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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3026/2024**
AFSAR ALI @ JISHANPetitioner

Through:

versus

STATE NCT OF DELHIRespondent
Through: **Mr. Aashneet Singh, APP**

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
06.02.2025

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1. As there was a holiday on 05.02.2025, the matters taken on the said date are taken up for hearing today i.e. 06.02.2025.
2. This is a petition filed under section 483 of BNSS, 2023 seeking grant of regular bail to the petitioner in FIR No. 484/2018, dated 02.10.2018, registered at Police Station Gokul Puri under sections 302/201/120B of IPC, 1860. The chargesheet has also been filed under sections 302/201/120B of IPC, 1860.
3. In the present case, the petitioner has been in custody since 03.10.2018.
4. As per the FIR, the facts are that on 26.09.2018, one person namely, Mr. Jalaluddin/complainant lodged a missing report regarding his son namely, Mr. Faisal (since deceased). Pursuant to the said complaint, investigation was carried out and during the investigation a CCTV footage was also viewed where the petitioner along with one Mr. Washid @ Abdul



Bashid was last seen with the deceased on 25.09.2018.

5. Thereafter, Mr. Washid @ Abdul Bashid was interrogated and at his instance the dead body of the deceased was recovered from the jungle near the Signature Bridge on 02.10.2018. Accordingly, the present FIR was registered and Mr. Washid @ Abdul Bashid was arrested. Consequently, on the disclosure of Mr. Washid @ Abdul Bashid, the petitioner was arrested on 03.10.2018 and at his instance, the shirt of the deceased was found from bushes in the jungle near the Signature Bridge.

6. Mr. Malik, learned counsel for the petitioner states that in the present case, the case against the petitioner is based on last seen theory and circumstantial evidence. Further, there are no eye witnesses and there is no recovery from the petitioner.

7. He further states that there is a delay in trial and out of a total of 67 witnesses, only 8 witnesses have been examined till date.

8. He further states that the petitioner has only been arrested on the basis of disclosure statement of Mr. Washid @ Abdul Bashid. In addition, he is the sole bread earner of his family and has clean antecedents.

9. *Per Contra*, Mr. Singh, learned APP opposes the present petition and states that the petitioner was the person who was last seen with the deceased in the CCTV footage, which is also affirmed by the mother, brother and father of the deceased in their evidence. Further, the shirt of the deceased was also found at the instance of the petitioner.

10. He further states that the CDR location of the petitioner also matches with the deceased i.e. at the spot where the alleged incident of the murder took place.

11. I have heard learned counsels for the parties.



12. In the present case, the allegations against the petitioner are serious and grave in nature and the petitioner is accused of committing murder, however the fact remains that the petitioner is still and under trial prisoner. The charges against the petitioner are yet to be proved. The prosecution has cited 67 witnesses in total, out of which only 8 witnesses have been examined till date and the trial is unlikely to conclude in the near future. Till the trial is concluded, the petitioner is presumed to be innocent.

13. The fact is that in the present case, there is no eye witness to the said incident and the case at best is of circumstantial evidence and last seen theory.

14. The petitioner has already undergone incarceration for a period of 4 years, 2 months and 2 days as on 14.10.2024 and as of today another period of around 4 months have elapsed and the total period undergone by the petitioner would be around 4 years and 6 months.

15. The rights under Article 21 of the Constitution of India are paramount and every accused is entitled to a speedy trial.

16. For the said reasons, the present petition is allowed and the petitioner is directed to be released on regular bail subject to the following terms and conditions:-

- I. The petitioner shall furnish a personal bond in the sum of Rs 10,000 (Rupees ten thousand only) each with 1 surety in the like amount, to the satisfaction of the concerned Trial court;
- II. The petitioner shall not leave the country without the permission of the competent court and if the petitioner has a passport, he shall surrender the same before the concerned Trial court;



- III. The petitioner shall furnish to the concerned Investigating Officer (IO), the cell phone 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;
 - IV. The petitioner will furnish his permanent address to the concerned IO and in case he changes his address, he will inform the IO concerned and this court also;
 - V. The petitioner shall not communicate with, or come into contact with the complainant or any of the prosecution witnesses, or tamper with the evidence of the case.
 - VI. The petitioner shall not indulge in any act or omission that is unlawful, illegal or that would prejudice the proceedings in pending cases, if any;
17. Nothing stated hereinabove shall tantamount to an expression of opinion on the merits of the case.
18. The petition stands disposed of in the aforesaid terms.

JASMEET SINGH, J

FEBRUARY 6, 2025/sp

Click here to check corrigendum, if any