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

% ***Date of Decision: 04th November, 2026***

\# **CNR No. DLHC010263502026**

\+ BAIL APPLN. 2282/2026 & CRL.M.(BAIL) 1793/2026

SUHAIL KHAN ALIAS SOHAIL KHAN .....Petitioner

Through: Mr. Pritish Sabharwal, Adv. with Ms. Shweta Singh, Mr. Sanjeet Kumar, Mr. Nishant Walia, Ms. Mehvish Khan and Ms. Vanshika Kapoor, Advs.
M: 9871878690
Email: pritishsabharwal1@gmail.com

versus

STATE NCT OF DELHI .....Respondent

Through: Mr. Ritesh Kumar Bahri, APP
M: 8920515685

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J. *(Oral):*

1. The present application has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS")/Section 439 of the Code of Criminal Procedure, 1973 ("CrPC"), seeking grant of regular bail to the petitioner, i.e., Suhail Khan @ Sohail Khan @ Parvez @ Pathan, S/o Mehboob Khan, in connection with the First Information Report ("FIR"), being *FIR No. 881/2021*, dated 16th October, 2021, under Sections 302/307/34 of the Indian Penal Code, 1860 ("IPC"), registered at Police Station ("PS") Dabri, Dwarka, Delhi.

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2. Furthermore, the application, i.e., *CRL.M.(BAIL) 1793/2026*, has also been filed on behalf of the petitioner seeking interim bail on medical grounds. By way of the said application, it has been submitted that the petitioner has a metal implant in his left knee, which is causing severe problems and has adversely affected his mobility, due to which he is unable to walk properly. Consequently, the petitioner is required to undergo a surgery for the removal/ treatment of the said metal implant.

3. As per the documents on record, the case of the prosecution is as follows:

3.1 On 15th October, 2021, an information was received at PS Dabri, Dwarka, Delhi, regarding a firing incident. Pursuant thereto, the Police reached the site of incident, i.e., *Gali No. 12, Mahavir Enclave Part-II, New Delhi*, wherein, it was revealed that the injured had already been shifted to the Deen Dayal Upadhyay Hospital, Hari Nagar, New Delhi ("DDU Hospital").

3.2 Upon reaching the DDU Hospital, the Police found that the injured, namely, Afroz Alam, was declared "brought dead" *vide Medico-Legal Case ("MLC")* bearing no. *8338/21* dated 15th October, 2021.

3.3 Subsequently, the statement of an injured eyewitness, namely, Ajee Mullaha, i.e., the complainant, was recorded. As per his statement, on 15th October, 2021, at about 10:30 PM, he saw the petitioner herein and co-accused, Bilal @ Raja, quarrelling with deceased regarding the parking of a motorcycle bearing registration no. *DL-10-SV-1996*. Upon intervention, the complainant was assaulted by the petitioner with a wooden plank/*fatta,* due to which the complainant fell down.

3.4 Subsequently, both the petitioner and the co-accused assaulted the deceased, and during the said assault, a gunshot was fired, whereafter, the

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deceased fell down on the street in a pool of blood. Thereafter, both accused persons fled from the spot, leaving behind the said motorcycle.

3.5 Pursuant to the foregoing, the present FIR was registered on 16th October, 2021, and the petitioner was formally arrested on 02nd November, 2021, while the co-accused, i.e., Bilal @ Raja, was formally arrested on 03rd November, 2021 in another connected FIR, i.e., *FIR No. 922/2021.*

3.6 In the *post-mortem* examination of the deceased, conducted at the DDU Hospital, the concerned doctors opined that the cause of death was *cranio-cerebra*l injury that injury was caused by firearm weapon, which was sufficient to cause death in the ordinary course of nature.

3.7 During the course of investigation, case property, including the scooty and motorcycle, used in the commission of the offence were recovered and seized. Further, in the course of the investigation in the connected FIR, i.e., *FIR No. 922/2021,* a pistol, involved in the commission of offence, was also recovered.

3.8 A Final Report/Chargesheet dated 24th January, 2022, was filed by Investigating Officer ("IO") before the Metropolitan Magistrate ("MM"), Dwarka Courts, Delhi, for offences punishable under Sections 302/307/34 of the IPC and Sections 25/27 of the Arms Act, 1959 ("Arms Act").

4. The Sessions Case, being *SC Cases 212/2022,* arising out of the present FIR, i.e., *FIR No. 881/2021*, is pending adjudication before the Additional Sessions Judge ("ASJ") – 05, South-West District, Dwarka, Delhi, and is presently at the stage of prosecution evidence.

5. The following contentions have been raised on behalf of the petitioner in support of the present application for regular bail:

5.1 The entire case of the prosecution attributes the act of firing the firearm

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to the co-accused, i.e., Bilal @ Raja, and not to the petitioner herein.

5.2 Furthermore, the petitioner has neither been alleged to have possessed nor to have used the firearm involved in the commission of the offence. Moreover, no recovery of any firearm has been made from the petitioner herein. Even the ballistic evidence collected during the investigation does not connect him with the alleged weapon of offence.

5.3 The role attributed to the petitioner is confined to an alleged assault upon the complainant with a wooden plank/*fatta*. The *MLC* of the complainant records that the injuries as simple in nature.

5.4 The testimonies of the material prosecution witness, namely, *PW-2*, i.e., Khurshid Alam, *PW-3*, i.e., Ajee Mullaha, and *PW-9*, i.e., Nabirsul Ansari, reveals significant contradictions, inconsistencies and improvements which go to the root of the case of the prosecution.

5.5 The complainant, in his testimony, has stated that the petitioner herein caught hold of the deceased, while the co-accused fired at the deceased. However, in the FIR, it is recorded that both the petitioner and co-accused started first beating the deceased, and only thereafter, the co-accused hit something on the head of the deceased, following which the complainant heard a sound like a fire cracker and the deceased fell on the street.

5.6 The complainant has stated in his cross-examination that none of the accused persons were known to him prior to the incident. However, in the FIR it is recorded that the said the complainant already knew the accused persons.

5.7 As per the testimony of the complainant during the cross-examination, *PW-2*, i.e., brother of the deceased, reached the site of the incident about 10-15 minutes after the deceased had fallen on the road. However, *PW-2,* in his cross-examination, denies the suggestion that he had not witnessed the

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incident in question.

5.8 Therefore, the complainant has improved the version of events.

5.9 The complainant has admitted, during his cross-examination, that he cannot read and write in Hindi and English language, and that the Police had not made any inquiry from him either at the spot or after taking him to the PS.

5.10 *PW-9*, i.e., Nabirsul Ansari, who claimed himself to be an eyewitness, has admitted, during his cross-examination, that his statement under Section 161 of the CrPC was recorded only on 31st July, 2022, i.e., after approximately 09 (nine) months from the date of the alleged incident.

5.11 He further admitted that the Police had not made any inquiry from him during the initial stage of investigation, despite their visits to the factory and DDU Hospital. Such unexplained delay in recording the statement of a purported eyewitness casts serious doubt upon the credibility and reliability of his testimony.

5.12 Further, the testimony of *PW-9* is also riddled with material omissions and improvements, as several important facts stated by him in his deposition were not disclosed to the Police during investigation.

5.13 Upon being confronted with his previous statement, *Ex. PW9/X1*, it was revealed that material facts, including the alleged heated exchange, intervention by the witness, unloading of clothes, cries of the complainant and other surrounding circumstances, were missing therefrom. Such material improvements go to the root of the prosecution case and render the testimony of *PW-9* wholly unreliable.

5.14 The petitioner has been in jail since 02nd November, 2021. Further, out of the 44 witnesses, only 14 witnesses have been examined so far. The trial is moving at a slow pace, and there is no likelihood of its conclusion in the near

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future.

5.15 The petitioner was earlier granted interim bail by this Court *vide* order dated 07th December, 2023, in *BAIL APPLN. 4054/2023,* for a period of 07 (seven) days, i.e., from 09th December, 2023 to 15th December, 2023. The petitioner has complied with each and every condition imposed by the Court and did not misuse the liberty granted to him.

6. *Per contra*, the learned Additional Public Prosecutor ("APP") for the State has vehemently opposed the bail application and has advanced the following submissions:

6.1 The trial is proceeding expeditiously and there are no unnecessary adjournments being sought. The petitioner was present at the spot along with the co-accused and fled away from there along with the co-accused. There is a common intention between the petitioner and the co-accused Bilal @ Raja. The presence of the petitioner herein at the site of the incident is confirmed by the evidence on record.

6.2 There are 04 (four) other criminal cases pending against the petitioner herein, and he has been involved in 07 (seven) instances of misconduct during his incarceration. Therefore, the conduct of the petitioner is unsatisfactory.

6.3 The judgment dated 05th January, 2023, passed by a coordinate bench of this Court, in the case of ***Ravi @ Anil Chaudhary Versus State of NCT of Delhi, in BAIL APPL. 2671/2022***, relied upon by the petitioner is distinguishable on facts, since in the said case the petitioner was not at the spot of the incident, whereas, in the present case, the petitioner was present at the time of the incident and has been named in the FIR.

7. Having perused the record and heard the learned counsel for the petitioner as well as the learned APP for the State, it is evident that the role

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attributed to the petitioner is not peripheral in nature. The evidence on record demonstrates active participation of the petitioner in the incident and that the acts of the petitioner and the co-accused were committed in furtherance of their common intention, thereby, attracting Section 34 of the IPC.

8. The allegations against the petitioner are extremely grave and serious in nature pertaining to a brutal incident in which one person lost his life due to firearm injuries, while another victim sustained injuries.

9. It is well settled that, at the stage of consideration of bail application, the Court is not required to conduct a detailed appreciation of evidence, however, at the same time, the Court cannot ignore the nature of accusations, the *prima facie* material collected during investigation, the role attributed to the accused, and the severity of punishment.

10. The contentions raised by the petitioner regarding appreciation of evidence, alleged contradictions in witness testimonies and distinction of role, are matters which can be adjudicated upon during trial. At this stage of consideration of bail application, the material available on record clearly discloses a strong *prima facie* case against the petitioner.

11. The statement of the complainant attributes a definite and active role to the petitioner, i.e., his presence at the site of incident with the co-accused, quarrel with the deceased regarding the removal of the motorcycle, exhorting to the co-accused to finish the matter permanently, and the assault committed upon the complainant with a wooden plank/*fatta*.

12. Thus, given the case of the prosecution is that the petitioner incited the co-accused and assaulted the complainant, in the course of the same transaction that resulted in fatal shooting of the deceased, the role of the petitioner cannot be characterized as minor or isolated from the primary

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offence.

13. Furthermore, it is to be noted that prolonged incarceration of an undertrial is not an absolute ground for grant of bail in every case. The petitioner has been specifically named by the complainant and active participation has also been attributed to the petitioner.

14. It is also pertinent to note that perusal of the latest Nominal Roll dated 18th July, 2026, furnished by the Jail Authorities, brings forth that there are 04 (four) other FIRs pending against the petitioner herein, besides the present case. The details of the said pending cases against the petitioner herein are as follows:

"

1.) FIR NO. 655/2019, U/S. 25 ARMS ACT, PS. DABRI.
2.) FIR NO. 270/2018, U/S. 324/341/506/34 IPC, PS. DABRI.
3.) FIR NO. 922/2021, U/S. 186/353/307 IPC & 25/27 ARMS ACT, PS. DABRI.
4.) FIR NO. 103/2021, U/S. 25/54/59 ARMS ACT, PS. RANHOLA.

"

15. Further, the said Nominal Roll also reveals that the petitioner has been convicted in another case, i.e., *FIR No. 567/2019* dated 08th March, 2022, registered at PS Dabri, Dwarka, Delhi.

16. The overall jail conduct of the petitioner is unsatisfactory as per the said Nominal Roll and the petitioner has been involved in 07 (seven) incidents of misconduct in the jail.

17. In this regard reference may be made to the judgment of the Supreme Court in the Case of ***Neeru Yadav Versus State of U.P. and Another***, ***(2016) 15 SCC 422***, wherein, it has been held as follows:

> *"xxx xxx xxx*
>
> *13.* ***We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established***

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fact that a crime though committed against an individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. *He cannot be a terror to the society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus:-*

> *"Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters."*
>
> *xxx xxx xxx*

15. ***This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused****. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind.* ***The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.***

xxx xxx xxx"

(Emphasis Supplied)

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18. In the light of the aforesaid facts and circumstances, this Court holds that the petitioner is not entitled to be released on bail. Accordingly, the application for regular bail is dismissed.

19. 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.

20. However, this Court notes that the petitioner has placed on record a copy of his medical documents which show that the petitioner has a '*history of gunshot injury*' and there is '*small metallic density focus in the knee joint*'. Thus, there is a likelihood that the petitioner has '*retained foreign body*' in the knee.

21. The medical records of the petitioner pertaining to his treatment at Jail Dispensary, Lok Nayak Hospital and DDU Hospital have been duly verified by the Senior Medical Officer ("SMO"), Central Jail No. 1, Tihar, New Delhi, who has accordingly submitted a Medical Report dated 30th September, 2026, to the Jail Superintendent. As per the said Medical Report, the petitioner has been shown to have a history of pain and swelling on the left knee.

22. Accordingly, in view of the medical condition of the petitioner, in order to allow the petitioner to take appropriate medical treatment in respect of his left knee, the petitioner is granted interim bail for a period of 03 (three) weeks from the date of his release in proceedings arising out of *FIR No. 881/2021,* dated 16th October, 2021, under Sections 302/307/34 of the IPC, registered at PS Dabri, Dwarka, Delhi, subject to the following conditions:

(i) The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Rupees Twenty-Five Thousand Only) with two sureties in the like

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amount, to the satisfaction of the Trial Court/Duty Magistrate;

(ii) The petitioner shall not indulge in any criminal activity, in any manner whatsoever, during the period of his interim bail;

(iii) The petitioner shall not leave National Capital Territory ("NCT") of Delhi without prior permission of the Trial Court and shall ordinarily reside at his address as per the prison records;

(iv) The petitioner shall not contact/visit/offer any inducement/threat/ promise/attempt to influence any of the prosecution witnesses or other persons acquainted with the facts of case;

(v) The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial;

(vi) Upon expiry of the period of 03 (three) weeks from the date of his release on interim bail, the petitioner shall surrender before the concerned Jail Superintendent on or before 04:00 PM on the said date;

(vii) The medical documents relating to the treatment of the petitioner's left knee shall be furnished by him to the concerned Jail Superintendent at the time of his surrender.

23. The present applications are disposed of, in the aforesaid terms.

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

MINI PUSHKARNA, J

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