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

CNR No. DLHC010065112026

+ **BAIL APPLN. 744/2026**

SUSHIL KUMAR

.....Petitioner

Through: Mr. R.S. Malik, Mr. Sahil Malik, Ms. Mamta, Mr. Aditya Solanki, Mr. Vanshak Jain, Mr. Keshav Bharadwaj
Mr. Rohit Kumar Dalal & Mr. Abhishek Kumar, Advs.

versus

THE STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Raghuinder Verma, APP for State.
ACP Mangesh Tyagi Crime Branch.
Mr. Joginder Tuli, Ms. Joshini Tuli,
Ms. Taniya Qureshi & mr. Komal Jha, Advs. for deceased father.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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06.08.2026

1. This application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 439 of the Code of Criminal Procedure, 1973) has been preferred by the petitioner, Sushil Kumar, seeking regular bail in case arising out of FIR No. 218/2021, registered at Police Station Model Town (Crime Branch), Delhi, under Sections 308/325/323/341/506/188/269/34 of the Indian Penal Code, 1860 and



Sections 25/54/59 of the Arms Act, 1959.

2. The genesis of the prosecution case lies in an incident of the intervening night of 4th-5th May, 2021. On a PCR call reporting gunfire inside Chhatrasal Stadium, Delhi, the police reached the spot and found that a violent occurrence had taken place in its parking area. Investigation revealed that the injured persons, Jai Bhagwan @ Sonu, Sagar Dhankhad, Ravinder @ Bhinda, Bhagat @ Bhagtu and Amit @ Khagad had earlier been abducted from Shalimar Bagh and Model Town, Delhi, and brought to the stadium, where they were mercilessly assaulted by the petitioner and his associates with lathis, dandas and hockey sticks, certain accused being armed with firearms. Sagar Dhankhad succumbed to his injuries the same day during treatment, resulting in the addition of Section 302 IPC to the case.

3. Investigation culminated in a chargesheet, and subsequently a supplementary chargesheet under sections 302, 307, 308, 364, 365, 452, 323, 342, 188, 269, 147, 148, 149, 506 (II), 392, 394, 411, 201, 109, 120B, 34, 174A, 212 IPC and Sections 25(1)(B), 27,(1) and 30 of Arms Act, 1959, against twenty three accused persons, of whom twenty stand arrested. Charges came to be framed on 15.10.2022, and the trial presently stands at the stage of recording of prosecution evidence, with a cumulative list of 222 prosecution witnesses. During its pendency, the petitioner was granted interim bail by the Trial Court on more than one occasion on 04.11.2022, 06.03.2023 and 19.07.2023, and it is not disputed that he surrendered on each occasion.

4. The petitioner's first application for regular bail was declined by the Trial Court *vide* order dated 22nd July, 2024. Aggrieved, he approached this



Court in Bail Appln. 2654/2024, which came to be allowed by a coordinate Bench *vide* order dated 04.03.2025, principally on the ground that the material eyewitnesses and injured witnesses examined until then, including the sole witness who had identified the petitioner in examination-in-chief, had, on the whole, turned hostile and failed to support the prosecution version, and that the trial, with 189 witnesses cited and only 30 examined, was unlikely to conclude in the near future.

5. *Vide* order dated 13.08.2025 in **Ashok Dhankad v. State (NCT of Delhi) & Anr.** [Criminal Appeal No. 3495/2025 arising out of SLP (Crl.) No. 5370/2025], the Supreme Court set aside the order dated 04.03.2025 and directed the petitioner to surrender within one week. At the outset, the Supreme Court reiterated the constitutional moorings of personal liberty in the context of non bailable offences, extracting the following observations of a three-Judge Bench in **Kalyan Chandra Sarkar v. Rajesh Ranjan**¹:

18. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non-bailable offences are entitled to bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so.

6. The Supreme Court, thereafter, drew a clear distinction between an



appeal against an order granting bail and an application for cancellation of bail. The former tests whether the discretion under Section 439 CrPC was exercised judiciously, cautiously and in compliance with settled parameters and the latter examines supervening circumstances or misconduct subsequent to release. Extracting the decision in **Y. v. State of Rajasthan**², the Supreme Court observed:

15. It is worth noting that what is being considered in this case relates to whether the High Court has exercised the discretionary power under Section 439 CrPC in granting bail appropriately. Such an assessment is different from deciding whether circumstances subsequent to the grant of bail have made it necessary to cancel the same. The first situation requires the Court to analyse whether the order granting bail was illegal, perverse, unjustified or arbitrary. On the other hand, an application for cancellation of bail looks at whether supervening circumstances have occurred warranting cancellation.

16. In Neeru Yadav v. State of U.P. this Court held:

“12. We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. It is well settled in law that cancellation of bail after it is granted because the accused has miscondacted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the court.”

7. Applying these principles, the Supreme Court found that the order

¹ (2005) 2 SCC 42.



dated 04.03.2025 passed by this Court had failed to reckon with, *inter alia*, the petitioner's conduct in evading arrest and remaining absconding for a considerable period; the gravity and shocking nature of the allegations; the recovery of a loaded firearm and forensically untampered video evidence; and, most significantly, the societal influence wielded by the petitioner as a decorated Olympian and the discernible pattern that, on each occasion he was afforded temporary liberty, witnesses who, thereafter, deposed had turned hostile. The Supreme Court in paragraph no. 24 and 25 recorded as under:-

"24. Furthermore, this Court cannot lose sight of the influence an accused wields in society while considering the grant of bail, as was expounded by this Court in Bhagwan Singh v. Dilip Kumar¹¹. Undoubtedly, the Accused is a celebrated wrestler and an Olympian, who has represented the nation at the international level. It cannot be doubted that he carries societal impact. In such circumstances, it cannot be said that he would have no domineering influence over witnesses or delay the proceedings of trial. Needless to add that allegations of pressurizing the witnesses have been made, before the order granting bail was passed. Certain witnesses had, in writing lodged complaints, apprehending threat to their lives at the behest of the Accused.

*25. On the above aspect, the State has further submitted that the whenever Accused was granted temporary bail [five occasions i.e. on 4th November 2022 (8 days); 6th March 2023 (3 days); 23rd July 2023 (7 days); 30th July 2023 (9 days) and 18th August 2023 (2 days)] the visible pattern seen is that, the prosecution witness be it for whatever reason, influence or threat, upon examination have turned hostile. However, at this stage we refrain from affirming seal of approval thereupon. **But pertinently, this pattern underscores the possibility of interference into the trial by the accused. Noticeably, out of 35 witnesses, 28 have turned hostile**"*

[Emphasis Supplied]

8. It was in this backdrop that the order dated 04.03.2025 passed by this Court came to be set aside, the petitioner was directed to surrender, and it

² (2022) 9 SCC 269.



was clarified, in the concluding paragraph of the judgment, that it would “*be open for the accused to apply afresh for bail, with a change in circumstances, before the appropriate Court, to be decided on its own merits.*” The petitioner surrendered on 20.08.2025, in compliance with the said direction.

9. Pursuant to the liberty so reserved, the petitioner moved a fresh application for regular bail before the Trial Court, which came to be dismissed *vide* order dated 06.02.2026. The Additional Sessions Judge, while declining bail, noted that although the witness who had identified the petitioner in examination-in-chief had turned hostile in cross-examination, the facts deposed by him could not be overlooked at that stage and that several material witnesses remained to be examined. Additionally, the observations of the Supreme Court concerning the petitioner’s conduct and societal impact continue to hold the field. It is against this backdrop that the present application has been preferred directly before this Court.

10. Learned counsel for the petitioner submits that the very apprehension which weighed with the Supreme Court in cancelling bail, that material public witnesses were yet to be examined and could possibly be influenced, no longer survives. It is submitted that all injured and public witnesses, from PW-1 to PW-42, have since been examined and have, without exception, declined to support the prosecution version or attribute any specific role to the petitioner. Considerable emphasis is laid on the circumstance that Ashok Dhankad, the father of the deceased and the very complainant at whose instance the earlier grant of bail was cancelled, has himself since been examined as a witness and, according to the submission, has not supported the case of the prosecution. This, it is urged, constitutes precisely the change



in circumstances, read with the petitioner's incarceration exceeding five years and the fact that only formal and official witnesses now remain to be examined out of the 222 cited, entitles him to regular bail.

11. Learned Counsel for the State along with the deceased's father has opposed the application. It is submitted, at the threshold, that the characterisation of Ashok Dhankad's (deceased's father) testimony as unsupportive of the prosecution is itself in dispute. Learned counsel appearing for him submits that his testimony, read as a whole, in fact corroborates the case of the prosecution, and that this is a matter that can only be authoritatively determined by the Trial Court upon final appreciation of the entire evidence, not at the interlocutory stage of a bail application.

12. It is further submitted that the concerns which weighed with the Supreme Court, i.e., the petitioner's pre-arrest conduct, the gravity of the offence, the corroborative forensic and video material and, importantly, his continuing societal influence and the demonstrated pattern of witnesses turning hostile upon his release on temporary liberty, remain wholly unaltered, and that the examination of one more witness cannot, without more, be elevated to a material change in circumstances.

13. Having heard learned counsel for the parties, this Court, *vide* order dated 16.07.2026, directed the Trial Court to submit a report on the stage of the trial and the impediments, if any, in its early conclusion. The report has been received in a sealed cover on 25.07.2026 and has been perused. It discloses that the trial involves twenty three accused persons, and that the cross examination of the prosecution witnesses by each of them individually is what is principally protracting the recording of evidence. The Presiding Officer has indicated that all endeavours are being made towards the early



conclusion of the trial; and that, as of date, 48 out of the 222 cited witnesses stand examined.

14. Two questions, therefore, fall for determination: **first**, whether the circumstance projected by the petitioner, the examination of the complainant Ashok Dhankad and his alleged failure to support the prosecution, constitutes such a change in circumstances as would justify a departure from the view taken by the Supreme Court while cancelling the earlier grant of bail; and **second**, assuming that threshold to be crossed, whether the petitioner is, on an overall conspectus, entitled to be enlarged on regular bail.

15. While an accused retains the right to move a successive application for bail, the Supreme Court in **Kalyan Chandra Sarkar** (supra) has held that the court entertaining such a subsequent application is under a duty to examine the grounds on which the earlier bail was rejected or cancelled and to record what fresh grounds persuade it to take a different view. The absence of such fresh grounds renders a subsequent grant of bail unsustainable, being tantamount to an indirect overruling of the earlier order of the superior court. Paragraph no. 19 and 20 is reproduced as under:-

19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitated on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.



20. The decisions given by a superior forum, undoubtedly, are binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view of the guarantee conferred on a person under Article 21 of the Constitution, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by the courts earlier, including the Apex Court of the country

[Emphasis Supplied]

16. This principle has been consistently applied. As held by the Supreme Court in **Babu Singh v. State of Uttar Pradesh**³, “the order refusing bail does not bar fresh application on a later occasion giving more details, further developments and different considerations”. The right to move afresh is real, but conditioned upon the applicant demonstrating something genuinely new. Relevant paragraph of **Babu Singh** (supra) is reproduced as under:-

Briefly we will state the facts pertinent to the, present petition and prayer and proceed thereafter to ratiocinate on the relevant criteria in considering the interlocutory relief of bail. Right at the beginning, we must mention that, at an earlier stage, their application for bail was rejected by this, Court on September 7, 1977. But an order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more materials, further, developments and different considerations. While we surely must set store by this circumstance, we cannot accede to the faint plea that we are, barred from second consideration' at a later stage. An interim direction is not a conclusive adjudication, and updated reconsideration is not over turning an earlier negation. In this view, we entertain the application and evaluate the merits pro and con.

³ AIR 1978 SC 527.



[Emphasis Supplied]

17. Tested on this anvil, the circumstance now projected does not meet the threshold. The foundation on which the Supreme Court proceeded was not merely that particular witnesses were yet to be examined; it was the broader finding that the petitioner, a person of considerable societal standing and influence, had, on each occasion he was afforded temporary liberty, was followed by witnesses turning hostile upon deposition. A pattern the Supreme Court expressly held “*underscores the possibility of interference into the trial by the Accused.*” Whether the deposition of Ashok Dhankad does or does not support the prosecution is, moreover, a matter of appreciation of evidence that must await the outcome by the Trial Court. It cannot be treated as a change in circumstances sufficient to unlock the door that the Supreme Court closed.

18. On the second question, even assuming the threshold were met, the parameters governing the grant of regular bail continue to weigh against the petitioner. The relevant considerations were summarised by the Supreme Court in ***Ajwar v. Waseem***⁴. Paragraph no. 26 is reproduced as under:-

26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail.

⁴ (2024) 10 SCC 768.



19. These considerations echo the earlier formulation of the Supreme Court in **Prasanta Kumar Sarkar v. Ashis Chatterjee**⁵, itself traceable to **Ram Govind Upadhyay v. Sudarshan Singh**⁶ which directs the Court's attention to the existence of a *prima facie* case, the nature and gravity of the accusation, the severity of the likely sentence, the character and antecedents of the accused, the danger of his absconding, and the reasonable apprehension of witnesses being influenced or of justice being otherwise thwarted. Relevant paragraph of **Ram Govind** (supra) is reproduced as under:-

Grant of bail though being a discretionary order but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for Bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture though however, the same are only illustrative and not exhaustive neither there can be any. The considerations being:

(a) *While granting bail the Court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.*

(b) *Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.*

⁵ (2010) 14 SCC 496.

⁶ (2002) 3 SCC 598.



(c) *While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the Court in support of the charge.*

(d) *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.*

20. It is true, as reaffirmed in ***Satender Kumar Antil v. Central Bureau of Investigation***⁷, that bail is ordinarily the rule and jail the exception; but that salutary principle operates within, and not in derogation of, the factors set out above, more so where, the offence is one of a premeditated and gruesome assault resulting in death, corroborated by recovery of a firearm, forensically untampered video evidence, and a large body of material yet to be tested at trial.

21. Twenty-three accused persons stand arraigned, 222 witnesses have been cited; and, as the report of the Trial Court discloses, 48 have been examined. This Court is neither required nor inclined, at this stage, to undertake a meticulous or threadbare examination of the testimony already recorded, nor to render any finding on whether the deposition of Ashok Dhankad supports or detracts from the prosecution case. That exercise belongs to the Trial Court at the stage of final adjudication. What is material for present purposes is that the specific concerns articulated by the Supreme Court; the petitioner's conduct prior to arrest, the gravity of the offence and, above all, his capacity to influence the outcome of the trial given his standing, have not been shown to have altered in any material particular.

22. In these circumstances, this Court is not persuaded that the petitioner

⁷ (2022) 10 SCC 51.



has made out a case either for a genuine change in circumstances within the meaning of the liberty reserved by the Supreme Court, or, independently, for the grant of regular bail on the ordinary parameters governing Section 439 CrPC/ 483 BNSS.

23. The application is, accordingly, dismissed. It is clarified that the observations made herein are confined to the disposal of the present application and shall not be construed as an expression of opinion on the merits of the case, which shall be decided by the Trial Court on the basis of the evidence lead before it.

24. Accordingly, the application stands disposed of.

25. Pending application(s), if any, also stand disposed of.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 6, 2026

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