



2025:DHC:7852



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

*Reserved on: 27.08.2025*  
*Date of Decision: 09.09.2025*

+ BAIL APPLN. 3909/2024

NIKHIL @ SONU .....Petitioner

Through: Mr. Saurabh Srivastava, Adv.

versus

THE STATE GOVT. OF NCT OF DELHI .....Respondent  
Through: Mr. Raghuinder Verma, APP  
for State with Mr. Aditya Vikram Singh,  
Adv.  
Ms. Jahanvi Worah, Adv. for Complainant

+ BAIL APPLN. 4209/2024

PAWAN @ BANDAR .....Petitioner

Through: Mr. Pradeep Rana, Mr. Gagan  
Bhatnagar, Mr. Tushar Rohmetra, Ms. Riya  
Rana, Ms. Narender Rana and Mr. Gaurav  
Vats, Advs.  
Ms. Tara Narula and Ms. Shivanjali  
Bhalerao, Advs. for the victim.

versus

THE STATE GOVT OF NCT OF DELHI .....Respondent  
Through: Mr. Raghuinder Verma, APP  
for State with Mr. Aditya Vikram Singh,  
Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**J U D G M E N T**

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1. The present judgment disposes of two connected applications seeking regular bail filed by the petitioners, Pawan @ Bandar (Bail Application 4209/2024) and Nikhil @ Sonu (Bail Application 3909/2024). Both petitions arise out of FIR No. 295/2022 dated 26.02.2022 registered at Police Station Paschim Vihar West, Delhi, for offences under Sections 302/34 of the Indian Penal Code, 1860<sup>1</sup> and Sections 25/27 of the Arms Act, 1959 in the case of Pawan @ Bandar and offences under Sections 302/212/34 of the IPC in the case of Nikhil @ Sonu.
2. The case of the prosecution, as set out in the FIR and the chargesheet, is that on 26.02.2022 at about 1:15 a.m., a call was received at Sanjay Gandhi Memorial Hospital, Mangolpuri, that one Sanjay, had been brought in an unconscious condition. Shortly thereafter, information was conveyed that the said individual had died during treatment. On the basis of this information, FIR No. 295/2022 under Section 302 of the IPC came to be registered.
3. The medico-legal report of the deceased recorded a history of physical assault by a sharp object. Post-mortem examination opined the cause of death as “hemorrhagic shock consequent to abdominal injury,” noting that all injuries were ante-mortem in nature.
4. During investigation, the police recorded the statements of two persons, namely Sagar (PW-3) and Vijay (PW-4), who had taken the deceased to the hospital. Both were cited as eye-witnesses to the incident. Their statements under Section 161 of the Code of Criminal Procedure, 1973<sup>2</sup> implicated the accused persons.

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<sup>1</sup> hereinafter “IPC”

<sup>2</sup> hereinafter “CrPC”



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5. The investigation further revealed that there existed animosity between the deceased Sanjay and accused Pawan @ Bandar on account of differences relating to a common acquaintance. On 25.02.2022, deceased Sanjay was allegedly called to Udyog Nagar, Peeragarhi, by accused Pawan @ Bandar using the phone of PW-3. It is alleged that the deceased reached the jhuggi at Udyog Nagar where Pawan @ Bandar, Nikhil @ Sonu, and others were present. After some time, an altercation ensued. At that stage, Nikhil @ Sonu is alleged to have caught hold of the deceased while Pawan @ Bandar inflicted knife blows upon him.

6. The investigation records that both accused fled the spot on a motorcycle. During further investigation, accused Pawan @ Bandar and Nikhil @ Sonu were arrested on 26.02.2022. A knife alleged to be the weapon of offence was recovered at the instance of Pawan @ Bandar, and the motorcycle allegedly used to flee was recovered at the instance of Nikhil @ Sonu. Both are in judicial custody since the date of their arrest.

7. The chargesheet in the case was filed on 24.05.2022, and charges were framed on 21.02.2023. PW-3 Sagar and PW-4 Vijay, both cited as eye-witnesses, have since been examined before the learned Trial Court and did not support the prosecution case in material particulars, turning hostile.

8. The petitioners moved applications for regular bail before the learned Additional Sessions Judge, District West, Tis Hazari Courts, Delhi. By separate orders dated 03.10.2024 (in the case of Pawan @ Bandar) and 07.10.2024 (in the case of Nikhil @ Sonu), the said applications were dismissed. Aggrieved thereby, the present petitions have been filed.



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### ***Submissions on behalf of the petitioners***

**9.** Mr. Pradeep Rana, learned counsel appearing on behalf of Pawan @ Bandar along with Mr. Saurabh Srivastava, learned counsel appearing on behalf of Nikhil @ Sonu, submit that the present case rests entirely on weak and unreliable evidence, and that the petitioner has been falsely implicated. It is urged that the prosecution's star witnesses, namely Sagar (PW-3) and Vijay (PW-4), who were cited as eye-witnesses to the occurrence, have been examined before the learned Trial Court and have resiled from their earlier statements under Section 161 of the CrPC. It is contended that with both key witnesses turning hostile, there remains no direct eye-witness linking the petitioners with the incident.

**10.** Learned counsel further submits that the only material attributed to petitioner Pawan @ Bandar is an alleged disclosure statement and recovery of a knife, which the prosecution asserts was recovered from his residence. It is argued that this assertion is belied by the testimony of PW-3 and PW-4 when examined before the learned Trial Court. Both witnesses denied the suggestion put forward by prosecution that the accused initially dropped the knife and later picked it up before fleeing on a motorcycle with co-accused Nikhil @ Sonu.

**11.** It is also submitted that PW-3 was further deposed, that on the same day of the incident he was taken to the spot by the police, and a knife was recovered from the spot itself. He denied the suggestion that the knife was recovered at the instance of Pawan @ Bandar from his house. He also stated that he was not a witness to any recovery memo of the knife. When shown the knife in court, he categorically stated



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that he had not seen the incident and therefore could not say whether the said knife was used to cause injury to the deceased Sanjay. He further failed to identify the knife as the weapon of offence. Learned counsel emphasises that this divergence in the prosecution story, between the alleged recovery from the house of Pawan @ Bandar and the testimony of the eye-witnesses suggesting recovery from the spot, casts serious doubt on the veracity of the recovery itself. It is urged that in the absence of independent corroboration from the eye-witnesses, the alleged recovery cannot form the sole basis for the petitioners' continued incarceration. Learned counsel emphasised that even though the knife was the weapon of offence which led to the death of the deceased, there is no proof or testimony which establishes that the petitioners used the said knife.

**12.** Learned counsel also addressed the submission of the prosecution regarding the recovery of clothes allegedly worn by the petitioners at the time of the incident, which were found to have blood stains. The prosecution has relied upon the FSL report which indicates that the blood stains on these clothes matched the blood and DNA of the deceased. It is submitted that this circumstance too has been explained by PW-3 and PW-4 in their testimony. Both witnesses stated that while they were carrying the injured Sanjay to the hospital, blood came into contact not only with their own clothes but also with the clothes of the petitioners, who were assisting in the process. It is in this manner, as per their evidence, that the clothes of the petitioners came to be blood-stained. Learned counsel accordingly submits that this explanation, coming from the prosecution's own cited witnesses, completely dilutes the evidentiary value of the alleged recovery of blood-stained clothes.



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**13.** As regards petitioner Nikhil @ Sonu, learned counsel appearing on his behalf adopts similar submissions, contending that the role assigned to him is merely of “catching hold” of the deceased, and that the recovery attributed to him is only of a motorcycle alleged to have been used for fleeing the spot. It is urged that such a role, even if assumed to be correct, does not attract the rigour of Section 302 of the IPC in the absence of credible supporting evidence, particularly when the eye-witnesses have not supported the prosecution case.

**14.** Learned counsel for both petitioners submit that the petitioners have been in judicial custody since 26.02.2022. Although the chargesheet was filed in May 2022 and charges were framed in February 2023, out of 31 prosecution witnesses cited, only 10 have been examined till date. With the principal eye-witnesses having already turned hostile, there is no justification for the petitioners’ continued detention pending the long-drawn trial.

**15.** In law, learned counsel submits that while this Court does not conduct a mini-trial at the bail stage, a limited *prima facie* appraisal is permissible where the prosecution case appears enfeebled by material developments such as hostile eye-witnesses; and that “bail is the rule and jail an exception”, particularly where incarceration has already been lengthy and expedition of trial is uncertain. In aid of these propositions, reliance is placed as under:

- (a) Learned counsel submits that where the star witness(es) turn hostile and the prosecution narrative is materially dented, a court considering bail may take a bird’s-eye, *prima facie* view of the testimony and surrounding circumstances, without embarking upon a threadbare analysis. In this regard, reliance



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is placed on *Sumer Singh v. State*<sup>3</sup>, and on decisions where bail was granted post-hostility of key witnesses, including *Rohit v. State (Govt. of NCT)*<sup>4</sup>; *Deepak @ Deepu v. State*<sup>5</sup>; and *Akash Kumar v. State (GNCT of Delhi)*<sup>6</sup>.

(b) It is further submitted that continued detention despite slow trial progress and partial examination of witnesses attracts the settled principle that liberty under Article 21 of the Constitution demands enlargement on bail when timely trial is not in sight. In this regard, reliance is placed on *Rahul @ Sonu v. State (Govt. of NCT of Delhi)*<sup>7</sup>, *Shubham @ Rinku v. Govt. of NCT of Delhi*<sup>8</sup>, and *Sheikh Javed Iqbal v. State of U.P.*<sup>9</sup>, with reference to *Union of India v. K.A. Najeeb*<sup>10</sup> explained therein.

(c) Learned counsel submits that gravity of the offence, though relevant, cannot be the sole ground to deny bail in the face of weakening evidence and prolonged custody; courts lean in favour of liberty where overall circumstances so warrant, particularly when there is no shown misuse of interim liberty or threat to witnesses. In this regard, reliance is placed on *Karan Verma v. State of NCT of Delhi*<sup>11</sup>, *Seema Singh v. CBI & Anr.*<sup>12</sup>.

### ***Submissions on behalf of the respondents***

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<sup>3</sup> Bail Application 750/2007

<sup>4</sup> Bail Application 878/2016

<sup>5</sup> Bail Application 4179/2024

<sup>6</sup> Bail Application 3793/2023

<sup>7</sup> Bail Application 2411/2021

<sup>8</sup> Bail Application 2935/2024

<sup>9</sup> Criminal Appeal 2790/2024

<sup>10</sup> (2021) SCC Online SC 50

<sup>11</sup> Bail Application 2702/2020

<sup>12</sup> Criminal Appeal 631/2017



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**16.** Ms. Tara Narula and Ms. Jahanvi Worah, learned counsel appearing on behalf of the complainant along with Mr. Raghuinder Verma, learned APP for the State, opposed the bail applications. It is submitted that the case of the prosecution rests firmly on three pillars, namely the eye-witness account, the forensic evidence, and the recovery of the weapon of offence.

**17.** At the outset, it is fairly acknowledged that PW-3 and PW-4, who were cited as eye-witnesses, have not supported the prosecution to the extent anticipated. However, learned counsel submits that the hostility of these witnesses does not demolish the prosecution case, for the reason that scientific evidence collected during investigation lends strong corroboration to the role of the petitioners. The FSL report categorically demonstrates that the blood stains found on the clothes of both petitioners matched the blood group and DNA profile of the deceased. The knife recovered at the instance of Pawan @ Bandar from his house was also tested positive for the blood of the deceased. Additionally, the medical evidence indicates that the weapon in question could have been used in the commission of the offence, and that the injuries caused thereby were sufficient to result in the death of the deceased. It is urged that the scientific evidence establishes a *prima facie* link between the petitioners and the crime and cannot be brushed aside at the stage of bail.

**18.** It is further argued that the learned Trial Court has rightly dismissed the bail applications by noting that the FSL results tie the weapon of offence to the deceased. According to the prosecution, the credibility and reliability of witnesses, including the explanations offered by PW-3 and PW-4, are matters to be tested during the course





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of trial, not at the stage of considering bail. The prior association of the parties, the admitted fact that PW-3 and PW-4 heard the deceased cry out “*maar diya*” and then saw him lying in a pool of blood, and the fact that none of the witnesses have categorically exonerated the petitioners, are emphasised as material factors weighing against their release.

**19.** Learned counsel also points out that PW-3 and PW-4 were known to both the deceased and the accused and therefore their testimony requires careful scrutiny at trial rather than being accepted at face value. Moreover, the testimonies of police witnesses and other formal witnesses remain to be recorded, and the case cannot be adjudged incomplete until such evidence is brought on record.

**20.** With respect to recovery, it is submitted that the knife was recovered pursuant to disclosure by Pawan @ Bandar and in strict compliance with procedure. A seizure memo was duly prepared and the khaka of the knife was drawn and appended to the chargesheet. The contention of the petitioners that the recovery is doubtful, it is argued, is an issue that must be adjudicated after evidence is led at trial.

**21.** Lastly, it is submitted that at the stage of considering bail, the Court is not expected to enter into a meticulous appreciation of evidence. At this juncture, what is to be seen is whether a *prima facie* case is made out against the accused. In the present case, the forensic findings, coupled with admitted circumstances and the recovery of the weapon, clearly point towards the involvement of the petitioners. It is urged that enlarging them on bail at this stage would be wholly premature and detrimental to the fair progress of the trial.



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22. In support of their submissions, learned counsels placed strong reliance on the judgment of the Hon'ble Supreme Court in *Satish Jaggi v. State of Chhattisgarh*<sup>13</sup>. It is contended, on the strength of the said decision, that at the stage of considering bail the Court is not required to weigh the evidence meticulously or to enter into an elaborate evaluation of the testimony of witnesses. The Court must only be satisfied whether a *prima facie* case is made out against the accused, leaving the appreciation of contradictions or reliability of witnesses to be undertaken during the course of trial.

### *Analysis*

23. This Court has carefully considered the rival submissions advanced on behalf of the petitioners as well as the State and has also perused the material placed on record. The primary issue which arises in the present matter is with respect to the evidentiary effect of the eye-witnesses PW-3 and PW-4, who, during their examination before the learned Trial Court, did not support the prosecution case and resiled from their earlier statements recorded under Section 161 of the CrPC.

24. It is significant to discuss that PW-3 and PW-4 admitted that on the night of the incident, after accompanying the injured to the hospital, they were taken by the police to the spot and from there a knife was recovered. When the said knife was shown to them during the stage of examination in the learned Trial Court, they identified it as the same knife, which was recovered at the spot. However, they

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<sup>13</sup> (2007) 11 SCC 195



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denied that this knife was used in the alleged incident, since they had not witnessed the same. At the same time, PW-3 in his cross-examination, volunteered that it was the same knife which had been recovered from the spot. Accordingly, while the actual use of the recovered knife may not be said to be proved at this stage, it does stand established that the recovered knife is the weapon of offence in the present case.

**25.** It cannot be denied that PW-3 and PW-4 have turned hostile and, in material particulars, have not attributed the act of assault to the petitioners. However, the hostility of these witnesses cannot be seen in isolation or divorced from the other incriminating evidence collected during investigation. The FSL report reveals that the knife recovered at the instance of petitioner Pawan @ Bandar, could have been used to cause the stab wound inflicted upon the body of the deceased. Furthermore, the FSL report also records that the blood stains found on the said knife, as well as on the clothes of both petitioners, matched the DNA and blood profile of the deceased.

**26.** Learned counsel for the petitioners has argued that the recovery of the knife is vitiated for want of public witnesses, since the recovery and seizure memos reflect only police officials as attesting witnesses. In this regard, it would be apposite to refer to the judgments of the Hon'ble Supreme Court in *Tahir v. State (Delhi)*<sup>14</sup> and *Sahib Singh v. State of Punjab*<sup>15</sup>, which hold that evidence of police officials cannot be discarded merely on the ground that no public witness was joined, provided such evidence is otherwise credible and trustworthy. The admissibility and reliability of the recovery in question, and the

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<sup>14</sup> (1996) 3 SCC 338

<sup>15</sup> AIR 1997 SC 2417



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explanation for non-joining of public witnesses, are issues that are matters of trial. At this stage, such infirmities alone cannot be treated as sufficient to discard the prosecution case or to justify grant of bail.

**27.** The same reasoning applies to the issue of eye-witnesses turning hostile. The weight and evidentiary value to be attached to hostile testimony is to be determined in the course of appreciation of evidence by the learned Trial Court. This Court, while considering bail, cannot undertake a microscopic evaluation of their depositions.

**28.** In this context, reliance placed by the respondents on *Satish Jaggi (Supra)*, is apposite. The Hon'ble Supreme Court held that in granting or declining bail in non-bailable offences, the primary consideration is the nature and gravity of the offence. At the stage of granting bail, the Court may only examine whether a *prima facie* case is made out and cannot enter into the credibility and reliability of prosecution witnesses, which is a matter strictly for trial. The Supreme Court further cautioned that any findings on credibility at the bail stage risk prejudicing the trial and virtually amount to a pre-trial acquittal, which is impermissible. The ratio of the said judgment squarely applies to the present case, where the arguments of the petitioners primarily rest upon the testimony of PW-3 and PW-4. The relevant paragraphs of the said judgment are reproduced for ready reference:

“**5.** It is settled law that in granting or non-granting of bail in non-bailable offence, the primary consideration is the nature and gravity of the offence. In the present case Respondent 3 is accused of murdering a rival political leader while campaigning in the election.

**6.** It appears that the learned Chief Justice did not consider the nature and the gravity of the offence while considering the bail



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application of the accused. On the contrary, while considering for bail, the learned Chief Justice appears to have decided the case pending trial on merit after scrutinising the evidence. To say the least, it is against all canons of law and judicial propriety.

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**12.** Normally if the offence is non-bailable also, bail can be granted if the facts and circumstances so demand. We have already observed that in granting bail in non-bailable offence, the primary consideration is the gravity and the nature of the offence. A reading of the order of the learned Chief Justice shows that the nature and the gravity of the offence and its impact on the democratic fabric of the society was not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned Chief Justice has virtually acquitted the accused of all the criminal charges levelled against him even before the trial. The trial is in progress and if such findings are allowed to stand it would seriously prejudice the prosecution case. At the stage of granting of bail, the court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial.

**13.** In the present case, the findings recorded by the learned Chief Justice, as referred to above, virtually amount to the regular trial pointing out the deficiency and reliability/credibility of the prosecution evidence. Such findings recorded at the stage of consideration of bail, in our view, cannot be allowed to sustain.”

[Emphasis supplied]

**29.** In light of the aforesaid discussion, this Court is of the considered opinion that no case is made out for grant of bail to the petitioners. Accordingly, both bail applications stand dismissed.

**30.** At the same time, this Court cannot overlook the fact that the petitioners have remained in judicial custody for a period exceeding three years. Therefore, while dismissing the present applications, this Court deems it appropriate to request the learned Trial Court to take



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all endeavours to ensure that the trial is concluded expeditiously within a period of six months from today.

**31.** It is clarified that nothing stated herein shall be construed as an expression of opinion on the merits of the case.

**32.** The judgment be uploaded on the website forthwith.

**AJAY DIGPAUL, J.**

**SEPTEMBER 9, 2025/ar/yr**