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

+ **BAIL APPLN. 3231/2025**

MUKESH KUMAR SINGH @ BUCHUPetitioner

Through: Mr. Gopal Jha, Ms. Shireesha
Sharma, Mr. Nimish Arjaria and
Ms. Priyanshi Goel, Advocates.

versus

STATE (NCT) OF DELHIRespondent

Through: Ms. Richa Dhawan, APP for the State
with Inspector Gaurav Kumar, PS –
Bhalswa Dairy.

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

25.09.2025

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1. Having remained under incarceration since 09.01.2021 (more than 4 years and 8 months) in a criminal case arising out of FIR No. 0002/2021 dated 04.01.2021, *inter alia*, for the alleged offence punishable under Section 302 of IPC, registered at Police Station Bhalswa Dairy, the applicant seeks regular bail.

2. Briefly speaking, the case set up by the prosecution/complainant as per FIR is that:-

2.1 The complainant, Mukesh Kumar (son of deceased), a street vendor, who runs a *redi* of *Chholey Bhaturey* in the weekly market, used to reside with his mother Rekha (deceased victim) and his younger sister. The complainant knew Mukesh@Buchu (Applicant herein), as the applicant was earlier employed with the complainant's grandfather at his grandfather's



redi of Chholey Bhatuery.

2.2 During the Covid lockdown, the applicant went back to his village but returned after restrictions were lifted, he came back. He started working with the complainant's family at the rate of ₹400/- per day. It is further stated that the applicant was living with the complainant's family.

2.3 Subsequently, the complainant's mother (deceased victim) informed him that she had married the applicant. The two began residing together as husband and wife. It is stated that the applicant and the deceased victim used to sleep in one room, while the complainant and his younger sister slept in a separate room.

2.4 On 03.01.2021 also, the complainant and his sister slept in their room, while the applicant and his mother slept in another. On the following morning, the complainant opened the room where his mother was sleeping, and found that the applicant was not in the room. When he tried to wake his mother, she did not respond. On removing the *rajai* (quilt), he found that some cloth had been stuffed in her mouth, blood had oozed out of her left ear, and there were visible injury marks on her head.

2.5 Realising that his mother was dead, the complainant rushed outside and informed the landlord, Vishwanath Singh, who immediately called the police by dialling 100. The complainant expressed his suspicion that Mukesh @ Bucha (applicant) had killed his mother and had absconded after taking his personal belongings.

2.6 When the police arrived, the victim was shifted to BJRM Hospital, where she was pronounced brought dead. Subsequently, based on the statement of the complainant, the MLC, and other material evidence, the aforesaid FIR was registered.



3. In the aforesaid backdrop, I have heard the rival contentions and perused the case file.

4. Learned counsel for the applicant would *inter alia* argue on the lines of grounds pleaded in the application as below:-

4.1 That the Applicant has committed no offence and has no criminal history. He has been falsely implicated in the case and there is absolutely no material on record to incriminate him. It is further submitted that there is no witness or evidence against the Applicant, no recovery has been effected from him, and there is no scientific evidence or material connecting him with the alleged offence.

4.2 That the prosecution has attempted to implicate the applicant by concocting a 'last seen' theory and building a case relying on circumstantial evidence, however, such evidence is entirely disconnected and does not form a coherent link connecting the applicant to the alleged offence.

4.3 That the applicant was arrested on 09.01.2021 and since then he has been in custody for more than 4 years and 8 months. It is further submitted that the prosecution cited 19 witnesses, out of which only two have been examined. Moreover, the case is fixed for prosecution evidence on 06.09.2025 before the Ld. Trial Court, and there is no likelihood of early conclusion of trial considering the pendency of numerous witnesses.

4.4 That the learned counsel thus points out that the applicant has already undergone more than four years of incarceration as an undertrial, and such prolonged custody, when the trial is not likely to conclude soon, amounts to punishment prior to his conviction and violation of his right to life and liberty.

4.5 That the regular bail application of the applicant was rejected by the



learned District and Sessions Judge, Rohini Courts on 29.03.2025, on the ground that the possibility of threatening unexamined witnesses cannot be ruled out. However, no specific material has been produced to substantiate such apprehension.

4.6 That the applicant is a boy of fragile health and belongs to a poor background. He had migrated to Delhi only to earn livelihood for himself and for his aged parents and family, but has been falsely implicated in the present case. He is a daily wager/labourer and there is nobody in his family to take steps for his defence during trial before this Court. The counsel further submits that the investigation in the case is unfair, and the applicant would not be able to take proper defence while being inside jail.

4.7 That the informant/complainant (P.W.2) was examined but did not support the case of the prosecution. Even on being put to leading questions by the Ld. Public Prosecutor, P.W.2 admitted that both he and the accused were not present at the premises at the time of occurrence. Thus, the substratum of the prosecution case stands severely eroded as the informant/complainant has not supported the prosecution case.

4.8 That the counsel places reliance on ***Sanjay Chandra v. CBI (2012) 1 SCC 40*** where the Hon'ble Supreme Court held that the object of bail is to secure the presence of the accused person at trial and not to punish him prior to conviction. The Court observed that punishment begins after conviction and detention in custody pending trial should not be used as a form of punishment.

4.9 Similarly, reliance is placed on ***Satender Kumar Antil v. CBI (2022) 10 SCC 51***, where while referring to ***Hussain v. Union of India (2017) 5 SCC 702***, the Apex Court directed that bail applications should normally be



decided within a week and trials where accused are in custody should be concluded within two years.

4.10 That the learned counsel points out that the golden principle that “*Bail is the Rule and Jail is the Exception*”, as laid down in ***Gudikanti Narasimhulu v. Public Prosecutor (1978) 1 SCC 240*** and reaffirmed in ***State of Kerala v. Raneef (2011) 1 SCC 784***, squarely applies here, particularly given the long custody and delay in trial. The counsel further submits that the Hon’ble Supreme Court has further emphasised that delay in concluding trial is a significant factor, since if the accused is ultimately acquitted, no one can restore the years lost in custody.

4.11 That the applicant had earlier filed a Bail Application, wherein this Court *vide* order dated 17.10.2023 was pleased to direct the learned Trial Court to expedite the trial, with liberty to the applicant to approach this Court in case of altered circumstances.

4.12 That in these circumstances, where the Applicant has already undergone more than four years of incarceration without conclusion of trial, with no substantive evidence against him and with key prosecution witnesses not supporting the case, it would be in the interest of justice to enlarge him on bail.

5. Opposing the submissions, the learned APP points out to the seriousness of the allegations. It is submitted that the applicant is involved in the commission of a heinous crime and there exists a real apprehension that, if released on bail, the applicant may abscond, being a resident of Bihar and threaten or intimidate the witnesses, tamper with the evidence or otherwise obstruct the course of justice. It is further submitted that the earlier bail applications of the applicant has been dismissed by the Ld. Trial Court *vide*



orders dated 14.07.2023 and 29.03.2025. It is therefore urged that the continued custody of the applicant is necessary to ensure a fair trial and to prevent any misuse of liberty, and the instant petition deserves to be dismissed, being devoid of merit.

6. Having heard, *Prima facie*, I am of the view that there may be some substance in certain of the arguments addressed on merits by the learned counsel for the applicant, but the same are a matter of trial. However, at this stage, in light thereof, it appears to be a case for bail for the reasons stated hereinafter.

7. Having read the FIR and the charge-sheet collectively, it does appear that there are serious gaps in the investigation. However, since the present matter concerns bail, I refrain from making any detailed comments at this stage, as such observations may prejudice the prosecution. Suffice to take note that there is an unexplained delay in the applicant's arrest. Though it was suggested during the hearing that he had absconded, the record shows that he was eventually arrested from the same neighbourhood where he had all along been residing. The charge-sheet curiously records that an informer casually reported seeing the applicant walking past on the road, upon which he was apprehended.

8. Further, no explanation has been furnished as to why no immediate steps were taken to arrest him, particularly when the son of the deceased, who is also the informant, had alleged that in the intervening night the applicant was last seen with his deceased mother. Adding to the doubts is the fact that the son was present in the very next room at the time of the alleged incident, yet despite claims that the deceased was struck on the head and gagged, no sound or murmur of any kind or any disturbance caused by



resistance was heard by him. Deceased was healthy 35 years old lady.

9. The prosecution's case rests on a "last seen" theory stitched together with disjointed circumstantial evidence, which fails to link the applicant to the alleged offence. Despite this, the applicant has languished in custody for over 4 years and 8 months as an under trial, while only 2 out of 19 witnesses have been examined and the trial shows no sign of early conclusion.

10. The complainant himself has given contradictory statement to the prosecution, eroding the very foundation of the case. Applicant was directed to join instant bail proceedings through VC from jail and it appears that he is a poor, fragile daily-wager who migrated to Delhi for livelihood and has been unjustly trapped in this case. Continued incarceration in his case may amount to punishment before conviction, in violation of his right to life and liberty. To keep the applicant jailed in the face of an inordinately delayed trial is nothing short of a travesty of justice.

11. Be that as it may, observations made here in above are all matters of trial, suffice at this stage that there is certain doubt casted on the prosecution version, which shall be dealt with by the learned Trial Court based on the evidence at the appropriate stage, but a case for bail is made out.

12. The applicant has already remained in custody since 09.01.2021 for more than 4 years and 08 months. Investigation is over *qua* him as the charge sheet has been filed on 03.04.2021. This prolonged pre-trial detention, coupled with the slow progress of proceedings, are contributory factors for bail, and further continued incarceration would cause undue hardship to the applicant's family and serve no useful purpose, especially when the trial is not likely to conclude in the near future, as it violates the fundamental rule, i.e. *bail is the rule and jail an exception*.



13. As regards the apprehension of tampering with evidence, there is nothing on record to suggest that he would interfere with evidence or influence witnesses. There is also no likelihood of the applicant absconding, given that he is a well-settled individual, has deep roots in society, and is the primary caregiver for his aged parents and who are dependent on him for their well-being, and hence not a flight risk.

14. Considering that the primary purpose of bail is to secure the presence of the accused during trial, coupled with the fact that the applicant poses no risk of absconding, his continued detention at this stage would serve no purpose other than to punish him prior to conviction.

15. As an upshot and taking a wholesome view of the matter, I am of the view that it is a case of bail at this stage.

16. Thus, the applicant is enlarged on bail in the FIR in hand and the proceedings arising therefrom, on his furnishing personal bond with solvent surety of like amount to the satisfaction of the Trial Court/Duty Judge concerned, as the case may be, subject to the other usual conditions to be imposed by the learned Trial Court/Duty Court.

17. Any observation made herein above is only for the purpose of disposing of the instant bail application and not to be construed, in any manner, as any expression on the merits of the pending case, and the trial shall proceed without being influenced either way by the same.

18. Accordingly, the bail application, along with the pending application(s), if any, stands disposed of.

ARUN MONGA, J

SEPTEMBER 25, 2025/kd