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

+ **BAIL APPLN. 5/2025**

SURAJ YADAV

.....Petitioner

Through: **Mr. Rajan Kumar Prasad, Advocate.**

versus

STATE GOVT.OF NCT OF DELHI

.....Respondent

Through: **Mr. Amit Ahlawat, APP for State
with Mr. Sandeep Kumar, SI,
Mr. Neeraj Kumar, Insp. PS-
Ambedkar Nagar.**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

10.02.2025

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1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (erstwhile Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in proceedings arising from FIR No. 132/2018 registered under Section 302 of the Indian Penal Code, 1860³ at P.S. Ambedkar Nagar. In the said proceedings, a chargesheet has been filed and the Applicant has been charged under Sections 302/34 of IPC and Sections 25/27/54/59 of the Arms Act, 1959.

2. In brief, the case of the prosecution is as follows:

2.1. On 12th March, 2018, DD No. 17A was recorded and marked for investigation to the SI Vishal Tiwari. He, along with other police staff,

¹ "BNSS"

² "Cr.P.C."

³ "IPC"



reached the location behind Batra Hospital and IOA House Building Near Pigs Khuddi, Thuglakabad Institutional Area, New Delhi. Upon reaching, a body of an unknown male aged about 25 years was found. The fingers of the left hand of the deceased along with the deceased's face were partially consumed by animals. Multiple wounds were visible on his chest, and his clothes were stained with mud. Bloodstains were observed on the rocky ground in several places. In the meantime, a PCR caller namely Mr. Sushil Kumar was also met with and he informed the police that he had come in the morning to feed the pigs when he saw them scavenging on the body. Accordingly, he alerted the police by calling the police helpline.

2.2. Subsequently, the crime team also reached the spot. Initially an attempt was made to have the body identified, however, the passersby could not identify the deceased. The crime team then inspected the body and photographs were taken. An MLC was conducted and the dead body was preserved Mortuary of All India Institute of Medical Sciences Hospital. The exhibits were taken into police possession.

2.3. After several efforts, the deceased was identified as Mr. Mohammad Danish, s/o Md. Akhtar Saifi, r/o Sangam Vihar, New Delhi, who at the time of his death is estimated to be 23 years of age. As per the investigation, the deceased was also apparently a drug addict. Thereafter, Mrs. Afroz and Mr. Akhtar Saifi, the parents of the deceased, were examined on 13th March, 2018 and they identified the body. During post-mortem examination, the doctor reported that the deceased had multiple stab wounds, with some areas showing signs of animal predation. The injuries were believed to have been inflicted by a sharp weapon. On the basis of these findings along with other evidence gathered during the inquiry, the present FIR was registered.



2.4. During the course of investigation, efforts were made to apprehend the accused persons. After receiving a tip, the police arrested the Applicant along with co-accused Mr. Sonu Yadav @ Bhinda, aged 32 years.

2.5. Statements of accused led to the recovery of their clothes which they allegedly wore during the commission of crime. The knife, which is alleged to be the murder weapon, has also been recovered.

2.6. The Prosecution also asserts that during interrogation, both the accused has confessed to the crime. The confession attributed to the Applicant reads to the following effect:

“I have lived in Sangam Vihar since birth with my maternal grandfather, Dharampal Yadav. I completed my education up to the 11th grade but dropped out due to a lack of interest. I am unemployed and addicted to drugs. To support my drug habit, I engage in theft, jewellery cutting, and snatching, often in collaboration with my maternal uncle, Sonu Yadav @ Bhinda, who is also a drug addict. On 11th March, 2018, around 8:30 PM, my uncle and I were going to the hill behind Batra Hospital to smoke smack with another person namely Kali whose address I don’t know. We reached the hilltop and began smoking when a young man, whom I had seen their occasionally over the past year and a half, approached us. As we ran out of smack, we asked the boy for some, and he agreed. However, when we asked repeatedly, he became agitated and verbally abused us, telling us to leave and find our own supply. This angered us, and my uncle told me to grab him. We took out the knife, intending to teach him a lesson today. We caught the boy, and my uncle pulled out the knife. As soon as the boy saw the knife, he freed his hand and began to run. My uncle, Sonu Yadav, stabbed him in the back, but he still kept running. We chased him for about 100 feet and caught him again, with the intention of killing him. My uncle, Sonu Yadav, and I started attacking the boy with the knife. When he fell to the ground and became still, we thought he was dead, and we all three ran away from the scene. Kali went to his home, while my uncle and I returned to our house. I hid the clothes I wore during the crime and the knife we used in the crime in the cupboard in my uncle’s room. My uncle and I used to smoke smack on the hill behind Sonu Yadav Batra’s house. We had come here two days ago, and there was a scuffle with some other smack users in which my uncle and I were injured. Today, we came here again to smoke smack. When my uncle and I arrived, we saw the police and started running away. My uncle jumped from the wall of the hill and injured his leg. In the meantime, we were both apprehended



by the police.”

2.7. The Prosecution also places reliance on scientific evidence to establish the Applicant’s involvement. These include the FSL report, the DNA profiling (STR analysis) conducted on the Exhibits ‘1’ (blood gauze), ‘2a’ (shirt), ‘2b’ (trouser), ‘2e’ (underwear), ‘2d’ (shoes), ‘2e’ (socks), ‘3’ (stone piece), ‘4’ (concrete pieces), ‘5’ (piece of plywood), ‘6’ (twig pieces), ‘7’ (knife), ‘8a’ (shirt of accused Sonu Yadav), ‘8b’ (jeans of accused Sonu Yadav), ‘9’ (knife), ‘10a’ (shirt of co-accused Mr. Suraj Yadav), and ‘106’ (jeans of co-accused Mr. Suraj Yadav). According to the Prosecution, the forensic analysis confirms that the male DNA profile generated from the Applicant’s exhibits matches the DNA profile derived from Exhibit ‘1’ (blood gauze), thus, linking him to the crime scene.

2.8. Further, after completion of investigation, chargesheet has been filed on 21st June, 2018. The trial has since progressed and 16 out of 28 witnesses have already been examined.

3. Counsel for the Applicant urges that the Prosecution’s case lacks a clear and cogent motive attributable to the Applicant for committing the alleged offence. The eyewitnesses relied upon by the Prosecution have turned hostile and since the primary material evidences to implicate the Applicant failed to substantiate the Prosecution’s case, it is argued that continued incarceration serves no purpose. The Applicant further undertakes to abide by the conditions of bail, if the same were to be granted.

4. Mr. Amit Ahlawat, APP for the States strongly opposes the Applicant’s request for grant of bail. While acknowledging that public witnesses have not supported the case of the Prosecution, he submits that there is sufficient scientific evidence gathered during investigation which



implicates the Applicant. To substantiate, he relies on the exhibits recovered at the instance of the Applicant which are the clothes allegedly worn by him at the time of the incident. These clothes, Mr. Ahlawat states, were recovered from the Applicant's residence and contain blood stains which have been found to be matching the deceased's blood. Moreover, the alleged weapon of offence has also been recovered from the Applicant's residence. These exhibits recovered pursuant to the disclosure statement of the Applicant, render the same to be admissible and sufficient to determine guilt of the Applicant. Mr. Ahlawat, however, clarifies that although in the status report it has been mentioned that the Applicant has criminal antecedents, this statement was an inadvertent mistake; the Applicant does not have any previous criminal involvement, although his associate, Mr. Sonu Yadav has a criminal history in 14 cases.

5. The Court has considered the afore-noted contentions. It is well established through a catena of judgments by the Supreme Court that the object of granting bail is neither punitive nor preventative, but to ensure the presence of the accused during trial.⁴ The chargesheet has been filed and the trial has progressed. As noted above, public witnesses have already been examined. The Prosecution has relied upon the statements of PW-1 (Mr. Karan Singh) and PW-2 (Mr. Nageshwar Rai) who have turned hostile and have resiled from their earlier statements made to the police. Further, PW-3 (Mr. Sushil Kumar) has also deposed that he cannot comment as to who has committed the alleged murder.

6. Regarding the alleged recovery of the weapon from the Applicant, no

⁴ See also: *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.



conclusive evidence on record links the Applicant to the weapon or establishes it as the weapon of offence. Furthermore, the forensic findings and the question of whether the recovered clothing belongs to the Applicant remain matters to be determined at trial, and at this stage, do not justify the continued incarceration of the Applicant.

7. The Applicant has remained in custody since 26th March, 2018. Further, as per the Nominal Roll, as on 30th January, 2025, the Applicant has spent 6 years, 5 months and 7 days in custody, which is sufficiently long period of incarceration. In light of the fact that the public witnesses have not supported the Prosecution's case and that the Applicant has no criminal antecedents, the Court finds that the present case warrants the grant of bail.

8. In view of the foregoing, the Applicant is directed to be released on bail on furnishing a personal bond for a sum of INR 50,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/ Duty Metropolitan Magistrate, 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 indulge in any criminal activity and 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 prior permission of the Trial Court.
- d. The Applicant shall appear before the Trial Court as and when directed;
- e. The Applicant shall provide a permanent address to the Trial Court



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 will report to the concerned IO on fourth Friday of every month.

9. 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.

10. 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 shall also not be taken as an expression of opinion on the merits of the case.

11. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

FEBRUARY 10, 2025

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