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

Reserved on: 05.12.2025
Date of Decision: 19.12.2025

+ **BAIL APPLN. 329/2025**

SHEKH RAFIQPetitioner

Through: Mr. I.M. Tripathi and Ms. Utsa
Srivastava, Advs.

versus

STATE OF NCT OF DELHIRespondent

Through: Ms. Meenakshi Dahiya, APP
for State with Mr. Ashish Mahani, Adv.
Insp Manish Bhati, PS Bhlaswa Dairy

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

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1. The present application seeks regular bail under Section 439 of the Code of Criminal Procedure, 1973¹ (now Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023) in connection with FIR No. 280/2019 dated 22.05.2019, registered at Police Station Bhalswa Dairy, for offences punishable under Sections 302/34 of the Indian Penal Code, 1860².

Factual Matrix

2. The case of the prosecution is that FIR No. 280/2019 dated 22.05.2019 was registered in relation to the death of Mukeem @ Akash.

¹ Hereinafter "CrPC"

² Hereinafter "IPC"



3. On 22.05.2019, the complainant Akhtar stated that he saw several persons namely Ramzan, Raees, Shekh Rafiq (petitioner), Wahiddul, Dilshad and Rahim @ Anvar @ Sanvar arriving from the *jhuggi* side on four motorcycles, and that Rahim @ Anvar @ Sanvar was allegedly carrying a *chapad* (knife). It is further the prosecution case that the said persons were proclaiming that they had killed Akash and that they would kill anyone who fought with them.
4. The prosecution further states that immediately thereafter the complainant reached the hall and found Akash lying on the ground in a blood-stained condition; on attempting to speak to him, he found that Akash had already died. The complainant thereafter called the police.
5. Upon the arrival of the police, an inspection of the spot was conducted and certain exhibits/articles were seized. The deceased was sent to Babu Jagjivan Ram Memorial Hospital, where he was declared “brought dead” *vide* MLC No. 172735/19 at about 4 PM on 22.05.2019.
6. On 24.05.2019, co-accused Ramzan and Rahim @ Anvar @ Sanvar were arrested on identification of the complainant and their disclosure statements were recorded.
7. The chargesheet was initially filed in respect of the arrested accused persons, i.e., Ramzan and Rahim @ Anvar @ Sanvar. Thereafter, as per the prosecution, the learned Trial Court enquired the status of investigation *qua* the other co-accused persons named in the FIR.
8. During further investigation, the remaining four accused persons namely Shekh Rafiq (petitioner), Dilshad, Wahiddul and



Raees, who did not join the investigation, were subsequently declared proclaimed offenders on 21.02.2022.

9. Co-accused Dilshad was arrested in another FIR, and later, on 30.05.2023, he was formally arrested in the present case.

10. On 30.08.2022, the present petitioner Shekh Rafiq and co-accused Raees surrendered before the Court. They were thereafter formally arrested, and police custody remand was obtained for one day. A supplementary chargesheet was filed thereafter, and the petitioner has remained in judicial custody since 31.08.2022.

Submission on behalf of the petitioner

11. Mr. Tripathi, learned counsel appearing for the petitioner, submits that the testimony of PW-3 (Akhtar), who is also the complainant, discloses material inconsistencies when compared with the version attributed to him in the FIR, particularly on basic points such as the number of assailants and the number of motorcycles. It is urged that these are not minor discrepancies, but contradictions which bear directly on the prosecution narrative as to who was seen, in what strength, and in what manner.

12. It is pointed out that while the FIR reflects a categorical version of six persons being seen together, PW-3 in his testimony before the learned Trial Court states that he first saw three persons and thereafter two more, and proceeds to name only five persons, including the petitioner. It is further submitted that PW-3 did not support the assertion regarding the accused persons coming on four motorcycles and, upon being confronted, denied the earlier version.



13. It is next submitted that PW-1 (Hasina Bibi), who is the wife of the deceased, does not support the prosecution version insofar as the petitioner's alleged presence is concerned. In this regard, reliance is placed on her statement that the petitioner had not come to her house with co-accused Ramzan on the day of the incident.

14. It is further submitted that PW-8 (Ashraf), who was allegedly the main eyewitness, has not supported the case of the prosecution during trial and has failed to identify the petitioner and other assailants in Court.

15. Reliance is also placed on the material collected during investigation to contend that CCTV footage generated near the site of the incident depicts only two persons running barefooted, with the time reflected as 12:11 PM. It is further urged that the PCR call record reflects that PW-3 stated the murder had been committed 4–5 hours prior to the reporting time of 1:16 PM, and that the complainant was not certain about the names of the assailants.

16. It is submitted that the petitioner was not among the two persons against whom the chargesheet was initially filed, and that the initial chargesheet was filed only against co-accused Ramzan and Rahim @ Anvar @ Sanvar, from whom the weapon and clothes are alleged to have been recovered. It is urged that no incriminating material has been recovered from the possession of the petitioner, and the prosecution case against him rests substantially on the naming of the petitioner in the initial version.

17. It is submitted that the petitioner has remained in judicial custody since 30.08.2022, and that a period of more than three years has elapsed. It is further urged that the trial is likely to take time, since only 8 out of 28 witnesses have been examined till date. It is also



submitted that the petitioner is the sole bread earner and has responsibility towards his wife and two minor children.

18. It is further submitted that this Court has already enlarged co-accused Dilshad on bail *vide* order dated 27.09.2024 passed in BAIL APPLN. 3307/2023, and the petitioner accordingly seeks bail on the ground of parity as well.

19. Further reliance is placed on the order dated 12.03.2025 passed by this Court in *Vikas Bharti v. State (Govt. of NCT of Delhi)*³, particularly paragraph 17, to contend that where the accused has undergone prolonged custody and only a limited number of witnesses have been examined out of a large set of cited witnesses, the conclusion of trial is likely to take a long time and the circumstances may not warrant continued incarceration pending trial. It is also indicated, on the strength of the same order, that involvement in other cases cannot, by itself, be treated as the sole ground to deny bail.

20. Additionally, learned counsel also draws support from orders of the Hon'ble Supreme Court in *Balwinder Singh v. State of Punjab*⁴ and *Praveen Rathore v. State of Rajasthan*⁵ to submit that inordinate delay in the conclusion of trial infringes the right under Article 21 of the Constitution, and that where the accused has already spent a substantial period in custody and the trial is not likely to conclude in the near future, bail may be granted to ensure that the trial process itself does not become punishment.

³ BAIL APPLN. 137/2025

⁴ SLP (Crl.) 8523/2024

⁵ SLP (Crl.) 6505/2023



Submissions on behalf of the respondent

21. Ms. Meenakshi Dahiya, learned APP for the State, opposing the application, submits that the petitioner is specifically named in the FIR by PW-3 (Akhtar), who is the complainant. It is urged that PW-3 attributes to the petitioner the role of being part of the group which was seen in the immediate aftermath of the incident, and which allegedly proclaimed that Akash had been killed and that anyone who fight with them would also be killed. Learned APP highlights the status report filed by the State in support of these submissions.

22. Learned APP also placed reliance on the testimony of PW-1 (Hasina Bibi), the wife of the deceased. It is submitted that PW-1 indicated about a monetary dispute of a sum of around ₹2,00,000/- between the deceased and co-accused Ramzan and stated that hot arguments had taken place around 2–3 days prior to the incident, on account of the borrowed money, and she apprehended an intense fight between them. Further, even if PW-1 has stated that the petitioner did not come to her house along with Ramzan on the relevant day, the naming of the petitioner by PW-3 in the FIR and the further material collected during investigation cannot be brushed aside at this stage.

23. It is further submitted that the petitioner did not join the investigation and was declared a proclaimed offender on 21.02.2022, along with other co-accused persons, which according to them reflects deliberate avoidance of the process of law. Petitioner surrendered only thereafter and his conduct is a relevant consideration while assessing the likelihood of his presence during trial.

24. Lastly, it is also pointed out that the petitioner has criminal antecedents and that, considering the nature of the allegations, the



gravity of the offence, and the manner in which the petitioner remained unavailable during investigation, he does not deserve the discretionary relief of bail at this stage.

Analysis

25. This Court has carefully considered the rival submissions advanced on behalf of the petitioner as well as the respondent and has also perused the material placed on record.

26. At the very outset, this Court deems it apposite to note that the Hon'ble Supreme Court, in a catena of decisions, has consistently held that the grant of bail entails consideration of multiple factors which ultimately turn upon the facts and circumstances of each case, and that no straight-jacket formula can be laid down as to what factors must necessarily be decisive in every matter. Ordinarily, the factors that guide the exercise of discretion, *inter alia*, include the *prima facie* involvement of the accused, the nature and gravity of the charge, and the character, besides the likelihood of the accused fleeing from justice or tampering with evidence. Equally, it is well settled that at the stage of bail, this Court is not required to undertake a detailed appreciation of evidence or to enter into a roving enquiry on the reliability of witnesses, which exercise properly falls within the domain of the learned Trial Court during trial. With this brief preface, this Court proceeds to consider the present application.

27. The present case pertains to a grave crime, and the petitioner stands accused of an offence punishable under Section 302 of the IPC, which carries a sentence of death or imprisonment for life. Having regard to the gravity of the offence, the petitioner's period of



incarceration, by itself, cannot be treated as a determinative ground for grant of bail in the facts of the present case.

28. This Court has considered the submissions advanced on behalf of the petitioner regarding alleged inconsistencies in the testimony of PW-3 (Akhtar) when compared with the FIR version. This Court does not completely brush aside the contention that certain aspects of PW-3's deposition, as highlighted, may reflect inconsistencies. However, such inconsistencies, at this stage, cannot be treated as sufficient to discard the prosecution case or to justify the grant of bail. The weight to be attached to the testimony of prosecution witnesses, including the impact of any omissions, contradictions, or the extent of support to the prosecution version, is a matter to be assessed during the course of trial upon appreciation of evidence. This Court, while exercising jurisdiction in a bail application, cannot undertake a microscopic or mini-trial evaluation of depositions.

29. In this context, reference may be made to the judgment rendered by the Hon'ble Supreme Court in *Satish Jaggi v. State of Chhattisgarh*⁶. The principle reiterated therein is that while considering bail in serious non-bailable offences, the Court primarily evaluates the nature and gravity of the offence and whether a *prima facie* case is made out, without entering into the credibility and reliability of prosecution witnesses, which is for trial. Any premature findings on credibility at the bail stage risk prejudicing the trial and may virtually amount to a pre-trial adjudication, which is impermissible.

⁶ (2007) 11 SCC 195



30. Applying the said principle to the present case, the record, as placed before this Court, reflects that the petitioner is specifically named in the FIR as part of the group allegedly seen by PW-3 in the immediate sequence of events. PW-1 (Hasina Bibi) has, in addition, spoken of a monetary dispute arising out of borrowed money and of hot arguments between the deceased and co-accused Ramzan 2–3 days prior to the incident, and further deposed that on the date of the incident 2–3 persons came to her house and asked the deceased to accompany them so that the issue of returning the cash could be settled. Although PW-1 does not name the petitioner as one of the persons who came to her house, when these circumstances are viewed together with the specific naming of the petitioner by PW-3 as one of the persons seen immediately after the incident, this Court cannot overlook the circumstances indicating towards the presence of the petitioner at this stage.

31. Whether the petitioner's alleged link with the arrested co-accused is ultimately proved, and what evidentiary value is to be attached to the oral and the CCTV material, are matters for the learned Trial Court. At this stage, this Court is only required to be satisfied whether the prosecution discloses a *prima facie* case, leaving deeper appreciation of contradictions and reliability of witnesses to the trial.

32. The plea of parity, advanced by drawing reference to the grant of bail to co-accused Dilshad *vide* order dated 27.09.2024 in BAIL APPLN. 3307/2023, also does not persuade this Court. Dilshad was not identified by PW-3 during his examination-in-chief, and PW-3 is stated to have expressly indicated that he did not know Dilshad, despite Dilshad being present in Court. The petitioner's case stands on a different footing, as PW-3 is stated to have identified the petitioner,



and the petitioner is also named in the initial version as part of the group allegedly proclaiming that the deceased had been killed. In these circumstances, parity cannot be claimed as a matter of course. The Hon'ble Supreme Court in *Sagar v. State of UP*⁷ has recently reiterated the principle that parity is not the sole ground on which bail can be granted, particularly in cases involving serious offences like murder.

33. This Court also cannot overlook the conduct of the petitioner during investigation. The petitioner was declared a proclaimed offender on 21.02.2022 and surrendered thereafter on 30.08.2022. Such conduct is a relevant circumstance while assessing the risk of absconding and the likelihood of the accused remaining available to face trial, particularly in a case involving a grave offence.

34. In view of the aforesaid discussion, this Court is of the considered view that, at this stage, the material on record discloses a *prima facie* case against the petitioner, and the present application does not merit exercise of discretion in favour of grant of bail.

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

36. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J.

DECEMBER 19, 2025/AS/yr

⁷ 2025 SCC OnLine SC 2584