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

% ***Date of Decision : 17.11.2026***

\# **CNR No.DLHC010410242026**

\+ **BAIL APPLN. 3629/2026**

DEEPAK @ KALLU .....Petitioner

Through: Mr. Jitendra Sethi, Sr. Advocate with Mr. Hemant Gulati, Mr. Shabit Demiri, Mr. Keshav Sethi and Mr. Divyam Gaur, Advocates.

versus

STATE, NCT OF DELHI .....Respondent

Through: Mr. Ashneet Singh, APP for the State. Inspector Subhash Chand, PS Hauz Khas.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (*ORAL*)

The matter is taken up today as 16.11.2026 was declared a holiday on account of Chhath Puja.

1. By way of the present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 439 of the Code of Criminal Procedure, 1973), the applicant/petitioner seeks regular bail in the case arising out of FIR No. 141/2022, dated 28.02.2022, registered at P.S. Hauz Khas, South District, Delhi, under Sections 302/34 of the Indian Penal Code, 1860 (hereinafter "*IPC*") and Sections 25/27/54/59 of the Arms Act, 1959. The charge-sheet has since been filed under Sections 302/201/120B/34 of the IPC and Sections 25/27 of the Arms Act, 1959.

2. The applicant's/petitioner's second application for regular bail was

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dismissed by the learned Additional Sessions Judge-06 (South), Saket Courts, New Delhi, *vide* order dated 28.08.2026 (in Bail Application No. 1618/2026).

3. *Vide* order dated 01.09.2026, a status report was sought from the State and the nominal roll of the applicant/petitioner was requisitioned from the Jail Authorities. The status report has since been filed.

4. It is the case of the prosecution that:

a. There was a long-standing enmity between the deceased and his associate Sandeep @ Dishu, on the one hand, and the accused persons, on the other. The enmity is stated to have originated from the murder of one Kiran in 2016, in respect of which FIR No. 695/2016 (P.S. Hauz Khas), under Sections 302/120B of the IPC was registered, wherein the deceased and Sandeep @ Dishu were accused persons. The prosecution also refers to FIR No. 142/2022 (P.S. Hauz Khas), under Sections 308/341/34 of the IPC, in which the applicant/petitioner is one of those accused of assaulting the deceased and Sandeep @ Dishu;

b. After the altercation alleged in the aforesaid FIR No. 142/2022, the accused persons gathered at the premises of co-accused Sanjeev Kumar @ Bhondu. Thereafter, the shooting took place outside the said premises, during which the deceased was shot dead;

c. The applicant/petitioner was one of the three main shooters, the others being Himanshu @ Hunny and Pankaj @ Kachdi; co-accused Hansraj assisted in the attack and co-accused Deep @

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Ankit and Vijay Pal @ Viju positioned themselves to block the escape routes; and

d. A pistol was recovered at the instance of the applicant from a Honda car (allegedly linked with the applicant/petitioner). The learned trial Court has recorded that, as per the ballistic report, the cartridges found at the spot matched with the recovered pistol.

5. Charges have been framed and the trial is pending. A total of forty-three (43) witnesses have been cited, of whom six public witnesses (PW-01 to PW-06) have been examined so far. The status report states that 37 witnesses remain to be examined. The following may be noted:

a. As noted by the learned Special Judge-NDPS/ASJ (South), Saket Courts, on 26.09.2025, in Bail Application No. 1904/2025, PW-01 to PW-05, who are public witnesses, including the alleged eyewitnesses, have not supported the case of the prosecution.

b. The State points out that PW-06 (Sandeep Kumar), on viewing the CCTV footage, deposed that the applicant/petitioner can be seen firing at the deceased. He also stated that the faces of other co-accused persons (except co-accused Hansraj) were not clear.

c. On the other hand, the applicant/petitioner emphasises that, in cross-examination, PW-06 admitted that he was not an eyewitness to the incident and learnt the facts from the police or from the CCTV footage. He has also admitted that he is himself an accused in the aforesaid FIR No.695/2016 (P.S. Hauz Khas).

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6. Learned senior counsel for the applicant points out that co-accused Sanjeev Kumar @ Bhondu, Vijay Pal @ Viju and Deep @ Ankit Kumar have been granted regular bail by the learned trial Court, *vide* orders dated 12.09.2025 (Bail Application 1660/2025), 26.09.2025 (Bail Application 1904/2025), and 26.09.2025 (Bail Application 1568/2025), respectively.

7. Learned senior counsel further emphasises that the applicant/petitioner has been in custody since 01.03.2022, i.e., for more than 4 years and 8 months, and that the applicant/petitioner was granted interim bail on two or three occasions and no allegation of misuse thereof has been made so far.

8. Learned senior counsel for the applicant/petitioner also submits that since only six (6) of the forty-three (43) cited witnesses have been examined in over four and a half years, there is no reasonable prospect of the trial concluding in the near future.

9. Learned senior counsel for the applicant/petitioner further submits that the present FIR is a blind FIR, which does not name the assailants, that the alleged eyewitnesses have not supported the prosecution, and that their testimonies are inconsistent.

10. On the other hand, learned APP for the State submits that the applicant was an active conspirator and one of the main shooters. He also emphasises that PW-06 has identified the applicant in the CCTV footage before the trial Court. He further submits that the offence is heinous and premeditated. He relies extensively on the status report in support.

11. I have given my thoughtful consideration to the respective submissions.

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12. It can hardly be gainsaid that bail is the rule and jail the exception. The Supreme Court has reiterated this position in a catena of decisions. It would be apposite to refer to its decision in ***Syed Iftikhar Andrabi v. National Investigation Agency, Jammu,*** **2026 INSC 503**, wherein the Court, *inter alia*, observed as under:

> "***35. The often invoked phrase 'bail is the rule and jail is the exception' is not merely an empty statutory slogan flowing from the CrPC as Gurwinder has stated. It is a constitutional principle flowing from Articles 21 and 22 of the Constitution and the presumption of innocence which is the cornerstone of any civilised society governed by the rule of law.*** *Statutes may undoubtedly calibrate the manner in which that principle is applied …*"
>
> (emphasis supplied)

13. The Supreme Court in ***Manish Sisodia v. Directorate of Enforcement,*** **2024 INSC 595**, has made a similar observation in the following terms:

> "*53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten* ***a very well-settled principle of law that bail is not to be withheld as a punishment****. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail.* ***The principle that bail is a rule and refusal is an exception is, at times, followed in breach.*** *On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency.* ***It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception"****."*
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> (emphasis supplied)

14. It has also been held by the Supreme Court that the gravity of the offence and the pendency of other criminal cases cannot, by themselves, be

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the basis for refusing bail. In this regard, reference may be made to the judgment of the Supreme Court in ***Prabhakar Tewari v. State of U.P.*, (2020) 11 SCC 648**, wherein the Court remarked as under:

> "*7. … 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.*"
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> (emphasis supplied)

15. Further, prolonged incarceration, with little prospect of an early conclusion of the trial, is a relevant consideration. The Supreme Court has emphasised it even in the context of special statutes. In this regard, a reference may be made to the Supreme Court's decision in ***Union of India v. K.A. Najeeb*, (2021) 3 SCC 713**:

> "*17.* ***It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution.*** *Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised.* ***Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence.*** *Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the*

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UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.
18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. ***However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail.*** *An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.*"

(emphasis supplied)

16. The Supreme Court in ***Mohd. Muslim v. State (NCT of Delhi)*****, (2023) 18 SCC 166**, made similar observations. The following observations of the Supreme Court in ***Arvind Dham v. Enforcement Directorate*****, (2026) 7 SCC 330**, may also be noted:

"*15. …* ***It is well settled that if the State or any prosecuting agency including, the court concerned has no wherewithal to provide or protect the fundamental right of an accused, to have a speedy trial as enshrined under Article 21 of the Constitution, then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime*** *[Javed Gulam Nabi Shaikh v. State of Maharashtra, (2024) 9 SCC 813 : (2025) 1 SCC (Cri) 222] . The aforesaid proposition was quoted with approval by another two-Judge Bench of this Court and it was held that long period of incarceration for around 17 months and the trial not even having commenced, the appellant in that case has been deprived of his right to speedy trial [Manish Sisodia v. Enforcement Directorate, (2024) 12 SCC 660 : (2026) 1 SCC (Cri) N-14] .*
16. A two-Judge Bench of this Court in V. Senthil Balaji case [V. Senthil Balaji v. Enforcement Directorate, (2025) 15 SCC 679 :

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> *2024 SCC OnLine SC 2626] has held that under the statutes such as PMLA, where maximum sentence is seven years,* ***prolonged incarceration pending trial may warrant grant of bail by Constitutional Courts, if there is no likelihood of the trial concluding within a reasonable time****. Statutory restrictions cannot be permitted to result in indefinite pretrial detention in violation of Article 21.*
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> *17.* ***A three-Judge Bench of this Court in Padam Chand Jain [Padam Chand Jain v. Enforcement Directorate, 2025 SCC OnLine SC 1291], reiterated that prolonged incarceration cannot be allowed to convert pretrial detention into punishment*** *and that documentary evidence already seized by the prosecution eliminates the possibility of tampering with the same.*
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> *18.* ***The right to speedy trial, enshrined under Article 21 of the Constitution, is not eclipsed by the nature of the offence. Prolonged incarceration of an undertrial, without commencement or reasonable progress of trial, cannot be countenanced, as it has the effect of converting pretrial detention into form of punishment.*** *Economic offences, by their very nature, may differ in degree and fact, and therefore cannot be treated as homogeneous class warranting a blanket denial of bail.*"
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> (emphasis supplied)

17. Reference may also be made to the decision of the Supreme Court in ***Zahur Haider Zaidi v. CBI*****, (2019) 20 SCC 404**, where a person accused under Section 302 of the IPC was released on bail, as he had been in custody for 19 months and the trial would have taken some time.

18. In the light of this legal position, what weighs with the Court is that the applicant has been in custody since 01.03.2022, *i.e.*, for more than 4 years and 8 months.

19. Although the material against the applicant cannot be trivialised, especially as PW-06 has identified him as one of the shooters, the inconsistencies in the testimonies of the witnesses cannot be lost sight of. Further, the eyewitnesses have not supported the case of the prosecution.

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While noting these aspects, this Court refrains from examining the merits of the depositions, which is a matter for trial.

20. What further weighs with the Court is the fact that co-accused Sanjeev Kumar @ Bhondu, Vijay Pal @ Viju and Deep @ Ankit have already been granted bail by the learned trial Court. Although the role attributed to them is distinct from that alleged against the applicant, certain considerations, such as the case of the prosecution not being supported by PW-01 to PW-05 (including the alleged eyewitnesses), which weighed with the trial Court, are not altogether irrelevant in the case of the applicant/petitioner.

21. In these circumstances, the applicant is directed to be released on regular bail on his furnishing a personal bond of Rs. 50,000/- with two sureties of the like amount to the satisfaction of the learned trial Court, subject to the following conditions:

a. The applicant/petitioner shall not leave NCT of Delhi or travel out of the country without prior permission of the trial Court;
b. The applicant/petitioner shall appear before the learned trial Court on each and every date of hearing, unless specifically exempted by the trial Court;
c. The applicant/petitioner 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;
d. The applicant/petitioner shall intimate the Investigating Officer (IO) and file an affidavit before the Trial Court regarding any change in his residential address;

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e. The applicant/petitioner 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, 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;

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

g. The applicant/petitioner shall not directly or indirectly contact the complainant, any prosecution witness, or the family members of the deceased;

h. The applicant/petitioner 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;

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

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

22. It is made clear that any breach of the aforesaid conditions shall entitle the State to seek cancellation of bail.

23. It is clarified that nothing stated hereinabove shall be construed as an

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expression of opinion on the merits of the case and the learned trial Court shall proceed with the trial uninfluenced by any observations made herein.

24. A copy of this order be sent to the Jail Superintendent concerned for information and necessary compliance.

25. The application is disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 17, 2026/r, vk

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