

(2025) 12 DEL CK 0034

Delhi HC

Case No: Bail Application No. 3867 Of 2025 & Criminal Miscellaneous Application Nos.
30155, 30156 Of 2025

Nasir

APPELLANT

Vs

State Nct Of Delhi

RESPONDENT

Date of Decision: Dec. 16, 2025

Acts Referred:

- Constitution of India, 1950- Article 21
- Indian Penal Code, 1860- Section 34, 201, 302

Hon'ble Judges: Amit Mahajan, J

Bench: Single Bench

Advocate: Mutiur Rehman, Nadeem Khan, Ayush Chaudhary, Shaheen, Ritesh Kumar
Bahri, Divya Yadav, Deepak Kumar

Final Decision: Allowed

Judgement

Amit Mahajan, J

1. By the present bail application, the applicant seeks regular bail in FIR No. 66/2019 dated 25.01.2019, registered at Police Station New Usmanpur, for offences under Sections 302/201 of the Indian Penal Code, 1860 (IPC).

2. It is the case of the prosecution that on 23.01.2019, information was received from SHO City Kotwali, Bijnor, U.P., vide DD No. 47 at Police Station New Usmanpur, Delhi, wherein it was informed that vide DD No. 8A, dated 24.07.2018, PS New Usmanpur, one Sanjay Mishra had lodged a missing complaint of his wife Soni @ Nidhi @ Ikra. It was further alleged that, the victim has been strangled by one Intzar, who also had brought the dead body to Bijnor for cremation.

3. Consequently, on 24.01.2019, Sh. Sanjay Mishra the husband of deceased identified the dead body of his wife and as per the post-mortem report, the cause of death was stated as "Ashphaxia due to Antemortem strangulation".

4. The main accused/Intzar was arrested on 25.01.2019, and during interrogation, he disclosed that on 22.01.2019 he had strangled the deceased, with the help of his brother-Nazir/Applicant herein. He further disclosed that he had brought the dead body to Bijnor for performing her last rites.
5. It is alleged that the CCTV footage of the area near the house of the accused/Intzar and Applicant shows the main accused/Intzar carrying the dead body of the victim and the Applicant following him.
6. The Applicant was arrested on 28.01.2019, who refused his Test Identification Parade proceedings and during police remand, at his instance, one muffler and a black cap, used by main accused/Intzar for covering his face and head, were recovered.
7. The chargesheet was filed under sections 302/34/201 of the IPC against the main accused and the Applicant.
8. The learned counsel for the Applicant submits that the applicant has been falsely implicated in the present case solely on the basis of disclosure statement of the co-accused.
9. He submits that even if the evidence as relied upon and the case of the prosecution are taken at the highest, the only role to be attributed to the Applicant would be of helping his brother in hiding the body of the deceased.
10. He submits that even as per the CCTV footage, without prejudice to the submissions that the Applicant is not involved in the present case, the person alleged to be the Applicant is merely seen walking behind the main accused, who was allegedly carrying the dead body.
11. He further submits that no motive can be attributed on the Applicant.
12. Per Contra, the learned Additional Public Prosecutor for the State submits that the circumstantial evidence in the present case clearly points towards the guilt of the Applicant in abetting the murder of the victim. He submits that the co-accused clearly disclosed that the Applicant was holding the victims hand while he strangled her.
13. He further submits that the CDRs reveal that the main accused and the Applicant were simultaneously at Delhi and then at Bijnor on the date of the incident.
14. Submissions heard and the material placed on record perused.
15. While considering the application for bail, the Court has to consider the nature of the offence, severity of the punishment and prima facie involvement of the accused. The Court, at this stage, is not required to enter into the detailed analysis of the evidence to establish beyond the reasonable doubt whether the accused has committed offence. It is essential to remember that bail is not a determination of

guilt but a safeguard ensuring the accused's right to liberty pending trial. Moreover, the court should ensure that bail conditions are tailored to address any potential risks while respecting the victim's rights. By upholding these principles, the court can strike a balance between protecting the interests of the victim and safeguarding the rights of the accused.

16. Undisputedly, even as per the chargesheet, it is the case of the prosecution that it is the main accused/Intzar, who had allegedly strangled the victim. The allegation against the Applicant is that he was holding the victim's hands while co-accused strangled her and he also assisted in carrying the dead body from Delhi to Bijnor.

17. Pertinently, his complicity is sought to be established on the basis of the disclosure statement of the main accused, the CCTV footage in which he is allegedly seen walking behind his brother, who had his face covered and was carrying the dead body and CDRs.

18. It is, however, not disputed that the entire case is based on circumstantial evidence. There is no eye-witness to the commission of the alleged offence.

19. While, it is not in doubt that in certain circumstances, the circumstantial evidence is sufficient for the conviction of the accused persons, it is also settled law that when the case is based solely on circumstantial evidence, the chain of circumstances has to be so complete that it leaves no reasonable ground for any other conclusion except for the hypothesis of guilt of the accused person. The veracity of the allegations levelled and the defence led, has to be seen after the entire evidence is led. At this stage, cannot be said with certainty that the Applicant was involved in the commission of the offence.

20. Admittedly, the Applicant has spent more than six years in custody. He was arrested on 22.02.2019 and but for a period of five months, when he was released on interim bail during the period of COVID-19, he has been under continuous incarceration.

21. Despite more than six years having elapsed since his arrest, the trial is still at the stage of examination of prosecution witnesses. On being pointedly asked, it is informed that only 18 out of 52 witnesses have been examined till date. In such circumstances, the trial thus is not likely to conclude in near future.

22. The Honble 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.

23. While it cannot be denied that the offences alleged against the applicant are heinous in nature, the Honble Apex Court in the case of **Javed Gulam Nabi Shaikh v. State of Maharashtra and Another** : CrI.A.2787/2024 has observed as under:

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

24. The continued incarceration of the applicant will result in the denial of her fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India, when the trial is not likely to conclude in near future.

25. 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.

26. It is not disputed that the Applicant was enlarged on interim bail and has not misused the liberty. The conduct of the Applicant while he was in custody, is stated to be satisfactory.

27. However, appropriate conditions ought to be put to allay the apprehension of the Applicant tampering with the evidence or evading the trial.

28. In view of the above, the Applicant is admitted on bail and is directed to be released on furnishing a personal bond for a sum of ₹20,000/- with one surety of the like amount, 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 under no circumstance leave the country without the permission of the learned Trial Court;

c. The applicant shall appear before the learned Trial Court as and when directed;

d. The applicant shall provide the address where he would be residing after his release and shall not change 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;

f. The applicant shall mark his appearance before the IO once every two months.

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

30. It is clarified that the observations made in the present order are only 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.

31. The bail application is allowed in the aforementioned terms. Pending application(s), if any, also stand disposed of.