of there being any FIR/DD entry / complaint lodged against the Applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.
14. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.
15. Copy of the order be supplied to the concerned Jail Superintendent for necessary information and compliance.
16. The bail application is allowed in the afore-mentioned terms.
17. Pending applications also stand disposed of.

SANJEEV NARULA, J

JULY 25, 2025

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