



2026:DHC:3586



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

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*Date of Decision: 28.04.2026*+ **BAIL APPLN. 721/2026**

MOHD. SHAMSHER ANSARI

.....Petitioner

Through: Ms. Medhavi Tyagi, Mr. Devender  
Kumar and Mr. Utsav Kumar,  
Advocate

versus

STATE OF NCT DELHI &amp; ANR.

.....Respondents

Through: Mr. Sanjeev Sabharwal, APP for State  
with Inspector Kaushlesh Kumar**CORAM: JUSTICE GIRISH KATHPALIA****J U D G M E N T (ORAL)**

1. The accused/applicant seeks regular bail in case FIR No. 634/2022 of Police Station Swaroop Nagar for offence under Section 302/34 IPC & 27 Arms Act.

1.1 Despite last order, learned counsel for accused/applicant did not place on record a copy of the chief-examination of PW1 Prince Kumar. As recorded in last order, the accused/applicant had filed only a part of cross-examination of PW1. However, in terms with last order, State filed detailed status report dated nil vide Index dated 04.04.2026.



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1.2 I have heard learned counsel for accused/applicant and learned APP for State assisted by IO/Inspector Kaushlesh Kumar. I have also heard the complainant *de facto* Prince Kumar, who has appeared today.

2. Broadly speaking, prosecution case is as follows. On the night intervening 22.10.2022 and 23.10.2022, a PCR call was received at PS Swaroop Nagar from Kapil Hospital, thereby informing that a patient namely, Dheeraj had been brought dead after being shot by someone. The IO reached the hospital and obtained MLC of the deceased bearing observation that there was gunshot injury on left side of the chest with tattooing around the wound, but without any exit wound. In the hospital itself, the IO met the eyewitness Prince Kumar, who narrated the incident and took the IO to the spot of occurrence. The eyewitness Prince Kumar stated that on the ill-fated night, he along with his cousin (*the deceased*) and his friends Shubham and Rohit were sitting at the spot, consuming liquor; that at about 08:15pm, three persons arrived on a motorcycle to whom the deceased requested for a cigarette and their refusal led to verbal altercation between the two groups which culminated into a scuffle; that during the altercation, one of the motorcycle borne persons fired the fatal gunshot at the deceased and all of them fled the spot. After analysis of CCTV footages of the locality, three persons including the present accused/applicant were found fleeing from the spot. One of those fleeing persons was identified as Lokesh by Sachin, an acquaintance of the deceased whose statement under Section 161 CrPC was recorded. Another witness namely, Tarun also identified Lokesh in the CCTV footage. On the basis of technical



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surveillance, co-accused Hemant Gupta and ultimately, on his disclosure, the present accused/applicant were arrested and the weapon of offence was recovered from the present accused/applicant.

3. Learned counsel for accused/applicant contends that he is in jail since 10.11.2022 without any legally admissible evidence against him. It is submitted by learned counsel that the alleged shooting occurred after 08:00pm in the month of October and it is not possible to clearly identify the actual shooter. Further, learned counsel for accused/applicant also contends that there is no allegation that the fatal shot was fired by the accused/applicant. It is also submitted that prosecution evidence would take very long time to conclude and the accused/applicant cannot be kept in jail endlessly.

4. Learned APP for State opposes the bail application on the ground that the offence is a serious one. It is contended that from dead body of the deceased, the fatal bullet was recovered and the same has been sent to FSL. Learned APP for State submits that the pistol used in the killing was recovered at the instance of the accused/applicant from the area of PS Samaypur Badli, where FIR No. 782/2022 for offence under Section 25 Arms Act was registered against the present accused/applicant.

5. The complainant *de facto* submits that even the motorcycle on which the assailants came was recovered from the accused/applicant. It is further submitted by him that two more eyewitnesses have been partly chief-examined, so grant of bail would lead to pressure on them.



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6. With regard to the two prosecution witnesses who have been partly chief-examined in trial, learned counsel for accused/applicant submits that one of them namely, Shubham categorically stated in his testimony as PW2 before the trial court that he could not identify any of the assailants as it was dark at the spot and his spectacles had fallen on the ground.

7. The evidence collected against the present accused/applicant is that he was named in the confessional statement of co-accused Hemant, which confessional statement was recorded in police custody; and the pistol allegedly used in the offence was allegedly recovered at his instance.

8. Admittedly, the alleged assailants were not known to Prince Kumar or Rohit or Shubham. All these three alleged eyewitnesses identified the accused/applicant for the first time during trial. So far as identity of the accused/applicant is concerned, PW Shubham could not identify him and explained that he could not do so because it was dark at the time of the alleged incident, and PW Rohit stated that the fatal bullet was fired by co-accused Lokesh and not by the present accused/applicant. According to Prince Kumar and Rohit, role of the accused/applicant is that he was driving the motorcycle and it is co-accused Lokesh who suddenly took out the pistol and fired at the deceased.

9. So far as the alleged recovery of pistol is concerned, the IO Inspector Kaushlesh Kumar submits that the pistol was recovered by the police of PS Samaypur Badli and the Recovery Memo is not on record. The IO is not even aware as to from where the pistol was recovered. Neither the learned



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APP for State nor the complainant *de facto* are able to throw light on this. Even the list of documents attached with the chargesheet does not mention the Recovery Memo of the pistol. So, it cannot be ascertained as to whether the pistol was recovered from a place which was in exclusive knowledge of the accused/applicant.

10. On last date, the IO/Inspector Gillu Ram had appeared but did not bring the complete record and it was recorded after discussion that apparently the IO was not much interested in contesting this bail application. Even copy of the said order dated 17.03.2026 was sent to the concerned DCP to ensure clear instructions to the learned prosecutor. Despite that, neither the IO Inspector Gilu Ram nor the SHO has appeared nor Inspector Kaushlesh is able to show the Recovery Memo of the pistol. Further, the incident being of October 2022, till date, even FSL report to match the allegedly recovered pistol with the bullet allegedly retrieved from the dead body has not been obtained by the IO. In such backdrop of lethargy, if not deliberate abstinence, on the part of the investigating machinery, the accused/applicant cannot be kept in jail in perpetuity.

11. Ultimately, the only evidence against the accused/applicant is the confessional statement of accused Hemant, recorded when he was in police custody.

12. In view of the aforesaid, I do not find any reason to deprive further liberty to the accused/applicant. Therefore, the bail application is allowed and accused/applicant is directed to be released on bail subject to his



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furnishing a personal bond in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the Trial Court.

13. Nothing observed in this order shall have bearing on final outcome of the trial.

14. A copy of this order be immediately transmitted to the concerned Jail Superintendent for informing the accused/applicant.

15. The accused/applicant shall not contact any of the prosecution witnesses in any manner whatsoever.

**GIRISH KATHPALIA  
(JUDGE)**

**APRIL 28, 2026/as**