



2025:DHC:4506



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

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Reserved on: 21st May, 2025

Pronounced on: 28th May, 2025

+ BAIL APPLN.4722/2024
NAUSHAD ALI

.....Petitioner

Through: Mr. Mutiur Rehman, Mr.
Nadeem Khan, Ms. Shaheen,
Ms. Mehwish Khanam, Ms.
Arshi, Ms. Nazish Khanam,
Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP with
Insp. Rizwan, PS-Karawal
Nagar and ACP Sanjeev
Kumar.

**CORAM:-
HON'BLE MR. JUSTICE RAVINDER DUDEJA**

JUDGMENT

RAVINDER DUDEJA, J.

1. This is an application filed on behalf of petitioner/accused under Section 439, Cr.P.C., 1973 and Section 483 BNSS, 2023 for grant of regular bail in case FIR No. 388/2019, registered under Sections 302/201/34 IPC at Police Station Karawal Nagar.



2. The prosecution case in brief is that on 26.09.2019, victim left her house to visit her tuition teacher, Naushad Ali (petitioner herein), but did not return to her house. On 29.09.2019, a PCR call, vide DD No. 8A was made at Police Station Karawal Nagar, regarding a dead body found at Ganda Nala near Sardar Patel School, Karawal Nagar. Police reached at the spot and found a highly decomposed body near Ganda Nala of an unknown female, aged about 25 years. This led to the registration of the present FIR. The post mortem report suggested the cause of death as “Asphyxia as a result of ante mortem drowning”. The body was identified by the brother and uncle of the victim. The statements of Rabia Begum, mother and Danish, brother of the victim, were recorded. They stated that victim left the house to meet her tuition teacher on the fateful day i.e. 26.09.2019 and she was missing since then.

3. As per the prosecution case, the deceased had gone to visit the petitioner at his house as she was having a love affair with him and was pressurizing him for marriage, but petitioner was already married, and therefore, to get rid of her, he gave *danda* blow on the head of the victim. Assuming her to be dead, he put her body in a jute sack and called his brother-in-law Rajiq @ Sameer (co-accused herein). Co-accused Rajiq @ Sameer borrowed ECO van of his brother, Md. Shahid Rizwi on the pretext



of taking his sister to hospital, but, in fact, the ECO van was used by the petitioner and co-accused to dump the body of the victim in Ganda Nala at Karawal Nagar.

4. During investigation, Police recorded the statement of Anees Ahmed under Section 161 Cr.P.C. on 01.01.2020, wherein he stated that he saw the petitioner and co-accused carrying a heavy moving thing in a jute sack, which they put in a silver colour ECO van. Statement of Md. Shahid Rizwi that he had given his car to the co-accused, was also recorded.

5. Petitioner seeks bail on the ground that he has already spent over five years in judicial custody with no incriminating material or murder weapon recovered from him and no proven link to the alleged crime. Prosecution case based on circumstantial evidence is weak and inconsistent with no CCTV footage, unreliable call records, delayed forensic submissions and lack of credible witnesses. Key witnesses, including PW-2, Md. Shahid Rizwi and the alleged last seen witness PW-10, Anees Ahmed, have either contradicted the prosecution version or made delayed statements, casting doubts on their credibility. The post mortem report attributes the cause of death to drowning rather than injuries, allegedly inflicted by the petitioner, further weakening the case. The co-accused has already been granted bail and many witnesses are yet to be examined. The petitioner has clean



antecedents, is not at flight risk and his conduct in jail has been good and undertakes to cooperate with the trial. Given these factors, including his role as the bread earner of his family, the petitioner prays for bail.

6. Learned counsel appearing for the petitioner has submitted the oral arguments with the written submissions, stating that the key prosecution witnesses i.e. PW-2, Md. Shahid Rizwi and PW-10, Anees Ahmed, have turned hostile and have not supported the prosecution case, thereby undermining the credibility of the prosecution case against the petitioner. It is submitted that there was an unexceptional delay of 90 days in recording of statement of PW-10, Anees Ahmed, under Section 161 Cr.P.C., raising doubts about its reliability. The absence of CCTV footage or video evidence, despite the incident allegedly occurring in a densely populated area, further weakens the prosecution claims. It is additionally submitted that inconsistencies exist regarding the recovery location of alleged murder weapon i.e. wooden log/*danda* and its recovery after 10-12 days of the incident casts further doubt. There was also a significant delay of 84 days in sending crucial evidence, including the belongings of deceased for forensic examination at FSL. It is averred that Police failed to seize or examine the mobile phone of the petitioner. The CDRs lack location data. Conclusively, counsel for the petitioner submits that with 12 out of 32 prosecution



witnesses examined, petitioner who has been in custody since 07.10.2019 with good jail conduct and no prior criminal record, is entitled to the grant of bail.

7. The bail application has been opposed by the learned APP, appearing on behalf of the State. Referring to the status report, it has been contended that CDRs indicate that petitioner was in constant contact with the deceased prior to her death and also communicated with co-accused during the commission of alleged crime. However, based on information provided by both accused, belongings of the deceased (stole and sandal) and weapon i.e. wooden log/*danda* allegedly used in the offence were recovered from the area near Jafrabad Metro Station besides the nala. These items were subsequently identified by the mother of the deceased during Test Identification Parade [TIP]. Additionally, the broken mobile phone, belonging to the deceased was also recovered on the basis of disclosure made by the petitioner. According to FSL results, soil samples, lifted from third floor of the petitioner's house contain fibers similar to those found on jute sack recovered from ganda nala, Karawal Nagar, where the body of the deceased was dumped. According to learned APP, there is sufficient strong evidence against the petitioner. In view of the same, petitioner is not entitled for the grant of bail.



8. The Court has considered the arguments advanced by learned defence counsel as also the learned prosecutor and has perused the material placed on record.

9. Admittedly, the case against the petitioner is based on circumstantial evidence and in case of circumstantial evidence, the Court needs to see whether the circumstances presented by the prosecution are supported by credible and cogent evidence and the entire chain of events is so complete that it eliminates any reasonable doubt regarding the innocence of the accused. Of course, such assessment is made at the final stage of the trial after the entire evidence is led. However, even at the stage of bail, the Court may broadly look into the evidence coming on record for determining or deciding the question of grant of bail.

10. Md. Shahid Rizwi and Anees Ahmed have already been examined by Court as PW-2 and PW-10 respectively. Admittedly, they have not supported the prosecution case and have turned hostile. A belated recovery of the belongings of the deceased and the *danda*, delay in sending crucial evidence to FSL etc. weakens the case of prosecution.

11. Out of 32 witnesses, only 12 have been examined so far and the trial is likely to take considerable time to conclude. The Nominal Roll of the petitioner does not indicate that petitioner has any criminal antecedents. He



has been in judicial custody since 07.10.2019. There is no likelihood of the trial being concluded in the near future. In case of **Manish Sisodia vs. Directorate of Enforcement** [2024 INSC 595], the Hon'ble Supreme Court has emphasized that the right to speedy trial and right to liberty are sacrosanct rights, and therefore, while granting bail, the Court should give due weightage to these factors. The relevant paragraph of the judgment is extracted below:-

“53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that “bail is rule and jail is exception”

12. The petitioner has been in judicial custody for over five years and seven months. Prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial. Considering long incarceration, denying bail to the petitioner would deprive him of his fundamental right to liberty under Article 21 of the Constitution of India.



13. As per the Nominal Roll, petitioner was granted interim bail from 09.02.2022 to 14.02.2022. There is no allegation that he had in any manner misused the grant of interim bail. The petitioner is, therefore, not a flight risk. Most of the material witnesses have already been examined, and therefore, there is remote possibility of him tampering with the evidence.

14. Hence, considering the totality of facts and circumstances, the bail application is allowed. Petitioner is admitted to bail on his furnishing a personal bond in the sum of Rs. 50,000/- with a surety of the like amount to the satisfaction of the trial Court and subject to the following conditions:-

- a. Petitioner shall not leave the country without prior permission of the trial Court.
- b. Petitioner shall appear before the trial Court, as and when directed.
- c. Petitioner shall share his mobile number with Investigating Officer and keep it operational at all times.
- d. Petitioner shall not, directly or indirectly, come in contact with witnesses of this case, in any manner.
- e. In case of change of residential address, petitioner shall immediately bring the same to the notice of the trial Court.

15. Application is accordingly allowed and disposed of with pending application(s), if any. Further, it is made clear that nothing stated in this



2025:DHC:4506



judgment shall tantamount to an opinion on the merits of the case and observations made are only for the purpose of disposal of the bail application.

16. A copy of this order be sent to the Jail Superintendent for necessary information and compliance.

RAVINDER DUDEJA, J.

28th May, 2025
Vd/AK

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