



\$~19

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

+ CRL.M.C. 4928/2017

STATE

.....Petitioner

Through: Mr. Amol Sinha, ASC for the State
with SI Pardeep Kumar, AGS/Crime
Branch.

versus

ARVIND

.....Respondent

Through: Mr. Vaibhav Dubey and Mr. Saurav,
Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

29.04.2025

%

1. Petition under Section 439(2) of the Code of Criminal Procedure, 1973, has been filed on behalf of the Petitioner/State, for recall of the Order dated 10.08.2017, passed by the learned ASJ/Special Judge (NDPS), Dwarka Courts, New Delhi *vide* which the Regular Bail was granted in S.C. No. 440699/2016 in FIR No. 478/2014 under Section 365/302/201/34 of the Indian Penal Code, 1860, registered at Police Station Bindapur.

2. The ***case of the Prosecution*** is that on 26.05.2014 at about 11:01 a.m., Inspector Kishore Kumar, SHO, Police Station Bindapur, received a phone call from the Ct. Rajesh Kumar Yadav, who informed that he along with HC Bhoop singh, Ct. Uttam Kumar, Ct. Sudhir Singh, Ct. Rajesh Kumar and Ct. Arvind, had brought a person to old building at East Uttam Nagar from J. J.Colony, Pankha Road, for the purpose of interrogation in respect of the firing, which happened a few days ago. Since no Complaint of

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 05/05/2025 at 14:45:03



firing was pending at Police Station Bindapur, SHO directed Ct. Rajesh Kumar Yadav, to report to the Police Station along with all the police personnel and the persons detained. Thereafter, at about 11:45 a.m., Ct. Rajesh Kumar Yadav came to the Police Station and disclosed that the person picked up by them had fallen unconscious while being interrogated. In the interim, SHO also received a call from Head Constable Bhoop Singh, in regard to the unconscious condition of the person detained. SHO instructed them to take him to DDU Hospital for medical assistance. The person was taken to DDU Hospital in Alto Car No. HR 19 F 3741 belonging to Ct. Arvind. SHO also reached the Hospital and on examination of CCTV footage, found that the Accused Arvind had brought the body to the Hospital and left it unattended in the casualty.

3. Another information *vide* DD No. 67B was received at Police Station Bindapur at about 5:00 p.m. from DDU Hospital that the unknown person admitted in the Hospital, was declared “Brought Dead” *vide* MLC No. 5594/14.f. Both the DDs were entrusted to ASI Banwari Lal, who got the body indentified from his relative /Complainant, the brother of the deceased. Rukka was prepared. An FIR No. 478/2014 under Section 365/302/201/34 of the IPC, was registered at Police Station Bindapur was registered.

4. Ct. Arvind moved the Bail Application, which was granted by the learned Trial Court *vide* Order dated 10.08.2017 on the ground that Kalandra under Section 15 of the Environment Protection Act, had been prepared by HC Virender Singh, showing the Applicant was associated with the proceedings of Kalandra and place of Kalandra is at reasonable distance of scene of crime. The plea of not being present at the scene of crime as reflected in Kalandra proceedings *prima facie* was accepted. The Applicant

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 05/05/2025 at 14:45:03



is in custody for more than three years and had never misused the liberty granted to him by way of Interim Bail and is a Government servant and trial shall take long.

5. The recall of the Bail Order is sought on the ground that the case pertains to custodial death of the hands of police personnel, who are being influenced.

6. The recall of the Bail Order is also sought on the ground that the Order of the learned Trial Court is based on hypothesis, surmises and conjectures. The offence committed is heinous offence of custodial death.

7. The Applicant being a Government servant and member of uniformed force, is certainly in a far better position to influence the witnesses and is also likely to tamper the evidence leading to miscarriage of justice. The public witnesses are yet to be recorded and the Bail so granted to the Applicant, be recalled.

8. Reliance has been placed on Ash Mohammed vs. Shiv Raj Singh @ Lalla Babu and Anr., Crl. A. No. 1456/2012 arising out of SLP Crl. No. 4083/2012 wherein it was observed that while deciding the Bail application, time spend by the accused in custody may be one of the factors but cannot be the sole factor in every case. It depends on the nature of offence, the manner in which it was committed and its impact on the society. In a given situation, circumstances and proportionality of crime, the bail Order is liable to be set-aside.

9. It is, therefore, submitted that the Bail Order so granted to the Respondent, be recalled.

10. ***Learned counsel for the Respondent*** submits that there is a clear plea taken that the Respondent was not present at the scene of alleged crime at

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 05/05/2025 at 14:45:03



the time it was committed, which is fully corroborated by the investigations, which form part of the Charge-Sheet; the CDR records of the Respondent clearly shows that he was not present at the alleged old Building where the incident happened; that the Respondent has never misused the liberty so granted and that 50 prosecution witnesses out of 62 have already been recorded. Furthermore, all other five accused have also been admitted to Bail.

11. It is, therefore, submitted that there is no merit in the present Petition, which is liable to be dismissed.

12. **Submissions heard and the record perused.**

13. Though it is an unfortunate case where a person has died due to alleged custodial torture as per the case of the Prosecution, but the present Petition pertains to recall of the Bail Order of the Respondent.

14. The grounds are that he being a police official is likely to influence the prosecution witnesses or to misuse his liberty. As has been pointed out, 52 witnesses out of 62 have already stands recorded.

15. The Bail was granted in 2017 and now i.e. after eight years, there is no allegation of misuse of liberty or of threatening the witnesses or tampering of evidence in these last years while the trial has been ongoing.

16. There is no merit in the present Petition seeking recall of the Bail Order.

17. The Petition is disposed of accordingly.

NEENA BANSAL KRISHNA, J

APRIL 29, 2025/RS

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 05/05/2025 at 14:45:03