



2025:DHC:11035



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

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Date of Decision: December 8, 2025+ **BAIL APPLN. 4074/2025 & CRL.M.A. 31699/2025**

SUNIL BIHARI ALIAS SHAKTI SINGHApplicant
Through: Mr. Sunil Tiwari,
Advocate.

versus

THE STATE (NCT OF DELHI)Respondent
Through: Mr. Ritesh Kumar Bahri,
APP for the State with
ACP Akash Rawat, SDPO
Ashok Vihar and Insp.
Yakub Khan, PS NDRS.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present application is filed seeking regular bail in FIR No.605/2017 dated 24.06.2017, registered at Police Station New Delhi Railway Station for offence under Section 302 of the Indian Penal Code, 1860 ('IPC').
2. The FIR was registered on 24.06.2017, pursuant to the information, received *vide* DD No. 16A regarding dead body of a young boy/deceased Yogesh Kumar Gautam, found lying at New Delhi Railway Station ('NDRS'). Thereafter, during investigation, on receipt of information from the secret informer one Sh. Sarvan was arrested and interrogated, who informed the



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police that the victim was part of a group which included Sh. Arif, Sh. Dharmender and the applicant/Sh. Sunil Bihari @ Shakti Singh herein, who worked as ragpickers at the NDRS and used to share their income. On the date of the incident, the accused persons had an altercation with the victim and in a drunken state, they beat him to death with bricks, stones and beer bottle.

3. Consequently, the applicant was arrested on 07.06.2018. The chargesheet has been filed in the present case under Sections 302/34/120B/201 of the IPC.

4. The learned counsel for the Applicant submits that the Applicant/accused has been falsely implicated in this case and no recovery has been made against him.

5. He further submits that the Applicant was arrested on the disclosure statement of co-accused Sarvan @ Sanju and Dharmender after about one year of the alleged incident.

6. He further submits that during investigation two public witnesses namely Rohit and Deva had implicated the applicant but they failed to identify the applicant in Court during trial and have turned hostile.

7. He further submits the mother of deceased has been examined and has deposed that the applicant had talked to her over mobile phone but no voice sample of the applicant was taken to compare with the alleged call.

8. He further submits that there are 54 witnesses in total of which only about 13 witnesses have been examined till date. The accused has been in judicial custody for nearly 8 years and the



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trial is not likely to conclude in near future.

9. *Per contra*, the learned Additional Public Prosecutor for the State has vehemently opposed the grant of any relief to the Applicant herein. He submits that the allegations against the accused are serious in nature and the applicant was declared proclaimed offender and is also involved in number of cases.

10. He further submits that the present case is at the stage of prosecution evidence and there is stout apprehension that if released on bail, the applicant may try to influence the witnesses or tamper with the evidence.

11. Submissions heard and the material placed on record perused.

12. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, period of incarceration is also a relevant factor that is to be considered.

13. The record reveals the that the applicant herein had previously preferred an application seeking regular bail, which was dismissed by this Court *vide* order dated 19.12.2023. Subsequently, another bail application preferred by the applicant was dismissed as withdrawn by this Court *vide* order dated

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13.12.2024, wherein it stands recorded that the trial is expected to concluded within 6-7 months and liberty to file a fresh application was granted to the applicant if the Trial does not conclude expeditiously.

14. Pertinently, a perusal of the order dated 19.12.2023 reveals that 12 out of 54 witnesses have been examined. The status report presently reveals, that after almost two years, only 13 out of 54 witnesses have been examined.

15. Further, pursuant to the dismissal of bail application preferred by the applicant *vide* order dated 13.12.2024, almost one year has been spent in custody. The same in the opinion of this Court, is a ground to move for bail afresh. This approach is consistent with the Hon'ble Apex Court's acknowledgment that prolonged detention can itself be a ground for reconsideration of bail, independent of the earlier dismissal, thereby not constituting a review but rather a fresh consideration under changed conditions. This aligns with the judicial imperative to ensure that detention prior to the trial does not become punitive and is in accordance with the principles of justice and liberty.

16. It is well settled that an accused cannot be kept in custody for an indefinite period of time, and the bail application can be considered on its own merits, even if filed repeatedly. It is trite that every day spent in custody can provide a new cause of action for filing a bail application under certain circumstances. This principle is part of a broader approach emphasizing that the law prefers bail over jail, aiming to balance the rights of the accused with the requirements of the criminal justice system. This leads





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to the principle that each additional day in custody could potentially alter the circumstances under which bail is considered, thereby necessitating a fresh evaluation of the bail application.

17. Undisputedly, the applicant has been in incarceration since 08.06.2018 i.e. for more than seven and half years and the trial is still not likely to conclude in near future.

18. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time as out of 54 witnesses only 13 have been examined and 41 witnesses are yet to be examined. In the opinion of this Court, no purpose would be served by keeping the applicant in further custody.

19. Pertinently, there is no CCTV footage to ascertain the role of the Applicant herein and the two public witnesses, have failed to identify him in Court during trial and have turned hostile.

20. Further, PW-4/Smt. Dhan Devi Seema, the mother of the deceased, has stated that on 23.06.2017, she received a phone call from an unknown number, demanding ransom amount of Rs. 12,000/- for saving the life of her son and from the voice she identified the caller to be the Applicant herein. She further states that when she called on the mobile no. of co-accused Arif, someone received the call and informed her that the dead body of the son is lying at the spot. However, she was not sure if the voice was of co-accused Sanju or of the Applicant herein.

21. Though the appreciation of the testimony of the material witnesses is a subject matter of trial, however, once the eye



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witnesses have turned hostile some doubt is created in the version of prosecution. It is settled law that in the event of there being even some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to bail. [Ref: **Ram Govind Upadhyay v. Sudarshan Singh: (2002) 3 SCC 598**].

22. It is also not disputed that the applicant was declared proclaimed offender way back in the year 2018 and he was subsequently arrested on 08.06.2018 and he is in custody since then. In regard to other cases pending against the applicant, the record indicates that the last of such case was registered way back in the year 2013.

23. Once the applicant undisputedly is in continuous incarceration since 08.06.2018 and once it is clear that the trial is not likely to be concluded in near future, the applicant cannot be denied benefit of bail on the sole criteria of his implication in previous FIRs and the fact that the accused was once declared proclaimed offender.

24. The Hon'ble Apex Court in the case of **Union of India v. K.A. Najeer: AIR 2021 SC 712** held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

25. The investigation in the present case already stands concluded with the filing of chargesheet followed by framing of charges and the material witnesses have already been examined by the learned Trial Court.

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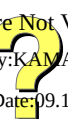


26. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

27. In view of the above, without commenting further on the merits of the case, I am of the opinion that the applicant has made out a *prima facie* case for bail.

28. Considering the aforesaid, the applicant is directed to be released on bail in the present FIR on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, out of which, one of the sureties necessarily has to be the family member of the applicant, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall appear before the learned Trial Court as and when directed;
- c. The applicant shall not leave the boundaries of the country without the permission of the learned Trial Court;
- d. The applicant shall provide the address where he would be residing after his release and shall not change





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the address without informing the concerned IO/ SHO;

e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

2. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

3. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

4. The bail application is allowed in the aforementioned terms.

5. Pending application also stands disposed of.

AMIT MAHAJAN, J

DECEMBER 8, 2025

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