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

Date of Decision: 15.07.2025

+ BAIL APPLN. 4238/2024

RAJ SAHA @ TARZEN

.....Petitioner

Through: Mr. Pratyush Prasanna and Ms.
Saumya Yadav, Advs.

versus

STATE GOVT.OF NCT OF DELHI

.....Respondent

Through: Mr. Satish Kumar, APP for
State.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

SHALINDER KAUR, J (ORAL)

1. By way of the present petition under Section 483 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner seeks the grant of Regular Bail in FIR No. 10/2018 dated 27.03.2018 for offence under Section 307 of the Indian Penal Code, 1860 (IPC) registered at Police Station North Avenue, New Delhi.

2. It is the case of the prosecution that on 27.03.2018, information was received at Police Station North Avenue *vide* DD No. 6A that an unknown injured person was lying on the footpath adjoining Block 18-32, Government Servant Residential Colony, Pandit Pant Marg, New Delhi. Upon receipt of the said information, IO/SI Kedar Yadav reached the spot, where one unknown male individual was found lying



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on the footpath in an injured condition and a considerable amount of blood was found on the footpath. Thereupon, the victim was shifted to Dr. RML Hospital *vide* MLC No. E/67193/18. However, he was declared unfit for statement and no eyewitness could be located at that point in time. Accordingly, on the basis of the said information and MLC, abovesaid FIR was registered.

3. During the investigation, the injured was identified as one Gajender Singh. On 25.04.2018, during the course of treatment, the said injured succumbed to his injuries at Dr. RML Hospital, pursuant to which Section 302 of the IPC was added to the abovesaid case. The post-mortem examination of the deceased was conducted at Dr. RML Hospital *vide* PM No. 310/18, wherein the cause of death was opined to be the ‘cumulative effect of head injury and neck injury, which is sufficient to cause death in the ordinary course of nature.’

4. The statement of an eyewitness, namely Mithai Parshad, was recorded. He stated that on the intervening night of 26/27.03.2018, he was sleeping on the opposite side of the footpath and at around 2:30 to 3:00 A.M., he heard sounds of a quarrel, specifically, "*Mar chikne ise mar de... chal Raj ab yahan se jaldi nikal le.*" Similarly, Ganesh Bahadur, who was posted as a security guard at the gate of Government Quarters, Block 18-23, Pandit Pant Marg, stated that at the said time and date, while on duty, he too heard the same quarrelling voices, i.e., "*Mar chikne ise mar de... chal Raj ab yahan se jaldi nikal le.*"



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5. On 15.04.2018, the petitioner was arrested by the staff of Police Station Mandir Marg in connection with FIR No. 22/2018, under Section 302 of the IPC at Police Station Mandir Marg. The petitioner got his disclosure statement recorded, wherein he disclosed that on the intervening night of 26/27.03.2018, he was sleeping along with his friend Chandan Jha @ Vicky @ Chikna on the footpath adjoining Government Quarters, Block 18-23, Pandit Pant Marg. In the meantime, one person, who appeared to be under the influence of alcohol, came there and started abusing them over the issue of sleeping space. Consequently, both of them assaulted the said person, and his friend Vicky is alleged to have slit the neck of the said individual with a surgical blade. Upon noticing blood oozing from his neck, they took two mobile phones from the injured's pocket and fled from the spot.

6. During the course of investigation, the petitioner was identified by a witness, namely Pintu @ Dheeraj, who runs a shop at Pandit Pant Marg. Pintu @ Dheeraj stated that he had seen the accused Raj Saha along with co-accused Chandan Jha @ Vicky @ Chikna and the deceased Gajender at the place of occurrence prior to the incident. Subsequently, another eyewitness to the incident, namely Baba @ Arun Kumar, was also found present at the scene of crime. His statement was recorded under Section 161 of the CrPC, wherein he stated that on the intervening night of 26/27.03.2018, he too was sleeping on the footpath and had witnessed the petitioner and Chandan Jha @ Vicky @ Chikna quarrelling with Gajender and thereafter assaulting him with a blade.



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7. Upon conclusion of the investigation, the Charge-Sheet was filed against the petitioner. Efforts were made to apprehend the co-accused Chandan Jha @ Vicky @ Chikna; however, he deliberately evaded arrest. Accordingly, *vide* order dated 12.02.2019, he was declared a Proclaimed Offender.

8. On 12.05.2019, the co-accused Chandan Jha @ Vicky @ Chikna was arrested in the present case. During the course of police custody remand, the weapon of offence, i.e., a surgical blade, was recovered at the instance of the said co-accused. A subsequent opinion regarding the said weapon was sought from the Forensic Department of Dr. RML Hospital. It was opined therein that 'the possibility of the injuries mentioned in the MLC being caused by this weapon or a similar weapon cannot be ruled out.'

9. The bail application filed by the petitioner before the learned Trial Court was dismissed *vide* order dated 21.10.2024, which has led to the filing of the present petition.

10. The learned counsel for the petitioner submits that the testimony of the material witnesses examined on behalf of the prosecution have been placed on record, to which a short reply about their testimony has been filed on behalf of the petitioner.

11. While praying for the grant of bail, the learned counsel submits that the petitioner has been in judicial custody for over seven years, since his arrest on 15.04.2018. Moreover, the petitioner was arrested after almost 15 days of the alleged date of the offence. Furthermore, out of the total 43 prosecution witnesses, 3 have been dropped, and only 19 witnesses have been examined over a span of more than six



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years and ten months. He submits that even though only the official witnesses, i.e., the police officials and the doctor, remain to be examined, it would still take considerable time to conclude trial and the petitioner is already suffering a long period of incarceration.

12. He submits that the petitioner was apprehended solely on the basis of his disclosure statement and there is not a single eyewitness, who has witnessed the crime alleged to have been committed by the petitioner. The case of the prosecution, the learned counsel submits, rests upon the statements of certain witnesses, who claimed to have heard whispers mentioning the names of the accused persons, however, none of them has witnessed the occurrence of the alleged crime or the presence of the petitioner at the spot.

13. The learned counsel submits that prosecution has failed to prove the recovery of the mobile phone at the instance of the petitioner as the witness to the recovery of the mobile phone of the deceased has been dropped from the list of witnesses, being untraceable. Moreover, he submits that many of the prosecution witnesses have either been dropped by the prosecution or have turned hostile.

14. Lastly, learned counsel submits that the petitioner's minor daughter needs his care and support after the death of his mother and the petitioner's father being aged is not in a position to take care of the minor daughter of the petitioner, as his wife has remarried.

15. The learned APP for the State, while seeking dismissal of the bail application, submits that the petitioner is involved in committing a heinous crime of having murdered, along with his co-accused, an



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unknown person, on a petty issue of using a space for sleeping over the footpath.

16. He further submits that some of the prosecution witnesses are not traceable and thus were dropped, however the other material witnesses have supported the case of the prosecution.

17. He submits that the prosecution case is at the fag end, as only the police witnesses and the doctor remain to be examined. He further submits that the petitioner is also involved in another murder case during the same period bearing FIR No. 22/2018 registered under Section 302 of the IPC at Police Station Mandir Marg, and that the mobile phone of the deceased was recovered at the instance of the petitioner.

18. Furthermore, intimation of the hearing of the present bail application before this Court was sent to the brother of the deceased through IO, who had appeared in person and opposed the present application.

19. Having heard the learned counsel for the petitioner, the learned APP for the State as well as the brother of the deceased, and upon perusal of the record, it emerges that it is alleged that the petitioner along with the co-accused were involved in inflicting injuries to the victim, who later succumbed to his injuries and the trial is currently underway. As per the status report, witnesses PW-1 to PW-6 and PW-9 have been examined. Admittedly, PW-9 has not supported the case of the prosecution. However, the other witnesses have supported the case of the prosecution.



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20. Although the petitioner has been in custody for more than 7 years in the present case, he has also been convicted in a similar case arising out of FIR No. 22/2018, which was initially registered at Police Station Mandir Marg under Section 302 of the IPC, however, upon conclusion of trial, the petitioner was convicted under Section 304 of the IPC.

21. As per the nominal roll of the petitioner, in FIR No. 22/2018, petitioner was sentenced to the custody period of 6 years, 8 months, and 5 days, which was already undergone by him and a fine of ₹20,000/- was imposed upon him.

22. In view of the above, specifically that petitioner has been convicted for a similar offence committed during the same period when he was arrested for commission of the present crime. The trial is underway and 19 prosecution witnesses have already been examined. As per learned APP, 03 witnesses have been dropped and only police officials and doctors remain to be examined. Therefore, this Court is not inclined to release the petitioner on regular bail. Accordingly, the present petition is dismissed.

SHALINDER KAUR, J

JULY 15, 2025/SK