$~2

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

% ***Date of Decision: 29.10.2026***

\# **CNR No.DLHC010322892026**

\+ **BAIL APPLN. 2884/2026, Crl.M.A.21719/2026**

PAWAN @ BANDAR .....Petitioner

Through: Mr. Paramjeet, Adv.

versus

THE STATE (GOVT. OF NCT DELHI) .....Respondent

Through: Ms. Priyanka Dalal (APP)
SI Chetan (P.S. Paschim Vihar-West).

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (*ORAL*)

1. By way of the present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS"), the petitioner herein seeks regular bail in FIR No. 295/2022 dated 26.02.2022 registered at Police Station Paschim Vihar (West), Delhi, under Sections 302/34 of the Indian Penal Code, 1860 (hereinafter "IPC") and Sections 25/27 of the Arms Act, 1959.

2. Briefly stated, the case of the prosecution is that on the intervening night of 25/26.02.2022, the deceased, namely Sanjay, aged about 26 years, was called near the Transformer Gate, Electricity Office, Udyog Nagar, Peeragarhi, Delhi, where an altercation took place between the petitioner and the deceased with respect to the deceased's interaction with one Ranjeeta. It is alleged that in the course of the scuffle, the co-accused Nikhil @ Sonu caught hold of the deceased, and the petitioner stabbed him in the abdomen with a knife. The deceased was taken to Sanjay Gandhi Memorial

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:30.10.2026
19:04:15

Hospital, Mangolpuri, Delhi, where he succumbed to his injuries. The petitioner was arrested on 26.02.2022.

3. This is the second bail application of the petitioner before this Court. The first bail application, being BAIL APPLN. 4209/2024, was dismissed by a Coordinate Bench of this Court vide judgment dated 09.09.2025. It was observed therein as under:-

> *"30. At the same time, this Court cannot overlook the fact that the petitioners have remained in judicial custody for a period exceeding three years. Therefore, while dismissing the present applications, this Court deems it appropriate to request the learned Trial Court to take all endeavours to ensure that the trial is concluded expeditiously within a period of six months from today."*

4. Thereafter, *vide* order dated 12.03.2026 passed in Bail Appln. 3909/2024, upon the matter being placed before a Coordinate Bench of this Court on an office note, it was ordered as under:-

> *"3. Matter has, now, been placed on the basis of an Office Notice as a request has been received from learned Trial Court for seeking extension of time. The present Presiding Officer of the Court concerned has submitted that he has taken over the aforesaid Court very recently and has mentioned in his request that it is difficult to dispose of the matter within six months which period has already expired on 09.03.2026. He has prayed that another period of six months be granted to conclude the trial.*
> *4. According to the report submitted, case is at the stage of prosecution evidence and fifteen prosecution witnesses are yet to be examined.*
> *5. Keeping in mind the reasons assigned, request made by learned Trial Court for grant of another six months period to conclude the trial is, hereby acceded to.*
> *6. Let a communication in this regard be sent to learned Trial Court by the Registry."*

5. Learned counsel for the petitioner submits that he has been in judicial custody since 26.02.2022. As per the Nominal Roll, as on 14.08.2026, the petitioner had undergone 04 years, 05 months and 03 days of custody. As on

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:30.10.2026
19:04:15

date, the period of custody exceeds four years and seven months. He further submits that two eye-witnesses , namely PW-3 Sagar and PW-4 Vijay, have been examined and they have not supported the case of the prosecution. It is submitted that both the periods fixed by this Court for conclusion of the trial have expired. It is submitted that the witnesses who remain to be examined are mostly official witnesses, i.e., police officials and medical officers, and that no apprehension of their being influenced can arise.

6. It is submitted by the learned APP that the offence is grave and the weapon was recovered at the instance of the petitioner from the petitioner's residence. It is further submitted that the FSL report also incriminates the petitioner inasmuch as the blood stains detected on the knife and on the clothes seized were found to match the blood/DNA profile of the deceased.

7. It is informed that, as per the Status Report dated 14.08.2026, out of a total of 30 prosecution witnesses, 14 witnesses have been examined.

REASONING

8. This is a successive bail application. It is well settled that there is no absolute bar to the maintainability of a successive application for bail; however, such an application can be entertained only where there is a change in the factual or legal situation which calls for reconsideration of the view taken earlier. Reference in this regard may be made to the decision of the Supreme Court in Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav, (2005) 2 SCC 42.

9. The considerations relevant to bail, especially in cases under Section 302 of the IPC, have been delineated by the Supreme Court in ***State of Maharashtra v. Sitaram Popat Vetal***, (2004) 7 SCC 521:

> *"6. There is a need to indicate in the order, reasons for prima facie*

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:30.10.2026
19:04:15

concluding why bail was being granted particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:
1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
2. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
3. Prima facie satisfaction of the court in support of the charge."

10. In ***Gurcharan Singh v. State (Delhi Admn.)***, (1978) 1 SCC 118, the Supreme Court, while distinguishing the power of the Magistrate under Section 437(1) of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") and that of the Court of Session/High Court under Section 439(1) of the CrPC (which provisions now correspond, respectively, to Sections 480 and 483 of the BNSS) observed as under:

"24. Section 439(1) CrPC of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), CrPC against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:30.10.2026
19:04:15

investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out."

(emphasis supplied)

11. These factors have to be juxtaposed against the well-settled legal position, reiterated by the Supreme Court in the landmark judgment of ***State of Rajasthan v. Balchand***, (1977) 4 SCC 308, wherein it was observed that *"the basic rule may perhaps be tersely put as bail, not jail"*.

12. At the same time, it is equally well settled that, at the stage of bail, the Court is not to enter upon the credibility or reliability of the prosecution witnesses. In ***Satish Jaggi v. State of Chhattisgarh***, (2007) 11 SCC 195, the Supreme Court held as under:

> *"5. It is settled law that in granting or non-granting of bail in non-bailable offence, the primary consideration is the nature and gravity of the offence. In the present case Respondent 3 is accused of murdering a rival political leader while campaigning in the election.*
>
> *6. It appears that the learned Chief Justice did not consider the nature and the gravity of the offence while considering the bail application of the accused. On the contrary, while considering for bail, the learned Chief Justice appears to have decided the case pending trial on merit after scrutinising the evidence. To say the least, it is against all canons of law and judicial propriety.*
>
> ***
>
> *12. Normally if the offence is non-bailable also, bail can be granted if the facts and circumstances so demand. We have already observed that in granting bail in non-bailable offence, the primary consideration is the gravity and the nature of the offence. A reading of the order of the learned Chief Justice shows that the nature and the gravity of the offence and its impact on the democratic fabric of the society was not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned Chief Justice has virtually acquitted the accused of all the criminal charges levelled against him even before the trial. The*

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:30.10.2026
19:04:15

trial is in progress and if such findings are allowed to stand it would seriously prejudice the prosecution case. At the stage of granting of bail, the court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial.

13. In the present case, the findings recorded by the learned Chief Justice, as referred to above, virtually amount to the regular trial pointing out the deficiency and reliability/credibility of the prosecution evidence. Such findings recorded at the stage of consideration of bail, in our view, cannot be allowed to sustain."

(emphasis supplied)

13. Significantly, the circumstance that PW-3 and PW-4 have turned hostile was expressly considered by the Coordinate Bench while dismissing the first bail application. It was held in the judgment dated 09.09.2025 as under:

"27. The same reasoning applies to the issue of eye-witnesses turning hostile. The weight and evidentiary value to be attached to hostile testimony is to be determined in the course of appreciation of evidence by the learned Trial Court. This Court, while considering bail, cannot undertake a microscopic evaluation of their depositions.

***

28. In this context, reliance placed by the respondents on Satish Jaggi (Supra), is apposite. The Hon'ble Supreme Court held that in granting or declining bail in non-bailable offences, the primary consideration is the nature and gravity of the offence. At the stage of granting bail, the Court may only examine whether a prima facie case is made out and cannot enter into the credibility and reliability of prosecution witnesses, which is a matter strictly for trial. The Supreme Court further cautioned that any findings on credibility at the bail stage risk prejudicing the trial and virtually amount to a pre-trial acquittal, which is impermissible. The ratio of the said judgment squarely applies to the present case, where the arguments of the petitioners primarily rest upon the testimony of PW-3 and PW-4."

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:30.10.2026
19:04:15

14. In view of the above, the hostility of PW-3 and PW-4 does not, by itself, constitute a change in circumstances, the said aspect having already been considered and dealt with by the Coordinate Bench vide judgment dated 09.09.2025. Equally, the earlier view of this Court on the prima facie material, including the recovery of the knife at the instance of the petitioner and the FSL report, is not being revisited, nor is this Court undertaking any assessment of the credibility of any of the eye-witnesses.

15. However, there is a change in circumstances on account of the following factors:-

i. The petitioner has spent a further period of more than one year in custody. As noticed above, his total period of custody is now more than 4.5 years.

ii. On 09.09.2025, this Court requested that the trial be concluded within a period of six months. The said time was extended on 12.03.2026 by another six months. Both periods have run out and it appears that trial is unlikely to be concluded in the near future.

iii. The trial has, in the meanwhile, progressed materially. The two cited eye-witnesses have been examined, and the witnesses who remain to be examined are stated to be largely official and formal witnesses. This Court does not see any realistic possibility of any of the remaining official witnesses being influenced by the petitioner.

iv. As per the Nominal Roll dated 14.08.2026, there is no other case pending against the petitioner, and his overall jail conduct as well as his jail conduct during the last one year has been reported to be "satisfactory". The petitioner was also enlarged on interim bail on four occasions and surrendered on each occasion, and there is nothing

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:30.10.2026
19:04:15

on record to suggest that he misused the liberty so granted.

16. In the above context, the prolonged incarceration of the petitioner, coupled with the absence of any realistic prospect of the trial being concluded in the near future, is required to be taken into account. In ***Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh***, 2024 INSC 534, the Supreme Court held as under:

> *"22. It is trite law that an accused is entitled to a speedy trial. This Court in a catena of judgments has held that an accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude."*

17. Concededly, the offence under Section 302 of the IPC is of a grave, heinous and serious nature. However, it is settled by the Supreme Court in ***Prabhakar Tewari v. State of U.P.***, (2020) 11 SCC 648, that this cannot be the sole factor for rejecting the plea for bail. As already noticed in ***Sheikh Javed Iqbal*** (supra), it is not open to the prosecution to oppose bail only on the ground that the charges are serious, where there is no end in sight for the trial to conclude.

18. Considering the aforesaid circumstances, the applicant is admitted to regular bail in FIR No. 295/2022 on furnishing a personal bond of Rs. 25,000/- with one surety of the like amount to the satisfaction of the learned Trial Court. The same shall be subject to the following conditions:-

i. The applicant/accused shall attend every hearing before the

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:30.10.2026
19:04:15

learned Trial Court unless exempted by the learned trial Court;

ii. The applicant/accused shall not leave NCT of Delhi or travel out of the country without prior permission of the learned trial Court;

iii. The applicant/accused shall provide his permanent address to the learned trial Court, and also the address where he will be residing during the pendency of the case;

iv. The applicant/accused shall intimate the Investigating Officer (IO) and file an affidavit before the learned trial Court regarding any change in his residential address;

v. The applicant/accused shall furnish his mobile number to the Investigating Officer (IO)/Station House Officer (SHO) concerned, which shall be kept in working condition at all times. The mobile number shall be kept switched on, with location services enabled at all times, and the same shall be shared with the IO. The mobile number shall not be changed without prior intimation to the IO during the pendency of the trial;

vi. The applicant/accused shall report to the IO as and when called for by the IO;

vii. The applicant/ accused shall not directly or indirectly contact the complainant, any prosecution witness, and their family members;

viii. The applicant/accused 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

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:30.10.2026
19:04:15

any manner whatsoever;

ix. The applicant/accused shall appear before the learned Trial Court on each and every date of hearing unless exempted;

x. The applicant/accused shall not indulge in any criminal activity during the period of bail; and

xi. The applicant/accused shall report to the concerned SHO, on the second and fourth Monday of every month at 11:00 a.m. and be discharged by 12:00 noon, after recording his presence and completion of the necessary formalities.

19. In case of breach of any of the aforesaid conditions, the State shall be entitled to move an application for cancellation of bail.

20. The learned Trial Court is requested to expedite the trial proceedings to the extent feasible.

21. It is clarified that the observations made herein are solely for the purpose of deciding the present bail application and shall neither influence the trial proceedings nor be construed as an expression of opinion of this Court on the merits of the case.

22. Let a copy of this order be communicated to the concerned Jail Superintendent electronically for information and necessary compliance.

23. The application is disposed of in the above terms. The pending application also stands disposed of.

SACHIN DATTA, J

OCTOBER 29, 2026*/uk,sd*

Signature Not Verified
Digitally Signed
By:UMANG
Signing Date:30.10.2026
19:04:15