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

% ***Date of Decision: 23rd November, 2026***

\# **CNR No. DLHC010360202026**

\+ BAIL APPLN. 3165/2026

PRAKASH CHAND .....Petitioner

Through: Ms. Sanya Kumar, Adv. (DHCLSC) with Mr. Chiranjeev Singh Marwaha, Advocates
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versus

STATE OF NCT OF DELHI .....Respondent

Through: Insp. Hansa Ram, PS Prasant Vihar
Ms. Anushkaa Arora, Standing Counsel, DHCLSC along with Mr. Shivansh Tyagi, Advocate for LRs of Deceased
Mob: 9355333663, 011-41414498
Email: legal@abalawoffice.in

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J. *(Oral):*

1. The present application has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), seeking grant of regular bail to the petitioner, i.e., Prakash Chand @ Nepali, S/o Gaurakh Chand, in connection with the First Information Report ("FIR"), being *FIR No. 264/2022*, dated 18th March, 2022, registered at Police Station ("PS") Prashant

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Vihar, Rohini North, Delhi, under Sections 302/323 of the Indian Penal Code ("IPC").

2. The facts, culled out from the document on record, relevant for the adjudication of the present application, are as follows:

2.1. The present FIR was registered on 18th March, 2022, pursuant to the receipt of information *vide* Daily Dairy ("DD") bearing No. *41A* at PS Prashant Vihar, Delhi, from Dr. Baba Saheb Ambedkar Hospital ("BSA Hospital"), Rohini, Delhi.

2.2. By way of the aforesaid DD, the BSA Hospital informed about the admission of an injured person, i.e., Pravesh, *vide* Medico-Legal Case ("MLC") bearing No. *4145/2022,* wherein, the doctors declared him as brought dead, and opined the injury to be of assault/stabbing on the right side of the neck.

2.3. The post-mortem of the deceased was conducted *vide PM No. 185/2022* at the BSA Hospital, wherein, the cause of death was identified as haemorrhagic shock consequent upon injury to the neck, caused by a sharp-edged weapon/object.

2.4. The statement of the eye-witness, i.e., the complainant, Master Raj Kumar, aged about 16 (sixteen) years, i.e., was recorded, wherein, he stated that on 18th March, 2022, irked by the application of colour on him on the occasion of Holi, the petitioner smashed a beer bottle, lying on the street, against the wall, and struck the neck of the deceased with the sharp broken end of the said bottle.

2.5. The petitioner also injured Vipin and Vishal, aged about 14 (fourteen) and 17 (seventeen) years respectively, i.e., the friends of the complainant, who intervened to stop the scuffle between the petitioner and the deceased.

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2.6. The said injured witnesses, i.e., Vipin and Vishal, were medically examined and were found to have sustained simple injuries. Their statements under Section 164 of the Code of Criminal Procedure, 1973 ("CrPC"), were recorded, wherein, they corroborated the version of the complainant.

2.7. During the course of investigation, the site of the incident, i.e., near *Mangal Bazar Road, Vision Viklang & Purnavas Kendra, Razpur, Delhi,* was inspected, and the exhibits were lifted and seized as per law. Upon identification by the complainant, the petitioner herein was apprehended.

2.8. After the conclusion of the investigation, and on the basis of the evidence collected, a Final Report/Charge Sheet dated 09th June, 2022, was filed by the Investigating Officer ("IO"), before the Trial Court, against the petitioner herein.

2.9. The petitioner's earlier application seeking grant of regular bail was dismissed by the Trial Court *vide* order dated 24th February, 2026.

3. The Sessions Case, being *SC 595/2022,* pertaining to the present FIR, is pending adjudication before the Court of Additional Sessions Judge ("ASJ") – 03, Rohini Courts, Delhi, and is presently at the stage of prosecution evidence.

4. As per the latest Nominal Roll dated 17th September, 2026, furnished by the Jail Authorities, the petitioner has been in custody since 18th March, 2022, i.e., for a period of 04 (four) years and 06 (six) months, as on 17th September, 2026.

5. In support of the present application, the case put forth by the petitioner is as under:

5.1. There has been a delay in conduct of the trial, and the petitioner has spent over 4.5 years in custody. The petitioner was arrested on 18th March,

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2022, and has been in judicial custody ever since, and there is no possibility of the trial ending in the near future.

5.2. The petitioner is a 27 (twenty-seven) year old young man, who has no criminal antecedents, and belongs to the lower strata of the Society.

5.3. The offence under Section 302 of the IPC is not made out against the petitioner, as it is the admitted case of the prosecution that the incident involved a sudden fight, without any premeditation or motive on the part of the petitioner.

5.4. The alleged recovery of the weapon of the offence, i.e., the broken head of the beer bottle, is *ex-facie* unreliable. Despite the extensive investigation carried out on 18th March, 2022, the crime team was unable to recover the beer bottle, and as per the Status Report filed on behalf of the prosecution, the same was recovered only subsequently from the MCD office, after the petitioner was taken to the site of the incident.

5.5. Furthermore, no fingerprints were lifted from the alleged murder weapon, which link the same to the petitioner, and therefore, the said recovery is likely to have been planted. Moreover, no forensic analysis has been carried out to ascertain whether the purported brown stains on the alleged murder weapon were of the blood of the deceased.

5.6. The prosecution has failed to file the supplementary Chargesheet and the Forensic Science Laboratory ("FSL") Report, till date.

5.7. The petitioner has been wrongly arraigned on the basis of mistaken identity, and in the absence of a Test Identification Parade ("TIP"), the identification of the petitioner in Court is unreliable.

5.8. None of the eye-witnesses knew the petitioner prior to the incident, and no TIP was conducted by the police. Thus, sole reliance has been placed on

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the dock identification, i.e., identification in Court during the examination of witnesses.

5.9. The circumstances surrounding the arrest of the petitioner are suspicious, as the FIR records the public beating the petitioner, but does not record his arrest from the spot. Further, no statements were taken from any independent witnesses or of the public. However, as per the Chargesheet, when Sub Inspector ("SI") Sanjay Dhaiya reached the spot, Head Constable ("HC") Rajpal had already sent the petitioner to the PS.

5.10. There are discrepancies in the accounts of the eye-witnesses regarding the arrest of the petitioner in their statements under Section 164 of the CrPC and their depositions before the Trial Court. The discrepancies are as under:

5.10.1. None of the eye-witnesses explain how the person apprehended, out of the 04-05 Nepali boys who ran from the spot, was the one who allegedly stabbed the deceased;

5.10.2. The eye-witnesses have not identified that the petitioner was even present among the said group of Nepali boys;

5.10.3. The eye-witnesses differ as to how the petitioner was apprehended, as on one hand it has been stated that the police apprehended him, while on the other hand, it has been stated that the public did so.

5.11. The matter before the Trial Court, is fixed for prosecution evidence; however, till date, only 12 (twelve) witnesses out of the total 28 (twenty-eight) witnesses have been examined. Moreover, *PW-12* was examined on 08th May, 2025, and the prosecution has not examined any witness for the past one year.

6. The case of the prosecution, as emerging from the Status Report dated 16th September, 2026, is as follows:

6.1. As per the post-mortem report, the cause of death was haemorrhagic

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shock consequent upon injury on the neck, and the said injury was ante-mortem and fresh before death, caused by a sharp-edged weapon/object. Further, the doctors opined that the aforesaid injury could have been caused by the weapon examined, i.e., the broken beer bottle.

6.2. The trial is at a material stage, as out of the total of 29 (twenty-nine) prosecution witnesses, only 14 (fourteen) have been examined so far.

6.3. The allegations against the petitioner are grave and serious, involving the offence of murder, and the case of the prosecution is supported by ocular evidence, medical evidence and the recovery of alleged weapon of offence.

6.4. The petitioner is a resident of Nepal and his family does not reside in India. Therefore, there is a reasonable apprehension that, if released on bail, the petitioner may attempt to influence, intimidate, or otherwise interfere with the witnesses, as a substantial number of witnesses are yet to be examined.

7. Learned counsel appearing for the Legal Representatives ("LRs") of the deceased has placed on record a written synopsis dated 27th September, 2026, on their behalf, their case emerging wherefrom, is as follows:

7.1. The case of the prosecution is supported by various eye-witnesses/injured witnesses, and the material witnesses have remained consistent in attributing the alleged offence to the petitioner herein.

7.2. During the course of investigation, the petitioner was taken to the site of the incident, and at his instance, the front portion of the beer bottle, allegedly used in the commission of the offence, was recovered and seized. The recovered weapon was subjected to medical opinion, wherein, it was opined that the injury mentioned in the post-mortem report could have been caused by such weapon.

7.3. The grounds and contentions raised by the petitioner call for

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appreciation and re-appreciation of the statements of the eye-witnesses/injured witnesses, the medical evidence, the recovery proceedings, and other material forming part of the Trial Court Record, which cannot be done at the stage of bail.

7.4. The earlier application of the petitioner seeking regular bail was rejected by the Trial Court after considering the material on record, wherein, it was held that the allegations are of the gravest kind, and there are multiple eye-witnesses to the incident in support of the case of the prosecution.

7.5. Furthermore, there has been no material change in the circumstances since the dismissal of the earlier bail application.

8. Having heard learned counsel appearing for the parties, this Court notes that the present case involves allegations of the murder of an 18 (eighteen) year old, and of causing injuries to other persons.

9. In this regard, this Court takes note of the observations made by the Supreme Court in the case titled as ***X Versus State of Rajasthan and Another.***, ***2024 SCC OnLine SC 3539***, wherein, it has been held that ordinarily, in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court, be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused. The relevant excerpts of the said order are as under:

> *"xxx xxx xxx*
>
> ***14. Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused***.

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> ***15.*** *Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.*
>
> ***16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

10. Further, in the case of ***State of Karnataka Versus Sri Darshan and Others, (2026) 8 SCC 223***, the Supreme Court has laid down the following considerations, relevant while exercising discretion to grant or deny bail:

> *"xxx xxx xxx*
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> ***29.2.*** *In Prahlad Singh Bhati v. State (NCT of Delhi) [Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280 : 2001 SCC (Cri) 674] , this Court laid down guiding principles:*
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> ***"(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails conviction and the nature of evidence in support of the accusations.***
>
> ***(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.***

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(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

xxx xxx xxx

35.1. It is well settled that the mere filing of a charge-sheet does not confer an indefeasible right to bail. Likewise, the mere prospect of a prolonged trial cannot, by itself, outweigh the gravity of the offence, the incriminating material gathered during investigation, or the likelihood of tampering with witnesses.

35.2. *In Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 2 SCC 42 : 2005 SCC (Cri) 489] , this Court categorically held that: (SCC p. 48, para 8)*

"8. ... the High Court could not have allowed the bail application on the sole ground of delay in the conclusion of the trial without taking into consideration the allegation made by the prosecution in regard to the existence of prima facie case, gravity of offence, and the allegation of tampering with the witness by threat and inducement when on bail. ... non-consideration of the same and grant of bail solely on the ground of long incarceration vitiated the order..."

xxx xxx xxx"

(Emphasis Supplied)

11. In view of the foregoing, this Court notes that the allegations against the petitioner herein are of the gravest nature, i.e., the offence of murder, which is punishable with death or imprisonment for life.

12. It is to be noted that the trial is at the stage of prosecution evidence, and only 14 (fourteen) out of the total 29 (twenty-nine) prosecution witnesses have

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been examined so far.

13. This Court also takes note of the submission made on behalf of the prosecution that the petitioner is a resident of Nepal, and his family does not reside in India. Therefore, there is a reasonable apprehension of the petitioner being a flight risk, as well as of his interfering with the witnesses, a substantial number of whom are yet to be examined.

14. Considering the facts and circumstances of the present case and the submissions made before this Court, no ground is made out for the grant of bail at this stage.

15. It is clarified that nothing contained herein shall be construed as an expression on the merits of the case.

16. Accordingly, the present application is dismissed.

MINI PUSHKARNA, J

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