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

% ***Date of Decision : 26.11.2026***

\# **CNR No.DLHC010504792026**

\+ **BAIL APPLN. 4458/2026**

ISTIYAK @ ISTIYAK KALIA (IN JC) .....Petitioner

Through: Ms. Tara Narula, Mr. Harshvardhan Jain, Advs.

versus

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

Through: Mr. Aashneet Singh (APP)
Mr. Anirudh Bakhru, Mr. Shadman Ahmed Siddiqui, Mr. Syed Arhma Masud, Mr. Alek Shenra Sharma, Mr. Wasif Naushad, Ms. Sudeed, Ms. Priya, Advs. for Complainant

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (*ORAL*)

1. The present application has been filed by the petitioner under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*"BNSS"*) seeking regular bail in case arising out of FIR No. 0624/2020 dated 27.12.2020 registered at P.S. Mayur Vihar, Ph-I under Sections 302/ 307/ 147/ 148/ 149/ 120B/ 34 of the Indian Penal Code, 1860 (*"IPC"*) and Section 25/27 of the Arms Act, 1959.

2. The factual conspectus of the matter is that, on the night of 26.12.2020, at about 9:30 p.m., an incident of firing took place at 27 Block, Trilokpuri, Delhi. In the said incident, one Shahid (son of Saeed), sustained a gunshot injury and was declared brought dead at Max Hospital, Patparganj, and

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fourteen other persons sustained injuries.

3. The fatal shot is attributed to co-accused Sajid @ Mannan.

4. It is submitted that the petitioner did not join investigation pursuant to notice dated 05.01.2021, whereafter proceedings under Sections 82/83 of the Cr.P.C. were initiated against him.

5. Thereafter, on 07.07.2021, petitioner surrendered before the learned Metropolitan Magistrate, East District, Karkardooma Courts, Delhi and was arrested on the same day. According to the petitioner, certain witnesses who attributed to the petitioner the role of loading weapons. However, nothing was recovered from the petitioner herein.

6. By letter dated 01.04.2021 (appended as Annexure A-25 to the present petition) addressed by the deceased's / Shahid's father to the IO/ Police Station Mayur Vihar, Phase-I, it was stated that the petitioner was not involved in the incident and that he does not wish to pursue any legal action against the petitioner.

7. It is informed today that all the injured witnesses stand examined. As per the reply dated 25.08.2026 filed on behalf of the State before the learned trial Court, 19 out of 60 witnesses have been stated to be examined.

8. The petitioner has been in custody since 07.07.2021, i.e., for more than 05 years and 04 months, apart from the the brief periods during which he was on interim bail.

9. Learned counsel for the petitioner submits that the injured witnesses have deposed and that the role attributed to the petitioner by the witnesses, i.e., of loading weapons, is similar to the role subsequently attributed by PW-6 (in his testimony dated 31.08.2024) to co-accused Salman, who stands enlarged on bail by this Court *vide* order dated 04.01.2024 in BAIL APPLN.

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4029/2023. It is further submitted that there is no reasonable prospect of the trial concluding anytime soon.

10. Per contra, learned APP for the State and learned counsel for the complainant submit that the petitioner has been identified by certain witnesses and the offences are grave.

11. I have given thoughtful consideration to the matter. In my view, the petitioner/ applicant is entitled to bail for the following reasons:-

i. Although the present application is a successive bail application, it is liable to be entertained in view of the material change in circumstances since the earlier bail applications of the petitioner were considered. The relevant aspect is that the injured witnesses have now been examined and cross-examined. This was not the case when the petitioner's bail applications were rejected on previous occasions. Notably, the petitioner's earlier bail applications before this Court were withdrawn (BAIL APPLN. 1099/2022, order dated 05.08.2022) and not pressed (BAIL APPLN. 1415/2026, order dated 13.04.2026). In each case, liberty was granted to apply afresh after the eye-witnesses/injured persons had been examined. That stage has now been reached. With all the injured witnesses having been examined, the apprehension of the petitioner influencing material witnesses stands considerably diminished.

ii. The role attributed to the petitioner as per the prosecution is of loading weapons. It has been pointed out by learned counsel for the petitioner that this is the same role attributed to the co-accused Salman who has been granted bail by this Court *vide* order dated 04.01.2024 in BAIL APPLN. 4029/2023. In fact, as per the reply

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dated 25.08.2026 filed on behalf of the State before the learned trial Court, PW6 has attributed to co-accused Salman the role of loading fire weapons and handing them over to the other accused. Importantly, the petitioner is not alleged to have fired the fatal shot, and no weapon has been recovered from him.

iii. Though proceedings under Section 82 of the Cr.P.C. were initiated against the petitioner during investigation, he surrendered before the learned MM on 07.07.2021. Thereafter, he has been released on interim bail on several occasions and there is no material on record to suggest that he misused the liberty so granted. The apprehension that he may abscond is, therefore, not borne out.

iv. As noticed, the complainant himself, *vide* letter dated 01.04.2021 to the IO/ Police Station Mayur Vihar Phase -I had confirmed that there is no involvement of the petitioner in the incident. The worth of that communication would be for the trial court to consider, but it is one of the factors which weighs with this Court.

12. Prolonged incarceration of the petitioner when the trial is not likely to conclude any time soon is itself a valid consideration which weighs with this Court for the purpose of grant of bail. In this regard, reference may be made to the decision of the Supreme Court in ***Union of India v. K.A. Najeeb***, (2021) 3 SCC 713, wherein it has been observed as under:

> ***"15.*** *This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no*

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person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail."

13. In ***Nayeem Ahmad Khan v. National Investigation Agency*** [SLP(Crl.) No. 22807 / 2026, decided on 23.11.2026], the Supreme Court observed as under:

"6. Though the allegations leveled against the appellant are quite serious and it is a case of bail pending trial, the appellant has been under incarceration for a period of more than nine years.

7. In view of the above facts and circumstances and taking into consideration the period of incarceration, the impugned order dated 09.04.2025 passed by the High Court in Criminal Appeal No.118 of 2023, stands set aside and the appellant shall be granted bail, subject to the terms and conditions imposed by the concerned Trial Court."

14. In ***Vaibhav Singh v. State of Uttar Pradesh*** [SLP(Crl.) 7416/2026, decided on 29.04.2026], the Supreme Court observed as under:

"10. It appears that the High Court has not been able to understand the true purport and ratio of the decision of this Court, referred to, in para 8. All that the High Court ought to have considered is the fact that the petitioner is languishing in jail as an undertrial prisoner past nine years. What more was required for the High Court to consider the plea of the petitioner for bail, keeping his right of speedy trial in mind as enshrined under Article 21 of the Constitution.

11. We believe we should not wait even for the State to appear. This is a gross case wherein the fundamental right of the petitioner to have a speedy trial as enshrined under Article 21 of the Constitution could be said to have been infringed.

12. In many of our Judgments and on many occasions, we have said in so many words that howsoever grave the crime may be, but if the accused is denied his right of speedy trial and is languishing in jail for years together and for no fault on his part, he cannot be kept in jail for indefinite period."

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15. In the present case, it is noticed that the petitioner has been in custody for over 5 years; only 19 out of 60 witnesses have been examined; the trial is not likely to conclude in the near future; and the co-accused to whom a similar role was attributed to as the petitioner, has already been enlarged on bail.

16. Accordingly, considering the totality of the circumstances, the petitioner is admitted to regular bail in case arising out of FIR No. 0624/2020 dated 27.12.2020 registered at P.S. Mayur Vihar, Ph-I under Sections 302/ 307/ 147/ 148/ 149/ 120B/ 34 of the IPC and Sections 25/27 of the Arms Act, 1959 on furnishing a personal bond of Rs. 25,000/-, with one surety of the like amount to the satisfaction of the learned trial Court, subject to the following conditions:-

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

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

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

iv. 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

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during the pendency of the trial;

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

vi. 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 any manner whatsoever;

vii. The applicant/accused shall appear before the Trial Court on each and every date of hearing;

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

ix. The applicant/accused shall report to the concerned SHO, on the first 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. Additionally, the applicant/accused shall report to the IO as and when called for by the IO.

17. In case any of these conditions is breached, it shall be open for the State to seek cancellation of bail.

18. The trial Court is requested to expedite the trial proceedings i.e. recording of the remaining evidence to the extent feasible.

19. 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.

20. The bail application is disposed of in the above terms.

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

SACHIN DATTA, J

NOVEMBER 26, 2026/*uk(ka)*

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