



2026:DHC:101-DB



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

Date of decision: 07th January, 2026

+ CRL.A. 674/2024

PAWAN KUMAR GUPTAAppellant

Through: Ms. Inderjeet Sidhu, Advocate
with DHCLSC, Mr. Lalit
Choudhary, Ms. Sanskriti
Mishra, Advocates.

versus

STATE NCT OF DELHIRespondent

Through: Mr. Aman Usman, APP with
Mr. Sanjay Lao, Standing
Counsel.
Insp. Amit Kumar, PS-
Sadarpur.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

RAVINDER DUDEJA, J. (ORAL)

CRL.M. (BAIL) 1265/2024 in CRL.A. 674/2024

1. The present application has been filed under Section 430 and Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 [“BNSS”], seeking suspension of sentence and release of the appellant on bail during the pendency of the appeal.

2. The captioned appeal has been preferred by the appellant, seeking setting aside of Judgment of Conviction dated 20.03.2024 and Order on Sentence dated 23.04.2024, passed by the learned Trial Court in Sessions Case No. 326/2017 in FIR No. 94/2017, registered



at PS Badarpur, whereby, the appellant has been held guilty for the offence under Section 302/379 of the Indian Penal Code, 1860 [“IPC”] and has been sentenced, *inter alia*, to undergo rigorous imprisonment for life with fine of Rs. 50,000/- for the offence under Section 302 IPC, and in default of payment of fine, he shall further undergo simple imprisonment for a period of six months. He has been further sentenced to undergo simple imprisonment for three years and payment of fine of Rs. 5000/- for the offence under Section 379 IPC and, in default of the payment of fine, he shall undergo one month simple imprisonment.

3. It is the case of the prosecution that about one month before the incident, the appellant, who was the tenant of the complainant, that is, the father of the victim, had a quarrel with the victim over some issue and had threatened to kill the victim in case he asked him to vacate the room or settle his dues. On 01.03.2017, while the victim was sleeping in his under construction house, on getting a chance, the appellant killed him and thereafter fled with the motorcycle and mobile phone of the victim. The stolen mobile phone of the victim was later recovered from PW-Sanjay Babu, to whom the appellant had sold the same for an amount of Rs. 2000/-.

4. The learned counsel for the appellant submits that the conviction is based on conjectures and surmises and that the learned Trial Court failed to appreciate that the present case is based on circumstantial evidence, with none of the circumstances having been conclusively proved or forming a complete chain.

5. It is contended that there is no eyewitness to the incident and



that the so-called “last seen” witness, that is, PW-4 is an interested witness whose testimony suffers from material contradictions.

6. It is further argued that there was neither any recovery of weapon of offence from the appellant, nor was the motorcycle and phone of the deceased recovered from the appellant’s possession.

7. It is contended that the prosecution case is based primarily on the complainant’s testimony which is untrustworthy and, in any case, shall be examined in detail at the final hearing of the appeal.

8. It is also submitted that no labourer working at the construction site has been examined by the prosecution to ensure if anyone of them had seen the appellant sitting with the deceased and playing cards. It is argued that PW-4, the alleged witness to have last seen the victim, is a planted witness and in any case, he allegedly saw the victim and the appellant together at 6.00 pm, while the information regarding the murder was received at 11.00 pm, and therefore, the possibility of someone else coming to the house and committing the murder, cannot be ruled out.

9. In compliance of the previous Order dated 06.11.2025 of this Court, it is submitted that an affidavit detailing the past criminal involvements of the appellant has been placed on record which suggests that the appellant was previously involved in two cases under the Narcotic Drugs and Psychotropic Substances Act, 1985 [“**NDPS Act**”] and has already served his sentence. Regarding the two other pending cases as reflected in the Nominal Roll, it is submitted that the appellant has no knowledge about the existence of such cases and he has never been summoned by any Court in those cases.



10. It is stated that the appellant has undergone almost 9 years of sentence and his appeal is not likely to be heard in the near future. The learned counsel further states that the appellant is willing to abide by all conditions imposed by the Court and prays that his sentence may be suspended pending appeal.

11. *Per contra*, the learned APP for the State opposes the application and submits that the offence is of grave nature and that the appellant was convicted after a fair trial and proper appreciation of evidence.

12. It is argued that even though there was no recovery of the motorcycle of the deceased, the Registration Certificate of the motorcycle was recovered at the instance of the appellant. It is contended that the learned Trial Court passed a detailed and reasoned Judgment based on the testimony of the complainant. It is further submitted that the sentence prescribed under Section 302 IPC is life imprisonment, and the appellant has merely undergone less than 9 years of his total sentence. The appellant does not have clean antecedents as he has also been involved in other criminal cases, and there are no exceptional circumstances warranting suspension of sentence.

13. This Court has considered the rival submissions and perused the record.

14. At the stage of considering an application for suspension of sentence, the Court is not required to undertake a detailed re-appreciation of evidence, but is expected to assess whether a *prima facie* case for suspension is made out, keeping in view the evidence,



the gravity of offence, the period of custody undergone, and the likelihood of early hearing of the appeal.

15. The contentions of the appellant, including the applicability of the “last seen” theory, circumstantial evidence, and non-recovery of weapon of offence, are arguable points which require consideration at the stage of final hearing of the appeal.

16. It is also not in dispute that the appellant has undergone incarceration for a substantial period of about 09 years. Keeping in view the nature of the Board, there is little likelihood of the appeal being taken up for final hearing in the near future and, therefore, continued incarceration of the appellant during the pendency of the appeal would not be justified.

17. Considering the overall facts, we are of the view that this is a fit case for suspension of sentence.

18. Accordingly, the application is allowed. The sentence awarded to the appellant is hereby suspended on his furnishing a personal bond in the sum of Rs. 30,000/- with one surety of the like amount to the satisfaction of learned Trial Court and further subject to the following conditions:

- (i) the appellant shall not leave the country without prior permission of the learned Trial Court and shall surrender his passport, if any, before the Trial Court. In case he does not possess any passport, he shall state so before the Trial Court by way of an affidavit and shall not apply for one without the permission of the learned Trial Court;
- (ii) the appellant shall provide his residential address, contact



details and mobile number to the learned Trial Court. In case of any change of his residential address and other contact details, the appellant shall immediately intimate the Trial Court by way of an affidavit as well as to the concerned SHO/IO so that as and when the appeal is taken up for hearing, he is duly intimated. Such contact details shall also be, in the same manner, furnished before the Registry of this Court and would form part of the appeal-record.

(iii) the appellant shall not indulge in any criminal activity during the period of suspension of sentence and shall not communicate with or shall not come in contact with any of the family members of the victim/deceased, directly or indirectly.

18. Needless to state that any observations made herein are purely for the purposes of deciding the question of suspension of sentence and shall not be construed as an expression of opinion on the merits of the case.

19. The application is accordingly disposed of in the aforesaid terms.

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20. List in due course.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

JANUARY 7, 2026/AK/RM