

2026 LiveLaw (SC) 451

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
DIPANKAR DATTA; J., SATISH CHANDRA SHARMA; J.**

April 29, 2026

CRIMINAL APPEAL Nos.2168-2169/2026 [Arising out of SLP (CRL) No. 3961-3962 OF 2026]

SACHIN YADAV versus STATE (NCT of DELHI) & ANR.

Constitution of India, 1950 – Articles 19 and 21 – Code of Criminal Procedure, 1973 (Cr.P.Code) / Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) – Section 168 (erstwhile Section 149 CrPC) – Bail Conditions – Validity of bail condition directing the accused to not reside in the same building as the complainant – Restraint on Residence – Proportionality and Reasonableness – Grant of bail with conditions is a discretionary relief, and courts may impose conditions that impinge on fundamental rights in exceptional cases - a bail condition that effectively ousts an accused from their own residence causes serious curtailment of rights guaranteed under Article 21 and must strictly satisfy the tests of reasonableness, proportionality, and necessity - In the absence of clear and cogent material showing that a less restrictive measure would not suffice, such an severe restriction becomes punitive rather than preventive - Where the conclusion of the trial is nowhere in sight and a speedy trial appears to be a mirage, a continuous restraint on the accused's right of residence is disproportionately harsh, unreasonable, and uncalled for. [Paras 15, 16, 23 & 24]

Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) – Section 168 – Statutory Obligation of Police to Prevent Offences – Shifting of Burden via Bail Conditions – Section 168 of the BNSS casts a vital, primary statutory duty squarely upon the police and the State to prevent the commission of cognizable offences - Imposing a bail condition that ousts the accused from their residence to maintain peace effectively shifts this preventive burden from the law enforcement machinery onto the accused, thereby weakening the State's core obligation to prevent crime - Courts must remind the police of their statutory obligations to ensure no one breaches peace, rather than relying on disproportionately restrictive bail conditions to achieve situational harmony. [Relied on State of NCT of Delhi vs. Sanjay, (2014) 9 SCC 772; Paras 17-28]

For Appellant(s): Mr. Ameet Siingh, Adv. Mr. Ankit Ambasta, AOR Ms. Ritu Bala Puri, Adv. Ms. Simran Vinayak, Adv. Ms. Niti Tiwari, Adv. Ms. Deepinder Singh Bhari, Adv.

For Respondent(s): Mr. Davinder Pal Singh, A.S.G. Mr. Nachiketa Joshi, Sr. Adv. Mr. Mukesh Kumar Maroria, AOR Mr. Amit Sharma-b, Adv. Mr. Praneet Parnav, Adv. Mr. Rajan Kumar Chourasia, Adv. Mr. R R Bag, Adv. Mr. Alok Singh, Adv. Mr. Rajbeer, Adv. Mr. Venkate Md Muppna, Adv. Mr. Shailendra Kumar, Adv. Mr. Ankit Borker, Adv. Ms. Shivangi Singh, Adv. Mr. Raj Shekhar Sharma, Adv. Ms. Alpana Sharma, AOR

ORDER

1. The High Court of Delhi by a common impugned judgment and order dated 02nd May, 2026 disposed of Bail Application No.1345/2025 & CrI. M.A. No.13482/2025. A part of the said order is under challenge in these appeals at the instance of the appellant-accused.

2. While granting the appellant's prayer for release on bail with certain conditions, the High Court imposed the following condition:

“22. ...

d. The applicant shall not reside in the same building as the complainant. 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. ...”.

This condition is challenged by the appellant as violative of his rights guaranteed by Articles 21 and 19 of the Constitution.

3. Appellant figures as an accused in FIR No. 109 dated 18th February, 2025 registered at Police Station Hauz Khas. The FIR, registered at the instance of the complainant/respondent no. 2/Savita Yadav¹, accuses the appellant and the co-accused of offences under Sections 110(3) and 3(5) of the Bharatiya Nyaya Sanhita, 2023² (corresponding to Sections 308 and 34 of the Indian Penal Code, 1860, respectively).

4. Appellant was arrested on 18th February 2025 and enlarged on bail by the aforesaid order dated 2nd May, 2025.

5. It is not in dispute that the complainant and the appellant are relatives. They are residing in the same building. An alleged violent altercation resulted in registration of the FIR. The High Court, while granting bail to the appellant has imposed several conditions apart from the condition that restricts his right of residence during the pendency of the trial, noted above. Furthermore, the appellant is also restricted from changing his address without informing the concerned Investigating Officer/Station House Officer. This condition has left the appellant aggrieved.

6. It has been argued by learned counsel on behalf of the appellant that such a condition amounts to his eviction from his own home without following due process and also adversely affects his income considering that he is running a shop, located in the same building. It has been almost a year that the appellant has been forced to reside elsewhere and not run his shop at the said building; and, since termination of the trial is nowhere in sight, the impugned condition ought to be set aside by this Court.

7. *Per contra*, it is the pleaded case of the State in its counter affidavit that the condition restraining the appellant from residing in the same building is preventive and situational. The condition, not amounting to displacement, is a reasonable restriction imposed in view of the long-standing history of violent altercations between the related parties who are residing in the same building to prevent breach of peace, ensure safety of the complainant and facilitate a fair trial.

8. Learned counsel on behalf of the complainant has supported the impugned condition. According to him, the impugned condition has resulted in peace in the locality. There have been no altercations between the family members of the complainant and the appellant ever since he has been forced to reside elsewhere and declining interference with such condition would be in the best interests of the society.

9. We have heard learned counsel appearing for the parties and considered the materials on record.

10. Upon completion of investigation, charge-sheet has been filed under Section 193 of the Bharatiya Nagarik Suraksha Sanhita, 2023³ on 18th April 2025. Appellant, as well as the co-accused, is alleged to have committed offence punishable under Sections 110 and 3(5), BNS. Prosecution proposes to examine 10 (ten) witnesses to drive home the charges

¹ Complainant

² BNS

³ BNSS

against the appellant. However, despite lapse of more than a year, the charges are yet to be framed; thus, trial is yet to begin. The counter affidavit of the State reveals that a supplementary chargesheet is also proposed to be filed, since the weapon of offence is yet to be recovered.

11. It appears from the medical reports, which are on record, that the injuries suffered by the complainant and her son are simple in nature. Despite the chargesheet having been filed on 18th April 2025, the same has not been placed on record for our perusal. It is only general allegations that are levelled in the FIR of the appellant having been part of the altercations. Curiously, it is seen that the appellant's mother and sister, who are alleged to have dealt severe blows on the complainant and her son, have already been granted the concession of pre-arrest bail by the Trial Court.

12. Furthermore, it is pertinent to note that a cross FIR bearing FIR 110 dated 18th February, 2025 under Sections 110 and 3(5), BNS has also been registered at the instance of the appellant's mother in respect of the same incident. As per the allegations in the cross-FIR, *prima facie*, it seems that the complainant and her family members as well as tenants had inflicted much more severe injuries to the appellant and his family members using weapons such as baseball bats, axes and knives.

13. Be that as it may, more than a year has passed since the appellant was arrested. The charges are yet to be framed; obviously, conclusion of the trial is nowhere in sight.

14. Thus, we need to test the impugned condition imposed by the High Court bearing in mind the above facts and circumstances.

15. Grant of bail to an accused, with conditions, is a discretionary relief. The impugned condition, which the High Court imposed in the exercise of its discretionary jurisdiction, seems to be preventive in nature which came to be imposed considering the situational aspect of multiple FIRs and cross FIR having been registered against the appellant as well as the members of the complainant's family, respectively, arising out of long-standing property disputes. It is not uncommon that courts do impose conditions which impinge on the fundamental rights of the accused (of right of locomotion within the country, right of residence, right to travel abroad, etc.).

16. However, it needs no emphasis that only in exceptional cases should such a condition be imposed. It is trite that a condition like the one under challenge takes in its train serious curtailment of rights guaranteed by Article 21 of the Constitution and must, therefore, satisfy the tests of reasonableness, proportionality and necessity. The objects for imposing conditions to enjoy the concession of bail need no elucidation; but a condition that amounts to effective ouster from residence could be susceptible to an invalidation unless there is clear and cogent material to show that a lesser restrictive measure would not suffice. In the absence of such satisfaction, the condition would become punitive rather than preventive.

17. Section 168 of the BNSS (corresponding to Section 149 of the Code of Criminal Procedure, 1973⁴) assumes importance in the factual milieu. It reads:

168. Police to prevent cognizable offences.

Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

⁴ Cr. PC

18. A plain reading of the aforesaid provision makes it evident that the duty to prevent the commission of offences rests squarely upon the police, and by extension, the State. This position is reinforced in ***State of NCT of Delhi vs. Sanjay***⁵.

19. Section 168, BNSS (earlier Section 149, Cr. PC) casts a vital duty on the police to prevent the commission of cognisable offence and empowers them to take preventive action. Courts ought to remind the police of this statutory obligation and ensure that it is duly performed. A condition of bail such as the one imposed here, however, shifts the burden to the accused and thereby weakens the State's obligation to prevent crime. This is not to suggest that an accused on bail is free to commit offences. He remains bound by the conditions of bail and by the law. Yet, any condition that curtails fundamental rights must be justified by circumstances that necessitate such restriction.

20. In light of Section 168, BNSS, the High Court ought to have impressed upon the police of discharging the duty to ensure that none breaches peace and takes the law in his/her own hands, and remind them of the duty to appropriately deal with the wrongdoer. The order dated 2nd May, 2025 appears to be silent in this regard.

21. There is one other aspect which needs to be touched upon; that is, delay in commencement of the trial, not to speak of conclusion, having its own consequences. While fairness of the trial remains the overriding consideration, a speedy trial is a facet of Article 21. If the right to speedy trial is breached, a simultaneous restriction on the right to residence becomes unjustified.

22. Although learned counsel for the complainant would urge that altercations at the instance of the appellant and his family members are a regular feature and that the complainant was at the receiving end upon one of such altercations between the parties having turned violent, *we prima facie* view them as mere skirmishes. Indeed, the number of skirmishes between the appellant and the complainant and their family members were, perhaps, thought to be too many by the High Court to be ignored.

23. In any event, it cannot be overlooked that although the chargesheet alleges attempt to commit culpable homicide by the appellant and his family members, the medical reports describe the injuries as 'simple'. We say no more on this to avoid any prejudice to the trial, except to recall the adage "*it takes two to make a quarrel*". Even if the High Court felt compelled to impose the condition in question, it was equally necessary for the judicial system to ensure that the trial proceeds with reasonable expedition, if not an early conclusion, having regard to the direction that the appellant has to stay away from his own home. Since a speedy trial in this case appears to be a mirage having regard to the progress made till date, a restraint on residence becomes disproportionately harsh.

24. Without doubt, the impugned condition to keep the appellant out of his own home till the conclusion of the trial amounts to an ouster and is, therefore, unreasonable and uncalled for.

25. Taking an overall view of the matter, we are of the considered opinion that the condition of restricting the appellant's right to reside in the same building as the complainant pending trial ought to be interdicted; and, since the appeals deserve acceptance, the appellant may be allowed the concession of bail without being required to abide by the aforesaid condition.

26. Accordingly, we set aside the impugned condition extracted above in paragraph 2.

⁵ (2014) 9 SCC 772

- 27.** Appellant, it is needless to observe, shall continue to abide by such other terms and conditions as have been imposed by the High Court by the judgment and order dated 2nd May, 2025.
- 28.** Apart from the conditions imposed by the High Court, we also deem it fit that the appellant gives an undertaking to the trial court that while on bail, he would maintain peace and good behaviour. Ordered accordingly.
- 29.** In the event there is any breach of the terms and conditions for grant of bail, the trial court shall be at liberty to cancel the bail of the appellant.
- 30.** We clarify that the observations made in this order will not be treated as findings on the merits of the case.
- 31.** The appeals are, accordingly, allowed on the aforesaid terms.
- 32.** Pending application(s), if any, shall stand disposed of.

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