



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 23rd April, 2025
Pronounced on: 20th May, 2025

+ BAIL APPLN. 4764/2024

JAGDISH SHARMA @ JAGGIPetitioner

Through: Mr. Jitendra Sethi, Senior Advocate
 with Mr. Shobit Dimri, Mr. Keshav
 Sethi, Advocates

versus

THE STATE OF NCT OF DELHI THROUGH SHO PS GEETA
 COLONYRespondent

Through: Mr. Hemant Mehla, APP for the State
 with Ms. Deepika Deshwal, Mr.
 Deepak Tomar, Mr. Rajesh Dahiya,
 Mr. Jaideep, Ms. Meenakshi Rana,
 Ms. Sharlee Garg, Mr. Rohit
 Chaudhary, Ms. Nandita, Advocates
 along with Insp. Sanjeev Kumar, PS
 Punjabi Bagh and Insp. Sanjay
 Prakash Bhatt, PS Sonia Vihar Mr.
 Alok Bhachawat, Mr. Ishan Jain,
 Advocates for Complainant

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. The present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (earlier Section 439 of the Code of Criminal

¹ “BNSS



Procedure, 1973²) seeks regular bail in FIR No. 578/2018 under Sections 302, 384 and 34 of the Indian Penal Code, 1860³, registered at P.S. Punjabi Bagh, Delhi.

Brief Factual Background

2. Briefly stated, the case of the prosecution is as follows:

2.1. On 14th October, 2018, a PCR Call was received at the P.S. Punjabi Bagh from the Sri Balaji Action Medical Institute regarding a person who had been brought in dead. The call was recorded *vide* DD No. 15A, and preliminary inquiry was entrusted to SI Rajpal. Upon reaching the hospital, the Investigating Officer collected MLC No. 7873/18 pertaining to one Nitin Gupta, who had been declared brought dead. The statement of the deceased's father, Mr. Pradeep Gupta, was recorded on the spot.

2.2 Mr. Gupta stated that on 13th October, 2018, his son Nitin left home for the office at around 11 AM, but around 4-5 PM he returned home from Chattarpur Temple and offered sweets to his mother. Thereafter, he left from home again and returned around 11:45 PM. On his return, Nitin lay down on the sofa without saying much. When his mother asked about his whereabouts, he did not respond and went to watch television in his bedroom.

2.3 About 10-15 minutes later, Nitin called out for his father complaining of pain and to seek his assistance to lie down. He showed his father his broken fingers and stated that he had been beaten severely on his back. When Pradeep Gupta suggested calling his other son – Varun Gupta for help, Nitin initially refused fearing that the atmosphere would get tense, but

² "Cr.P.C."

³ "IPC"



eventually agreed due to the extent of his discomfort. Varun was called, and both family members attempted to get further details, but Nitin was initially reluctant to explain. The family members then insisted that they call the police, however, the deceased Nitin requested them not to do so.

2.4 Upon being repeatedly questioned about the cause of his injuries, Nitin disclosed that he owed a sum of ₹12,50,000/- to one Jagdish @ Jaggi (the Applicant), who, along with Rajiv @ Bille and Sanjeev @ Bablu, had brutally assaulted him with sticks at Jagdish's office. He further cautioned that the said individuals were extremely dangerous.

2.5 Varun Gupta, brother of the deceased Nitin, removed Nitin's T-shirt and saw several bruises on his back which had turned blue in colour, suggesting severe beatings with a stick or rod. When Nitin expressed difficulty standing, Varun helped him use the bathroom. After returning from the bathroom, Nitin collapsed. His family members then picked him up and made him lie down on the bed.

2.6 Pradeep Gupta then contacted one of Nitin's friends, Pankaj Dawar, to ascertain what had transpired. However, Pankaj stated that he had no knowledge of any such incident and that, at the time when he last saw Nitin, he appeared to be in normal condition.

2.7 Thereafter, Pradeep and Varun helped Nitin lie down in his room and changed his clothes, as he was experiencing considerable pain. Nitin was repeatedly asking for cold water and ice, and despite the air conditioner being on, he was perspiring heavily.

2.8 Pradeep Gupta then contacted Aggrasen Hospital to request an ambulance but was informed that the hospital lacked sufficient staff to provide one. The family thereafter resolved to take Nitin to the hospital in



their own vehicle. However, as Nitin had by then become unconscious, they were unable to move him. Subsequently, an ambulance was called from Action Balaji Hospital, which arrived at approximately 3:00 AM. Nitin was placed on a stretcher and transported to the hospital, where he was declared “brought dead”.

2.9 Based on the statement of Pradeep Gupta, FIR No. 578/2018 was registered at P.S. Punjabi Bagh and investigation was initiated. The body of the deceased was shifted to Sanjay Gandhi Hospital Mangolpuri, Delhi and the postmortem was conducted and recorded under PM No. 958/18. As per the Post Mortem Report, the doctor opined the cause of death to be haemorrhagic shock as a result of multiple bruises, due to blunt object impact, sufficient to cause death in ordinary course of nature. All injuries were noted to be ante mortem in nature.

2.10. The Applicant, Jagdish @Jaggi along with the other co-accused were arrested on the same day – i.e., 14th October, 2018. During interrogation, the Applicant disclosed that he had extended a loan of ₹12.5 Lakhs to the deceased Nitin Gupta, of which only ₹3.70 Lakhs had purportedly been repaid, and that no further payment was forthcoming. Owing to this grievance, the Applicant stated that he, along with co-accused Sanjeev@Babbu and Rajeev@Bille, physically assaulted the deceased and also retained his scooty. At the instance of the Applicant, a Pointing Out Memo was prepared in respect of the first floor of Flat No. 477, Pocket-3, Paschimpuri, where the assault allegedly occurred. He further led the police to a nearby park from where a broken wooden stick (danda), wrapped in black tape, was recovered and seized *vide* Seizure Memo dated 14th October, 2018. The said stick was thereafter forwarded to the mortuary at Sanjay



Gandhi Hospital for expert opinion by the doctor who had conducted the postmortem examination. The medical opinion stated: *“After going through PM 958/18 and examining the weapon of offence, opinion is - injuries mentioned in PM report are possible with the weapon examined or similar one”*.

2.11 Subsequently, CCTV footage from a camera installed near the first floor of the alleged place of incident, pertaining to the fateful evening of 13th October, 2018, was obtained. The footage initially shows the Applicant entering the flat at 8 PM along with co-accused Sanjeev and deceased Nitin. Two minutes later, Sanjeev is seen leaving the flat, and at 8:16 PM, he appears to be carrying a wooden stick. Footage from another camera depicts both Sanjeev and Rajeev riding a motorcycle, driven by Sanjeev with Rajeev visibly holding the stick. At 9:27 PM, another person identified as Anil, a tenant residing at the top floor of the building is seen entering the flat. Pankaj Dawar (friend of the deceased) and one person identified as Mukesh are also seen entering the flat at 9:41 PM. Thereafter, at 11:10 PM, the deceased Nitin, along with Pankaj, Mukesh and Anil are seen leaving the flat. The CCTV footage reveals that the condition of the deceased Nitin was not good and he was walking down the stairs supporting himself by holding the banister.

2.12. Upon completion of investigation, a chargesheet was filed against the accused, and trial commenced before the Sessions Court. Of the 32 prosecution witnesses cited, 18 have been examined so far.

2.13 As per the SCRB Record, the Applicant has prior involvements in 07 cases, including the present FIR. The details of the SCRB Record are as follows:



S.No	FIR No.	Under Section	Police Station	Remarks
1.	0526/1994	61/1/14 Excise Act	Punjabi Bagh	Acquitted 03.05.1997
2.	861/1994	307/34 IPC	Punjabi Bagh	Acquitted 15.07.1998
3.	722/1995	302/207 IPC	Punjabi Bagh	Convicted for life
4.	0116/1996	25/54/59 Arms Act	Punjabi Bagh	Acquitted
5.	0941/2001	25/54/59 Arms Act	Punjabi Bagh	Acquitted 29.08.2008
6.	0965/2004	307 IPC	Punjabi Bagh	Acquitted 01.02.2008
7.	0578/2018	302/34 IPC	Punjabi Bagh	Pending Trial

Contentions raised by the Parties

3. Mr. Jitendra Sethi, Senior Counsel for the Applicant, urges the following grounds for seeking bail:

3.1. The case of the prosecution primarily rests on the testimony of three purported eye-witnesses – Pankaj Dawar, Mukesh Kumar, and Anil Vaid, all of whom have been examined before the Trial Court. None of these witnesses have supported the prosecution's version. In particular, they have categorically denied witnessing any incident of assault by the Applicant or the co-accused persons upon the deceased Nitin.

3.2 It is admitted case of the prosecution that the deceased left the Applicant's around 11:00 PM and was seen descending the staircase on his own. The CCTV footage corroborates that Nitin was ambulatory and conscious at the time, and later he returned home unaided. Even if the prosecution's version is assumed to be true, it is submitted that no case under Section 302 IPC is made out.



3.3 The prosecution places reliance on statements allegedly made by the deceased to his father (Pradeep Gupta) and brother (Varun Gupta), wherein before going unconscious, the deceased named the Applicant and co-accused as the persons who beat him. However, the conversation forms part of the chargesheet and reflects that Pradeep Gupta himself described Nitin's condition as not in conscious state of mind. He stated that "Hamey To Samajh Nahi Aa Rahhi Per Sudh Mein Nahi Hai" indicating that the deceased was not in a conscious state of mind at around 12:30 AM on 14th October, 2018, when the alleged conversation took place. Pradeep Gupta further admitted that, at that time, the deceased was unable to identify who exactly had beaten him up. Moreover, Pankaj Dawar – one of the eye witnesses stated that he left the deceased near his home at the night on 13th October, 2018, in a state of good health.

3.4 In the initial statements made by the family members of the deceased – i.e., Pradeep Gupta, Varun Gupta and Sudha Gupta, which were recorded pursuant to DD Entry No. 15A, there is no mention of any accused person. However, nearly 21 hours after Nitin returned home, their supplementary statements introduced the names of the Applicant and co-accused. No explanation has been furnished as to why this information was withheld during their earlier interactions with police, or why it finds no mention in the inquest proceedings under Section 174 Cr.P.C. or in the contemporaneous PCR form.

3.5 The afore-noted fact is also corroborated by the PCR form wherein it is categorically mentioned that the father and brother of the deceased met the police officials in the Hospital and upon their asking, the witnesses disclosed that the deceased Nitin told them that he was given beatings by



“someone”, not naming any person specifically.

3.6 As for the recovery of the alleged weapon of offence, a wooden stick (danda), the same was recovered from an open plot/park, reportedly in broken condition. The recovery was made without following the safeguards under Section 100(4) Cr.P.C., rendering it procedurally tainted and evidentiary value suspect.

3.7 The MLC of the deceased records injuries only on non-vital parts of the body, namely left arm, left shoulder, left scapular region, right shoulder and right scapular region. The prosecution’s case that the cumulative effect of these injuries resulted in death lacks clarity in establishing homicidal intent.

3.8 The pattern of injuries, coupled with the fact that the deceased was allowed to leave the premises alive and unaided, undermines the allegation of any intention to cause death. If the intention of the Applicant was indeed to cause death, he would not have allowed the deceased to leave his office and be taken back to his home by Pankaj Dawar and others. It is the prosecution’s own case that the Applicant’s underlying motive was recovery of a substantial financial debt owed by the deceased. In such a scenario, attributing an intention to cause death would be illogical and counterintuitive, as it would defeat the very objective by permanently extinguishing the prospect of repayment. Reliance in this regard is placed on *Gurdeep Singh & Ors. v. State of Punjab*⁴; *Dalip Singh & Ors. v. State of Haryana*⁵ and *Panchiah & Ors. v. State of Karnataka*⁶.

3.9 The criminal antecedents of the Applicant cited by the prosecution to

⁴ AIR 1987 SC 1151

⁵ AIR 1993 SC 2119

⁶ AIR 1994 SC 963



oppose the bail are of limited relevance in the present context. The Applicant stands acquitted in all the previously registered cases, save for FIR No. 722/1995 at P.S. Punjabi Bagh. In that case as well, the conviction has been assailed before the Apex Court, wherein the Court has grant bail to the Applicant *vide* order dated 16th February, 2024. In view of the foregoing, no adverse inference can be drawn against the Applicant at this stage solely on account of his past antecedents.

3.10 The Applicant did not abscond in the present case and in fact, he voluntarily joined the investigation. He was arrested on 14th October, 2018 and has remained in custody ever since, save for the period during which he was enlarged on interim bail by this Court during the COVID-19 pandemic. The Applicant has thus undergone nearly five years of incarceration as an undertrial. Despite the passage of considerable time, the trial is progressing at a slow pace. Only 19 or 20 out of 34 witnesses have been examined so far. In such circumstances, continued pre-trial detention of the Applicant is punitive, particularly when undue delay appears evident.

3.11 The Applicant ought to be granted the benefit of the settled legal principle, time and again emphasised by courts - that *Grant of Bail is a Rule and Denial of Bail is an Exception*. In support of this proposition, reliance is placed on ***Praveen Rathore v. State of Rajasthan***⁷; ***Dataram Singh v. State of U.P.***⁸ and ***Javed Gulam Nabi Sheikh v. State of Maharashtra***⁹.

4. On the other hand, counsel for the Complainant (deceased Nitin's father) supplementing the submissions advanced by the State, opposes the present bail application on the following grounds:

⁷ Special Leave to Appeal Crl.No. 6505/2023, decided on 6th October, 2023

⁸ (2018) 3 SCC 22

⁹ (2024) 9 SCC 813



4.1 When the deceased Nitin returned home on the fateful day of his demise, in an injured condition, his father called Pankaj Dawar to inquire into the circumstances which led to this condition. Pankaj allegedly informed the Complainant that he had met Nitin around 6:00 PM that evening and that the deceased was in good health at that time. It is only after repeated inquiry from his family members that the deceased himself disclosed that he had been assaulted by the present Applicant and his associates. As per the CCTV footage retrieved during investigation, in addition to the three accused – Jagdish @Jaggi, Sanjeev@Babbu, and Rajeev@Bille, three other individuals, namely Pankaj Dawar, Mukesh, and Anil, are also seen entering the premises where the incident allegedly occurred. When these individuals were initially summoned by the police for questioning, they denied any presence at the scene. However, upon being confronted with the CCTV footage, they admitted to having been present but claimed to have played no active role, stating they merely stood by as passive onlookers.

4.2 In view of the above it is evident that when the deceased's father spoke with Pankaj later that night around 12:30 AM to ascertain what had transpired, he gave a false account, stating that Nitin had left in a healthy state earlier that evening. This conduct, suggests that these three persons were not merely witnesses but were complicit in the assault, and yet the prosecution has chosen to array them as prosecution witnesses rather than co-accused in the present case. In this regard, the Complainant has filed an application under Section 358 of the BNSS before the Trial Court, seeking initiation of proceedings against the said individuals for their alleged role in the incident. It was expected that these individuals, who were present inside



the room and had witnesses the entire incident of the deceased being brutally beaten up for hours, would not support the case of the prosecution and in fact, turn hostile during trial. Nonetheless, merely because a witness has turned hostile, does not negate the entirety of their testimony and certain aspects of their testimony, which shed light on the prosecution's version, can be considered by the Court.

4.3 There exists a *prima facie* case against the aforementioned three persons, and in the event the Complainant's application under Section 358 BNSS is allowed and in case the Applicant is released on bail, there is a strong apprehension that he may attempt to influence these persons or otherwise tamper with the evidence. Except for the testimonies of the aforementioned three individuals, the depositions of all other prosecution witnesses are incriminating against the Applicant and other co-accused. Therefore, no justifiable ground exists for granting bail to the Applicant at this stage.

4.4 Moreover, several prosecution witnesses are yet to be examined, and there is a reasonable apprehension that, if released on bail, the Applicant may attempt to threaten or influence the remaining witnesses or exert pressure on the family members of the deceased.

4.5 In light of the seriousness of the alleged offence, the potential for witness intimidation, and the previous involvements of the Applicant highlighted by the prosecution, it is urged that no case for grant of bail is made out at this stage.

Analysis

5. The Court has carefully considered the submissions advanced on



behalf of the Applicant, the State, and the Complainant. At the outset, it must be underscored that the allegations against the Applicant herein pertain to the death, allegedly caused by the physical assault perpetuated at the hands of the Applicant and the co-accused persons. The incident occurred late at night on 13th October, 2018, and in the early hours of the morning on 14th October, 2018, the deceased succumbed to his injuries. The nature of the offence, as reflected in the Post Mortem Report, involves multiple bruises caused by a blunt object, which the doctor opined were sufficient, in the ordinary course of nature, to cause death. The cause of death was determined to be haemorrhagic shock resulting from such injuries.

6. According to the prosecution, the deceased was assaulted at the Applicant's office and returned home in a visibly injured condition, where he subsequently collapsed and was declared dead at the hospital. Although the CCTV footage does not capture the actual assault occurring inside the room, it nonetheless establishes the presence of the Applicant, the co-accused, and the deceased within the premises at the relevant time. The sequence of footage, showing the Applicant entering the premises followed by the deceased, and thereafter the deceased exiting in a visibly distressed and weakened state, *prima facie* supports the prosecution's narrative. The relatively short interval between the alleged incident and the deceased's death lends further probative weight to this account. Additionally, the recovery of a wooden stick/danda at the instance of the Applicant, coupled with the forensic opinion that the injuries recorded in the Post-Mortem Report are consistent with such a weapon, *prima facie* reinforces the chain of circumstances forming the prosecution's case.

7. The Applicant has urged that the deceased, at the time of disclosing



the names of his alleged assailants to his father and brother, was not in a fully conscious state of mind, and therefore, his statements should not be treated as reliable. However, whether the deceased was in a fit state to make such statements, and the evidentiary value to be attached to the statements made in such an alleged state, are matters that go to the heart of appreciation of evidence and cannot be conclusively adjudicated at the bail stage. These are issues that must be left for evaluation during trial, based on the overall evidentiary record.

8. The Applicant further contends that there was an unexplained delay of several hours in naming the accused to the police, despite the family having been in contact with law enforcement earlier in the day. At this stage, such a delay by itself does not displace the *prima facie* case made out by the prosecution. It is well settled that the impact of any such delay must be assessed alongside the broader factual context and corroborating material, and cannot form the sole basis for grant of bail in a case of this nature.

9. As regards the Applicant's submission that there was no intention to cause death and that alleged beatings, if any, were only meant to coerce repayment of a debt, this Court finds it premature to express any opinion on the probative strength of such claims. At the stage of considering a bail application, the Court is not expected to weigh the evidence as if conducting a mini-trial.¹⁰ Rather, the limited inquiry is whether there exists *prima facie* material to connect the accused to the alleged offence¹¹, and whether custodial detention is necessary to safeguard the integrity of the trial

¹⁰ See: *Brijmani Devi v. Pappu Kumar & Anr.*, (2022) 4 SCC 497; See also *Mahipal v. Rajesh Kumar @ Polia*, 2020 (2) SCC 118

¹¹ *Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr.* (2010) 14 SCC 496



process¹². The argument that the injuries of the deceased were not intended to be fatal and that the death was unanticipated, raises factual questions which are best examined during trial, after the entire body of evidence has been adduced and tested through cross-examination. Any definitive finding on the nature or effect of the injuries at this stage would risk pre-judging the case and may prejudice either side. Accordingly, the Applicant's plea that the offence falls outside the scope of Section 302 IPC cannot be accepted at the present stage.

10. While it is true that three eyewitnesses [Pankaj, Mukesh, and Anil] have not supported the prosecution's case during trial, this alone cannot tilt the balance in favour of the Applicant at this stage. It is well settled that the evidentiary value of hostile witnesses can only be determined upon conclusion of trial, particularly when there is a possibility that the witnesses may have turned hostile under duress¹³. If a witness turns hostile, the prosecution can still use those portions of their testimony that are supportive of their case¹⁴. This ensures that relevant evidence is not disregarded simply due to a witness's change in stance.

11. The Complainant has, in fact, filed an application under Section 358 of the BNSS seeking further investigation against these three witnesses, asserting that they were present during the alleged incident and may be complicit in the crime. The outcome of that application is yet to be determined. Given this context, the effect of their testimony, whether they can be relied upon or whether their hostility undermines the prosecution's

¹² *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *See also: Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.

¹³ *Rajesh Yadav v. State of U.P.* (2022) 12 SCC 200

¹⁴ *Goverdhan & Anr. v. State of Chhattisgarh*, (2025) 3 SCC 378



case, can only be evaluated at the stage of final adjudication, not while considering bail. Pertinently, the prosecution case is not solely dependent on the testimony of these three witnesses. It draws substantial support from other incriminating material, including the CCTV footage, the Medico-legal and Post Mortem Reports, the forensic opinion linking the weapon of offence to the injuries, and the recovery made at the instance of the Applicant. In this context, the overall strength of the prosecution case must be evaluated holistically and not through the narrow lens of three witnesses turning hostile. The impact of their testimony, or lack thereof, is a matter to be assessed at the conclusion of trial and cannot serve as the basis for grant of bail at this stage.

12. The Applicant's contention that the beatings were inflicted only on non-vital parts of the deceased's body and were not intended to cause death also does not hold much weight at this stage. The law is clear that under Section 300 Thirdly of IPC, if the injuries inflicted are sufficient in the ordinary course of nature to cause death, it is not necessary to prove that there was indeed an intention to "*cause death*"; the only thing that needs to be proved is that there was an intention to inflict those bodily injuries that were found to be present on the victim and that such injuries were sufficient in the ordinary course of nature to cause death¹⁵. In this regard, it is important to note of the Post Mortem Report, wherein the presiding doctor has opined that "*Cause of death is due to haemorrhagic shock as result of multiple BRUISES due to blunt object impact sufficient to cause death in ordinary course of nature all injuries are antemortem in nature*".

¹⁵ *Virsa Singh v. State of Punjab*, 1958 SCC OnLine SC 37; See also: *Parkash Chand v. State of H.P.* (2004) 11 SCC 381



13. The Court is mindful that the Applicant has remained in custody for nearly five years as an under-trial, and such prolonged incarceration does raise a concern under Article 21 of the Constitution, which guarantees the right to a speedy trial. However, the Court also notes from the status report received from the Trial Court through the Principal District and Sessions Judge, it is indicated that the matter is still at the stage of prosecution evidence. Out of the 34 listed witnesses, approximately 18–19 have been examined. The delay, appears to be partly attributable to the complexity of the case and the number of accused and witnesses involved. In any case, delay alone cannot override the gravity of the charge, particularly where the death of a young man is alleged to have occurred due to a violent beating involving blunt weapons.

14. Taking all of the above into account, the nature of the allegations, the stage of trial, the status of eyewitness testimonies, and the evidence on record, this Court is not persuaded to grant bail to the Applicant at this juncture. However, considering the period already undergone in custody, it is imperative that the trial proceeds without further delay.

15. Accordingly, the present application is dismissed. The concerned Trial Court is requested to make all reasonable efforts to conclude the trial expeditiously, as possible.

16. Copy of the order be sent to the concerned Trial Court for necessary information and compliance.

SANJEEV NARULA, J

MAY 20, 2025

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