





3. Broadly speaking, the prosecution case is as follows. On 24.11.2022, one Surender Kumar, brother of the deceased Om Kumar lodged a missing person complaint with the police. Thereafter on 28.11.2022, when ASI Yudhvair Singh alongwith Surender Kumar reached Yamuna Khadar in the course of inquiry of the missing report, one Vijay Kumar met them and stated that on the night intervening 23.11.2022 and 24.11.2022, he saw three persons coming in a golden colour car and after consuming liquor two of them started beating the third person. Thereafter, Surender Kumar informed ASI Yudhvair Singh that car of his neighbour Kartik (*co-accused*) fell in Yamuna river and few persons got Kartik and the car pulled out of the river. On 28.11.2022, dead body of the deceased was recovered from the Yamuna river.

4. Learned counsel for accused/applicant submits that the accused/applicant has been falsely implicated in this case only to solve a blind murder. It is submitted that the accused/applicant is in custody since 08.12.2022 and prosecution is deliberately withholding its star witness Vijay Kumar from the learned trial court.

5. Learned counsel for complainant *de facto* also has been heard and he discloses that the complainant *de facto* Surender Kumar has filed a writ petition for grant of habeas corpus for production of Vijay Kumar in Court. That writ petition is pending scrutiny before the Registry of this court.

6. Learned APP for State submits that prosecution case rests on last seen evidence, coupled with post-mortem report. Learned APP for State reads



over the statement of Vijay Kumar recorded under Section 161 CrPC.

7. The post-mortem report dated 29.11.2022 mentions that all injuries present over the body were ante-mortem in nature and “fresh in duration”. As mentioned above, according to prosecution case, the deceased was last seen alive by Vijay Kumar on the night intervening 23.11.2022 and 24.11.2022. In other words, even according to prosecution case, there was a gap of about 06 days between the discovery of the dead body and the alleged last seen circumstance; and the fatal injuries were fresh in duration.

8. It would be surprising to note that although in statement under Section 161 CrPC dated 29.11.2022, Vijay Kumar allegedly stated that he knew both assailants by name, but in the corresponding Case Diary No. 31 dated 29.11.2022, Vijay Kumar did not name either of the assailants and simply stated having seen two persons beating up the third person.

9. At this stage, I must add a cautious rider that on the above aspects, the learned trial court shall carry out analysis independent of above observations. The only purpose of above discussion is to ascertain if there is some valid reason to direct further curtailment of liberty of the accused/applicant.

10. Therefore, the bail application is allowed and accused/applicant is directed to be released on bail subject to his furnishing a personal bond in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction

BAIL APPLN. 753/2025

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of the Trial Court.

11. A copy of this order be immediately transmitted to the concerned Jail Superintendent for informing the accused/applicant.

12. It is also directed that the accused/applicant shall not in any manner whatsoever try to contact any of the prosecution witnesses, failing which appropriate consequences shall follow.

**GIRISH
KATHPALIA**

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**GIRISH KATHPALIA
(JUDGE)**

FEBRUARY 17, 2026/as