



2025:DHC:7944



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

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**Reserved on: 28.08.2025**  
**Pronounced on: 11.09.2025**

+ BAIL APPLN. 4535/2024

DURGESH @ DURGA

.....Petitioners

Through:. Mr. Nishank Tyagi, Mr.  
Gaurav Jain, Mr.  
Kishalaya Mudgal, Mr.  
Prashant Tyagi, Advs.

versus

STATE NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Yudhvir Singh  
Chauhan, APP for the  
State with Insp. Sanjeev  
Kr. & Insp. Dharmendra.

**CORAM:**

**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**JUDGMENT**

**RAVINDER DUDEJA, J.**

1. This is an application under Section 439 Cr. PC (438 BNSS) filed on behalf of the petitioner Durgesh @ Durga seeking regular bail in case FIR No. 341/2016, PS Harsh Vihar, under Section 302/394/120-B/34 IPC.

2. As per the prosecution version, on 27.10.2016 at about 11:15 p.m., an information was received that a dead body was lying at A-3



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Block, Harsh Vihar, Jain Colony, 27 Bigha, on the kachcha road leading towards Power House. On receipt of such information, police reached the spot and found an unknown deceased, later identified as Shakir @ Teetar, with firearm injury on the left side of the neck. The scene of crime was inspected, exhibits were seized and the body was sent to GTB Hospital for postmortem. The postmortem report confirmed that the death was a result of shock due to ante-mortem firearm injury to the head.

3. During investigation, the statement of the alleged eye witness Hakim was recorded, wherein, he stated that there was longstanding enmity between two factions of Village Daus Ras. One faction belonged to Fakru and the other faction belonged to Jafru. Hakim, who allegedly accompanied the deceased at the spot, stated that Shakir was lured to Delhi by co-accused Banne Singh @ Baniya under the guise of friendship. Shakir and Hakim were taken to a deserted place in Harsh Vihar, where Banne Singh suddenly shot Shakir from behind, thereby, causing his death at the spot. Hakim was also assaulted and his mobile phone was robbed. The statements of family members and the villagers confirmed the animosity and the threats earlier extended by Hanif @ Rodu, an associate of Shaukat, who had been released from jail shortly before the incident.

4. The analysis of call detail records revealed that Banne Singh had been in frequent telephonic contact with Shaukat and Jafru before,



during and after the incident and had used the robbed mobile phone of Hakim.

5. On 09.02.2017, petitioner Durgesh @ Durga and co-accused Vishan Singh @ Banne Singh were arrested by the Special Cell in case FIR No. 06/2017. They admitted their involvement in the present case. Thereupon, they were arrested in this case on 16.02.2017. They refused to join the TIP. The weapon used in the murder of Shakir @ Teetar was recovered by the Special Cell in case FIR No. 06/2017, under Section 25 Arms Act.

6. Upon completion of investigation, charge sheet was filed against the petitioner and co-accused persons under Sections 302/394/120-B/34 IPC read with Section 25/27 Arms Act.

7. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case despite there being no material to establish his active role in the alleged offence. It has been submitted that even as per the admitted case of the prosecution, the gunshot injury was caused by co-accused Vishan Singh @ Banne Singh. He further submits that the deceased himself was a known criminal with multiple cases, including those under Section 302 IPC, pending against him. Petitioner was not a member of either of the two gangs, having rivalry with each other. The only role ascribed to him is that he was accompanying co-accused Vishan Singh @ Banne Singh at the time of incident and even PW-1 Hakim has not attributed the act of firing to him.



8. It has been further submitted that the entire case of prosecution hinges upon the testimony of PW-1, who is an interested witness, being associated with the rival gang and his testimony suffers from material infirmities. He further submits that there is an unexplained delay of two hours in reporting the matter to the police. Prosecution has failed to examine material witnesses such as the tempo driver, the security guard or the motorcyclist, allegedly present at the spot. No CCTV footage of the places visited by the petitioner prior to the incident has been collected. Prosecution has also not placed on record any CDR of the phone of the petitioner to show his presence at the spot. Such omissions, according to the learned counsel, create serious doubts about the veracity of the prosecution version.

9. Learned counsel further submits that petitioner has been in custody since 16.02.2017, having undergone incarceration of more than 8.5 years, without the trial reaching its conclusion. Out of 44 witnesses, prosecution has only examined 16 witnesses so far. It is urged that right to speedy trial under Article 21 cannot be defeated by such protracted proceedings. Reliance has been placed on *Union of India v. K.A. Najeeb*, CrI. Appeal No. 98/2021 to contend that undertrials cannot be indefinitely detained pending conclusion of trial. It is submitted that all the material witnesses have already been examined, thereby eliminating any apprehension of tampering or influencing witnesses.



10. Learned APP, appearing for the State, has opposed the bail application, submitting that eyewitness Hakim has supported the prosecution case and has identified the petitioner. It is submitted that the ballistic report confirms that the bullets recovered from the body of the deceased matched with the weapon recovered in case FIR No. 06/2017 and the accused persons had pleaded guilty in the said case. He further submits that petitioner had refused to take part in the judicial TIP, but has been identified in court by PW Hakim. It has been further submitted that as many as 18 witnesses came to the police station to identify the petitioner, thereby, corroborating the prosecution version. He further states that petitioner has criminal antecedents, inasmuch as, he has 8 prior involvements in criminal cases including 3 murder cases. It is argued that the allegations against the petitioner are grave and serious in nature, and therefore, he is not entitled for the grant of bail.

### **Analysis and Conclusion**

11. The Court has considered the rival submissions advanced by learned counsel for the petitioner as also the learned APP appearing for the State and has perused the material on record.

12. Admittedly, the gunshot injuries have been caused by the co-accused Vishan Singh @ Banne Singh. The role ascribed to the present petitioner is that he was accompanying the co-accused Vishan Singh @ Banne Singh at the time of incident and he and co-accused Banne Singh had caught PW Hakim and gave him blow over his face



and snatched his phone. There is no allegation that petitioner was carrying any weapon at the time of the incident. Thus, his role is confined to accompanying the co-accused and assisting him after the incident by overpowering Hakim and committing robbery of his mobile phone. Thus, at the highest, the petitioner's role is that of an accomplice or facilitator and not of the actual assailant, who inflicted the fatal injury.

13. While common intention under Section 34 IPC and conspiracy under Section 120-B IPC, widens the scope of liability, it nevertheless remains relevant, particularly at the stage of bail to distinguish between the principal assailant and those who are alleged to have lent assistance. In the present case, the prosecution itself has accepted that the fatal shot was fired by co-accused Banne Singh, whereas, the petitioner's involvement is derivative in nature, lacking independent motive or prior enmity with the deceased.

14. The petitioner's contention that the testimony of PW-1 falls in the category of the testimony of an interested witness, is to be tested during the trial. However, the fact remains that the examination of PW Hakim is complete and therefore the possibility of influencing, threatening or intimidating him stands largely mitigated.

15. The issue of prolonged incarceration also assumes significant importance. The petitioner has been in judicial custody since 16.02.2017, completing more than 8.5 years without conclusion of trial. Out of 44 witnesses cited, only 16 have been examined, with a



substantial number yet to be examined. It is a settled law that prolonged incarceration of undertrial prisoners, without the likelihood of an early conclusion of trial, is impermissible and violative of Article 21 of the Constitution, which guarantees the right to a speedy trial as part of the right to life and personal liberty. While the gravity of the offence and antecedents are relevant considerations, they cannot eclipse the constitutional mandate against indefinite detention of undertrials, and the Supreme Court in *Hussainara Khatoon v. State of Bihar* (1980) 1 SCC 81 & *Supreme Court Legal Aid Committee representing undertrial Prisoners v. Union of India & Ors.* (1994) 6 SCC 731, has consistently held that once an accused has spent an inordinate period in custody and material witnesses have been examined, bail ought to be granted to prevent continued incarceration from becoming oppressive and unconstitutional.

16. The principle that the right to a speedy trial is an essential facet of Article 21 of the Constitution was first emphatically recognized in *Hussainara Khatoon v. State of Bihar* (supra), where the Supreme Court held that no procedure which fails to ensure a reasonably quick trial can be termed “reasonable, fair or just,” and thus any such delay would fall foul of Article 21. This doctrine has been consistently reiterated in subsequent cases, including *Kadra Pahadiya v. State of Bihar* (1981) 3 SCC 671 and *Abdul Rehman Antulay v. R.S. Nayak* (1992) 1 SCC 225, where the Court clarified that it is primarily the obligation of the State or complainant to conduct the prosecution



with due promptitude. Importantly, the Court rejected the proposition that an accused must demand a speedy trial to claim its violation, noting that in India, where most accused belong to weaker socio-economic strata, often lacking proper legal aid, the burden cannot be placed upon them to insist upon such a right. Thus, denial of a speedy trial not only undermines the fairness of the procedure but also violates the fundamental guarantee of life and personal liberty.

17. Having regard to the fact that the petitioner is not the principal assailant, his role is limited to being an accomplice and keeping in mind the inordinate delay in trial, this Court is persuaded to conclude that continued detention would be oppressive and violative of the constitutional rights of the petitioner under Article 21. While the gravity of the charge cannot be understated, bail jurisprudence mandates a balance between the seriousness of the offence and the fundamental right to liberty. Hence, in the given circumstances, the petitioner makes out a case for grant of bail subject to stringent conditions.

18. In view of the above facts and circumstances, the bail application of the petitioner is allowed. The petitioner be released on regular bail upon him furnishing a personal bond of Rs. 50,000/- alongwith one surety of the like amount to the satisfaction of the Ld. Trial Court/Duty MM, subject to the following conditions;

- a) the petitioner shall regularly appear before the trial court as and when directed;



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- b) that petitioner shall not try to contact any of the prosecution witnesses and shall not directly or indirectly threaten or intimidate the witnesses;
  - c) the petitioner shall remain available on the address, to be given to the IO and shall not leave the State of Delhi/NCT without the permission of the learned Trial Court;
  - d) In case of change of residential addresses and/or mobile number, the petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
  - e) Upon being released, petitioner shall share his mobile number to the IO and shall keep the same operational all the times.
19. In view of the above, the petition alongwith any pending application, if any, stand disposed of.
20. Nothing stated herein shall tantamount to be an expression in the merits of the case.
21. A copy of this order be sent to Jail Superintendent for necessary compliance.

**RAVINDER DUDEJA, J.**

**SEPTEMBER 11, 2025/na**