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

+ **BAIL APPLN. 3999/2024**

KUNAL @ BHOLA

.....Petitioner

Through:

versus

STATE OF NCT DELHI

.....Respondent

Through: Mr. Sanjeev Sabharwal, APP with
Ms. Mansi Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **04.03.2025**

CRL.M.A. 33006/2024

1. Exemption allowed, subject to all such exceptions.
2. The application is disposed of.

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3. This is a petition filed under section 483 of BNSS seeking grant of regular bail to the petitioner in FIR No. 843/2016, dated 29.11.2016, registered at PS Neb Sarai under sections 365 of IPC, 1860.
4. In the present case, the petitioner has been in custody since 21.03.2017 and the chargesheet has been filed under sections 302/365/201/120B/34 of IPC, 1860.
5. Briefly stating the facts are that on 28.11.2016, the complainant i.e. Smt. Santra Devi registered a complaint regarding her missing son, namely, Hemraj. On 29.11.2016, the complainant suspected that her son might have been kidnapped. Hence the FIR came to be registered under section 365 of IPC, 1960. Subsequently, during investigation one person, namely, Rahul Khan @ Dawood was arrested on 05.12.2016. During interrogation, Rahul Khan @ Dawood disclosed that he along with the petitioner had called



Hemraj on false pretext and thereafter had demanded ransom from his father but after some time, they murdered Hemraj by shooting him and buried his dead body in the area of Sangam Vihar. The dead body of the deceased came to be discovered at the instance of Rahul Khan @ Dawood. Hence the present petitioner was arrested on 21.03.2017.

6. In the present case, the petitioner had absconded during investigation and had evaded his arrest following which he was declared proclaimed offender by Learned Metropolitan Magistrate on 27.06.2017. Subsequently he was arrested on 03.07.2017. During the trial the petitioner, was granted bail however since he misused the said liberty and absconded again, he was declared proclaimed offender vide order dated 28.11.2023.

7. Learned counsel for the petitioner states that the petitioner has only been arrested on the basis of a disclosure statement and apart from that, nothing incriminating has been found against the petitioner.

8. It is further stated that the petitioner has undergone incarceration for a period of 5 years. The prosecution has cited 55 witnesses in total, out of which only 16 witnesses have been examined till date and the trial is unlikely to conclude in the near future.

9. Learned counsel for the petitioner further places reliance on the judgment passed by the Hon'ble Supreme Court of India in **Prabhakar Tewari vs State of Uttar Pradesh and others**, Criminal Appeal No. 152/2020 and more particularly para 7 which reads as under:

“7. On considering the submissions of the learned Counsel for the parties. Having regard to the circumstances of this case, in our opinion, there has been no wrong or improper exercise of discretion on the part of the High Court in granting bail to the



Accused. The factors outlined in the case of Mahipal (supra) for testing the legality of an order granting bail are absent in the order impugned. The materials available do not justify arriving at the conclusion that the order impugned suffers from non-application of mind or the reason for granting bail is not borne out from a prima-facie view of the evidence on record. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the Accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the Accused Vikram Singh upon considering relevant materials. No ex-facie error in the order has been shown by the Appellant which would establish exercise of such discretion to be improper. We accordingly sustain the order of the High Court granting bail. This appeal is dismissed.”

10. Per Contra, Mr. Sabharwal, learned APP states that the petitioner has earlier also been granted bail, however he misused the said liberty. Further, there are 6 other cases pending against the petitioner.

11. I have heard learned counsel for the parties.

12. In the present case, the petitioner has been arrested on the basis of the disclosure statement of Rahul Khan @ Dawood (co-accused) and no weapon pertaining to the alleged incident of murder has been recovered at the instance of the petitioner. Further, the main accused i.e. Rahul Khan @ Dawood, at the instance of whom, the body was recovered has already been granted bail by the learned Sessions Court on 01.05.2024.

13. As per the nominal roll dated 17.12.2024, the petitioner has



undergone incarceration for a period of 4 years 10 months and 2 days. As of today, another period of 3 months has elapsed and the petitioner would have undergone incarceration for about 5 years and 1 month.

14. Even though the petitioner was declared a proclaimed offender, the petitioner has been granted interim bail for 90 days from 08.07.2021 to 05.10.2021 and he surrendered on 15.12.2021.

15. I am of the view that even though 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 and has undergone incarceration for a considerable period of time. Till the trial is concluded, there is a presumption of innocence in his favour.

16. Further, the prosecution has cited 55 witnesses in total, out of which only 16 witnesses have been examined till date. To my mind, the trial is not likely to conclude in the near future. Article 21 is paramount and every accused is entitled to a speedy trial. In the 6 cases pending against the petitioner, 2 have already been closed and 4 are pending. The details are as under:

Sr. No.	Case FIR No.	Under Section	Status of Case
1	224/2017, PS Ambedkar Nagar, New Delhi.	25/54/59 of Arms Act	Charge Sheet has been filed before the Court concerned. The case is listed for Misc. Appearance on 08/07/2025



			Pending for want of sanction under Section 35 of the Arms Act from the DCP concerned.
2	274/2017, PS Ambedkar Nagar.	25/54/59 of Arms Act	Accused has been acquitted by the concerned court on 07.10.2017.
3	692/2021, PS Ambedkar Nagar, New Delhi.	25 of Arms Act	Uncontested- Disposed on 03.03.2022 Cognizance denied
4	210/2022, PS Ambedkar Nagar, New Delhi.	25 of Arms Act	Charge Sheet has been filed before the Court concerned. The case is listed for Misc. Appearance on 09.07.2025; FSL awaited.
5	01/2023, PS Ambedkar	392/34 of IPC	Charge Sheet has been filed before the Court concerned. The



	Nagar, New Delhi.		case is listed for argument on charge on 23.07.2025.
6	15/2024, PS Tilak Nagar, New Delhi.	25 of Arms Act & 34 of IPC	The case is pending investigation.

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

- a. 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;
- b. 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;
- c. The petitioner shall furnish to the IO concerned 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;
- d. The petitioner will furnish his permanent address to the concerned IO and in case he changes his address, he will inform the IO concerned;



- e. 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;
 - f. The petitioner shall appear in Court on every date of hearing unless exempted;
 - g. 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.
18. Nothing stated hereinabove shall tantamount to an expression of opinion on the merits of the case.
19. The petition stands disposed of in the aforesaid terms.

JASMEET SINGH, J

MARCH 4, 2025/pk

[Click here to check corrigendum, if any](#)