



2026:DHC:3819



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

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*Reserved on: April 22, 2026
Pronounced on: May 05, 2026*

+ **BAIL APPLN. 371/2026**

MR HIMANSHU ALIYAS DONTI

....Applicant

Through: Mr. Lakshay Yadav, Mr. Yashvir Singh, Mr. Gaurav Kumar, Mr. Harsh Jain, Advocates

Versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Satish Kumar, APP with Ms. Upasana Bakshi, Ms. Divya Bakshi and Mr. Gourav Singh, Advs.
Mr. Danish Aftab Chaudhary, Advocate with brother of the deceased (Through VC).
Mr. Sarthak Karol, Standing Counsel (DHCLSC) Ms. Neelakshi Bhadauria & Ms. Tanishka Pawar, Advocates

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. The applicant, *vide* the present application under *Section 483* of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with *Section 439* of the Code of Criminal Procedure, 1973 seeks grant of regular bail in SC No.159/2018 arising out of FIR No.791/2017 dated 14.11.2017 registered at PS.: Sultan



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Puri, Delhi under *Sections 365/364A/302/201/120B/34* of the Indian Penal Code, 1860.

2. *Succinctly put*, as per prosecution, on the intervening night of 07-08.11.2017, the complainant came to PS Sultan Puri reporting the disappearance of his elder brother Rahul Saxena (*hereinafter referred to as “deceased”*). During the course of enquiry, it was revealed that shortly before his disappearance, the deceased had sent a WhatsApp text message to one of his employees, sharing contact details of “Sellu Builder” and “Bijender Builder” saying that “*M iske sath Sec 32 aaya hu ye Sec-22 wala banda hai*”. Based thereon, the present FIR came to be registered and investigation was initiated, during which it transpired that ransom calls had been made to the mother of the deceased, demanding a sum of Rs.20 Lakhs.

3. Further, one Vijay during his interrogation stated that about a week prior to the incident, the applicant along with other co-accused persons, namely Akash, Sheelu, Bijender, and Kunal @ Rahul, had expressed their eagerness to earn money as quickly as possible by kidnapping/ abducting someone. He also stated that on the night of the incident, the present applicant along with Kunal @ Rahul came to him inquiring about Akash, where they disclosed that they had killed one Rahul and had concealed his dead body in the boot of a car.

4. Subsequently, on 09.11.2017, a male dead body was recovered from a drain, who was later identified as the deceased.

5. Thereafter on 14.11.2017, based on a secret information, the applicant and Kunal @ Rahul were arrested. During interrogation, they disclosed that



the deceased was brought by the co-accused persons Sheelu, Akash and Bijender to the applicant's rented flat, where the deceased was eventually murdered by strangulation. Various articles belonging to the deceased, including a pen drive, ATM card, and broken pieces of his mobile phone were recovered from different locations at their instance. On the very same day, other co-accused person Sheelu @ Nitin, Akash, and Bijender were also arrested and various articles were recovered at their instance as well.

6. In these facts, learned counsel for applicant submitted that the applicant is in custody since 14.11.2017 i.e., for more than *eight years* and his prolonged incarceration without conclusion of trial is violative of his fundamental right to speedy trial under *Article 21* of the Constitution of India. For this, he placed reliance upon the decision of the Hon'ble Supreme Court in *Javed Gulam Nabi Shaikh v. State of Maharashtra and Another SLP(Crl.) No. 3809/2024*.

7. Learned counsel then submitted that though this Court *vide* orders dated 30.01.2024, 12.08.2024 and 20.03.2025 directed the learned Trial Court to expedite the trial and conclude it within a fixed time frame, however, the trial is pending with as many as *eight* prosecution witnesses still remain to be examined out of total *forty-four* witnesses.

8. Qua the conduct of the applicant, learned counsel submitted that every time he has been granted interim bail, he has duly surrendered without any default on any occasion. Thus, if released on regular bail, the applicant will abide by the condition(s) imposed by this Court. Lastly, he submitted that the applicant is the sole earning member and his continued incarceration has



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caused/ is causing severe hardship to his family.

9. *Per contra*, learned APP for the State opposed the present bail application and submitted that the allegations against the applicant are very serious in nature since he is involved in a case where a young boy of 27 years was abducted for ransom and then murdered. The learned APP further submitted that there is sufficient evidence against the applicant like recovery of pen drive and pieces of mobile phone of the victim which were effected at the instance of the applicant, the location of mobile phone/ CDR analysis, FSL report, all of which prove the case against the applicant beyond doubt.

10. Learned APP further submitted that the trial is already at its fag-end where out of *forty* prosecution witnesses, only *four* witnesses remain to be examined. Placing reliance upon *X v. State of Rajasthan & Anr.:2024 INSC 909*, the learned APP submitted that in serious offences like the present, once evidence has been started, the Court should be slow in granting bail to the applicant.

11. Learned APP lastly submitted that barring the present FIR, the applicant is also involved in three other FIRs, and as per Nominal Roll received from the Jail Authorities, his overall conduct is “*Unsatisfactory*” and as many as *five* punishment tickets have been issued to him.

12. The learned counsel for the complainant as also Mr. Sarthak Karol, Standing Counsel, DHCLSC have also supported the case of the prosecution.

13. Heard learned counsel for the parties and perused the documents on record as also the Status Report.

14. Moving ahead, though there is no dispute that long incarceration of



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any accused/ inmate is indeed a relevant factor for considering grant of regular bail and *Article 21* of the Constitution of India which gives a right to speedy trial to all such accused, plays a vital and dominant role, however, it is to be kept in mind that grant of bail being discretionary is to be exercised judiciously taking into account the other surrounding circumstances like the nature/ gravity of the offence, severity of punishment, the nature of accusation, reasonable ground to believe that the accused had committed the crime, nature of evidence, the accused having no prior criminal antecedents, the stage of trial/ proceedings before the learned Trial Court, the chances of accused fleeing/ absconding, the chances of witness tampering and/ or being threatened, the nature, character, behavior, standing of the accused in the society, the nominal roll received from Jail Authorities showing the conduct of the said inmate when inside jail, possibility of the offence being repeated if released on bail. Therefore, it calls for a fine, may be delicate, balance to be struck between the liberty of an accused with the interest of the Society. It is also to be kept in mind that, while granting bail, the Court is neither to read into the evidence nor get swayed by the probabilities and/ or the outcome after trial.

15. Also, though *Article 21* of the Constitution of India postulates that the said accused cannot be made to languish in custody for an indefinite period for no fault of his own by partaking the character of pre-conviction punishment, which goes against the very postulate of criminal jurisprudence that an accused is presumed to be innocent unless proven guilty, however, mere delay in trial and/ or prolonged incarceration, cannot itself operate as a



ford for the accused to make out a solitary reason, particularly, when it is involving grave and serious offences wherein the maximum punishment prescribed is life imprisonment or death.

16. In fact, the Hon'ble Supreme Court in *State of U.P. v. Amarmani Tripathi:(2005) 8 SCC 21* has also held as under:

“19.[T]he condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration by itself would not entitle the accused to be enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.”

[Emphasis Supplied]

17. No doubt, the (Constitutional) Court must lean towards safeguarding constitutional liberty, including that of an accused, but it equally true that such liberty is not absolute and has to be balanced against the larger interest of the society. The Hon'ble Supreme Court in *Masroor v. State of U.P.:(2009) 14 SCC 286* held as under:-



*“15. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. **The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned.** In this context, the following observations of this Court in *Shahzad Hasan Khan v. Ishtiaq Hasan Khan* are quite apposite : (SCC p. 691, para 6)*

“6. ... Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution....” ”

[Emphasis Supplied]

18. Similarly, the Hon’ble Supreme Court in *Ash Mohammad vs. Shiv Raj Singh alias Lalla Babu & Anr.* has also held as under:-

“ 30. We may usefully State that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy. There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are



also to be weighed. They are to be weighed in the scale of collective cry and desire. The societal concern has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter we are inclined to think that the social concern in the case at hand deserves to be given priority over lifting the restriction on liberty of the accused.”

19. More recently, the Hon’ble Supreme Court in ***Gulfisha Fatima v. State (NCT of Delhi):2026 SCC OnLine SC 10***, though rendered in the context of Unlawful Activities (Prevention) Act, 1967 has examined the issue of prolonged pre-trial incarceration as ground of bail to go onto hold as under:-

“30. Article 21 occupies a central place in the constitutional scheme. The right to life and personal liberty, and the insistence that any deprivation must conform to procedure established by law, are foundational guarantees. The right to a speedy trial has been recognised as an important facet of this guarantee. It follows that pre-trial incarceration cannot, by the mere passage of time, be permitted to assume the character of punishment.

31. At the same time, Article 21 has never been understood as operating in isolation from law. The constitutional promise is not that liberty will be unregulated, but that deprivations of liberty will not be arbitrary, unconscionable, or unfair. The expression “procedure established by law” reflects that balance. The UAPA, as a special statute enacted to address offences alleged to affect the security of the State and the stability of civic life, represents a legislative judgment as to the conditions under which bail may be granted at the pre-trial stage. Section 43D(5) of UAPA embodies the exercise of that judgment.

*32. In **Union of India v. K.A. Najeeb**, this Court recognised a constitutional safeguard that cannot be*



ignored: statutory restrictions cannot be applied so as to render the guarantee of personal liberty illusory. It was held that where the trial is not likely to commence or conclude within a reasonable period, constitutional courts retain the jurisdiction to grant bail notwithstanding statutory restraints. The decision thus operates as a protection against unconscionable detention and there can be no second opinion on the said principle.

33. The same decision, however, does not indicate as laying down a mechanical rule under which the mere passage of time becomes determinative in every case arising under a special statute. The jurisprudence of this Court does not support a construction whereby delay simpliciter eclipses a statutory regime enacted by Parliament to address offences of a special category.

34. The constitutional inquiry into delay is not an inquiry into guilt. It is an inquiry into whether continued detention remains constitutionally permissible in the circumstances of the case. That inquiry is necessarily contextual. Context includes the nature of the allegation, the statutory field, the stage of the proceedings, the realistic trajectory of the trial, the causes contributing to delay, and the risks attendant upon release. Delay cannot be detached from these considerations and treated as a solitary determinant.

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44. It is in this sense that the plea of delay must first be examined to see whether it arises in a manner that warrants constitutional scrutiny of continued custody. Broadly stated, the Court must consider whether the custody undergone is substantial, whether the proceedings have made meaningful progress, and whether there exists a realistic prospect of conclusion of trial within a reasonable period. The Court must also take note of the causes contributing to delay, including whether delay is attributable to the inherent



complexity of the prosecution or to the conduct of parties, including the accused.

45. A finding that these circumstances exist does not, by itself, compel bail. It merely calls for the next level of constitutional consideration. At that stage, the Court is required to examine whether, notwithstanding delay, continued detention remains constitutionally justified having regard to the statutory context and the facts of the case. This examination is not a free-ranging balancing exercise; it is structured by legally relevant considerations.

46. One such consideration is the gravity of the alleged offence in its statutory setting. Under the UAPA, Parliament has legislatively characterised certain conduct as implicating the security of the State and the peace of society. That legislative characterisation does not conclude the judicial inquiry, but it is not constitutionally irrelevant. It forms part of the context in which the Article 21 claim is assessed.

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49. Consideration must also be given to the integrity of the trial process and the risks associated with release. Depending on the nature of the case, these may include the possibility of influencing witnesses, tampering with evidence, or undermining the fairness of the proceedings. In prosecutions alleging organised activity, the assessment of such risks may differ from that in ordinary criminal cases. This is not to presume guilt, but to recognise that bail decisions are necessarily forward-looking in terms of ensuring an effective trial.

50. The Court must also bear in mind that it is not confined to a binary choice between continued custody and unconditional release. Where delay becomes a matter of constitutional concern, appropriate directions for expeditious trial, prioritisation of witnesses, or periodic review of progress may be issued. Such measures are constitutionally significant responses that address the vice of



delay while respecting the statutory framework. The liberty to renew a prayer for bail upon continued stagnation may also be preserved.

51. *There is a further constitutional aspect that warrants articulation. Article 21 protects individual liberty. It also, within the same guarantee of life, reflects the State's obligation to protect the life and security of the community. In prosecutions alleging threats to public order and national security, the Court cannot be unmindful that both dimensions are engaged. The constitutional order is not served by an approach that treats liberty as the sole value and societal security as peripheral. Both must be accommodated through reasoned adjudication.*

52. *The consequence of the above is that Najeeb (supra) must be understood as a principled safeguard against unconscionable detention. Prolonged incarceration is a matter of serious constitutional concern and carries great weight. It is not, however, the sole determinant. The Court must consider, in totality, whether continued detention has become constitutionally unjustifiable, having regard to the role attributed, the statutory context, the limited prima facie material, the trajectory of the trial, the causes of delay, and the availability of intermediate remedies.*

53. *This approach does not dilute Article 21. It gives Article 21 structured content in a field where the Constitution itself recognises competing interests. Nor does it render Section 43D(5) absolute. It recognises that statutory restraint must yield in an appropriate case where detention becomes punitive by reason of unreasonable and unjustified delay. What it excludes is a mechanical override based on time alone, divorced from legal context.”*

[Emphasis Supplied]

20. *Notably, the aforesaid, most relevantly the pronouncement in **Gulfisha Fatima (Supra)**, leads this Court to conclude that the inquiry as to the delay*



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is necessarily contextual. The mere length/ period of incarceration need not be the sole guiding factor for release of an accused on regular bail. All the said require a due justification under the facts and circumstances of the case based on various considerations.

21. As per the facts involved herein, the allegations against the applicant are very serious in nature, especially since he is alleged to be involved in a pre-mediated abduction of the deceased for ransom and thereafter in commission of his cold-blooded murder by strangulation, followed by disposal of the body in a drain. Moreover, as per Status Report, the role attributed to the applicant is *prima facie* not peripheral/ incidental. So much so, the flat where the deceased was murdered was rented by the applicant. These, coupled with recovery of pen drive and broken pieces of mobile phone, which have also been effected at his instance, as also considering that the applicant is not a first-time offender, and is involved in *three* other FIRs involving serious offences, and that the Nominal Roll of the applicant shows his overall conduct throughout the incarceration as '*Unsatisfactory*' with as many as *five* punishment tickets being issued to him mostly on account of involvement in fights with other inmates, showing his proclivity to commit offence, lend no, and/ or little, support to the applicant being given benefit of long incarceration of more than *eight years* and/ or *Article 21* of the Constitution of India. Under such circumstances, this Court does not find any justification to release the applicant on regular bail.

22. Be that as it may, taking into account that the trial is already at its fag end, with only *four* prosecution witnesses remain to be examined, in the



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considered opinion of this Court, the right of the applicant herein to speedy trial can be guaranteed by issuing appropriate directions for expeditious trial and prioritisation of witnesses, especially whence the Court is not inclined to release the accused on regular bail.

23. Thus, the learned Trial Court is requested to expedite the trial and positively conclude it within a period of *six months* from today, by giving/ conducting a day-to-day hearing to the proceedings before it in SC No.159/2018 arising out of FIR No.791/2017 dated 14.11.2017 registered at PS.: Sultan Puri, Delhi under *Sections 365/364A/302/201/120B/34* of the Indian Penal Code, 1860.

24. Accordingly, in view of the aforesaid discussions, the present bail application is dismissed in the aforesaid terms.

25. Needless to say, observations made on the merits of the matter, if any, are only for the purposes of deciding the present application and shall not be construed as expressions on merits of the matter.

26. A copy of this judgment be sent to the learned Principal District and Sessions Judge, Rohini Courts, North-West, Delhi for information and compliance.

SAURABH BANERJEE, J

MAY 05, 2026
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