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

CNR No. DLHC010033742026

+ **BAIL APPLN. 458/2026 & CRL.M.A. 3487/2026**

SHIVAM GUPTA

.....Petitioner

Through: Adv. (appearance not given)

versus

THE STATE (GOVT OF NCT OF DELHI)

.....Respondent

Through: Mr. Shoaib Haider, APP.

Insp. Rajesh Kumar, P.S.- New
Ashok Nagar.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **18.08.2026**

1. The present application has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“**BNSS**”) seeking regular bail in connection with FIR No. 568/2013, registered at Police Station New Ashok Nagar, East Delhi, for the offences punishable under Sections 396, 412 and 120-B of the Indian Penal Code, 1860 (“**IPC**”).

2. The prosecution case, as it emerges from the record, is that on 07.11.2013, the applicant, along with three to four associates, trespassed into House No. 31-A, Pocket A-1, Mayur Vihar, Phase-III, by luring the 14 year old son of the complainant to open the gate under the pretext of a courier delivery. Upon the door being opened, the intruders, armed with a knife and a pistol, held the deceased, Ms. Madhubala Gupta, at knife-point and



dragged her to the rear bedroom, while the two minor children of the house were simultaneously confined and threatened at knife-point in an adjoining room. The house was thereafter ransacked of silver and gold ornaments and cash, and the assailants fled after locking the gate from outside. The children, upon venturing out, found their mother unresponsive; she was declared brought dead at the hospital. The post-mortem report attributes the cause of death to asphyxia consequent upon manual strangulation and smothering, with ante-mortem injuries indicative of a violent struggle.

3. The applicant was arrested on 05.01.2014 and has remained in judicial custody continuously since that date. Silver jewellery weighing over two kilograms, the deceased's bank passbook, and cheque books belonging to the complainant are stated to have been recovered from the applicant's possession at the time of his arrest. The child witness, examined as PW-3 during the trial, is stated to have identified the applicant both during the Test Identification Parade and, subsequently, through Video Conferencing.

4. The applicant's earlier applications seeking regular bail before learned Trial Court came to be dismissed on three previous occasions, *vide* orders dated 11.08.2020, 07.02.2022 and 29.10.2025, principally on the ground of the gravity of the offence, the applicant's antecedents, including his implication in FIR No. 116/2013, Police Station Mandawali, concerning the abduction and murder of two minor children, and adverse reports as to his conduct in judicial custody.

5. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. He submits that, independent of the question of innocence, the applicant is entitled to regular bail on the ground of long incarceration and inordinate delay in the



conclusion of trial. It is submitted that, as on 30.03.2026, the applicant had already undergone 12 years, 2 months and 25 days of custody, and continues to remain incarcerated as an undertrial prisoner to date. It is further submitted that, out of 32 witnesses cited by the prosecution, only 15 have been examined thus far, and that the delay is substantially attributable to the repeated non-appearance of the police witnesses themselves rather than to any conduct on the part of the applicant.

6. The submissions are opposed by Mr. Shoaib Haider, learned APP for the State, who contends that the offences committed by the applicant are heinous in nature, having resulted in the murder of a woman in the presence of her traumatised minor children. He further submits that the applicant is involved in two other cases, FIR No. 116/2013 under Sections 364-A, 302, 201, 120-B and 34 IPC, Police Station Mandawali, and FIR No. 404/2018 under Sections 324, 506, 323 and 34 IPC, Police Station Anand Vihar, and that, having regard to these antecedents as well as the applicant's demonstrated propensity to abscond, he is not entitled to the discretionary relief of regular bail.

7. This Court has heard learned counsel appearing for the parties and has perused the record.

8. It cannot be disputed that the allegations levelled against the applicant are grave, and that he carries antecedents which cannot be brushed aside. However, the gravity of an offence, by itself, has never been treated as the sole or predominant touchstone for the grant or refusal of bail once it is shown that the right to a speedy trial guaranteed under Article 21 of the Constitution stands infringed. The Supreme Court had recent occasion to



reaffirm this principle in ***Sahil Manoj Machare v. State of Maharashtra***,¹ where while granting bail to an undertrial charged under Section 302 IPC who had remained in custody for nearly four years without even a single witness having been examined, the Court held as under:-

*“6. We are mindful of the fact that the petitioner is charged with the offence of murder but time and again, we have said **that howsoever serious the crime may be, if the right of speedy trial is infringed, then Court must consider the plea for bail appropriately.** 7. Here is a case wherein past almost 4 years, the petitioner is in jail but not a single witness has been examined.”*

[Emphasis Supplied]

9. The aforesaid enunciation makes it clear that even where the accused stands charged with the most serious of offences, the seriousness of the charge cannot, by itself, operate as an absolute bar to the grant of bail once it is demonstrated that the trial has ceased to progress with reasonable expedition and the accused’s right to a speedy trial stands infringed.

10. This position finds resonance in the earlier decision of the Supreme Court in ***Union of India v. K.A. Najeeb***,² wherein, while dealing with a bail application under the stringent regime of the Unlawful Activities (Prevention) Act, 1967, the Court held that statutory restrictions on the grant of bail do not oust the jurisdiction of constitutional courts to grant bail where continued incarceration would offend the guarantee of personal liberty under Article 21. The Court observed:

“16. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a

¹2026 SCC OnLine SC 810.

²(2021) 3 SCC 713.



speedy trial. ... However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. 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.

[Emphasis Supplied]

11. The Court further explained the manner in which the two competing considerations, i.e., statutory rigour, where applicable, and constitutional liberty, are to be harmonised in the following terms:-

“18. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

[Emphasis Supplied]

12. Sections 396 and 412 IPC do not carry the statutory bail restrictions of a special enactment of the kind considered in **Najeeb** (supra). If constitutional liberty is held to prevail over an express legislative restriction on bail once incarceration becomes prolonged and the trial shows no realistic prospect of timely conclusion, the same principle must, a fortiori, inform the exercise of an otherwise unfettered judicial discretion under Section 483 BNSS.



13. The Supreme Court has also had occasion, in ***Satender Kumar Antil v. Central Bureau of Investigation***,³ to advert to the state of undertrial incarceration prevailing in the country and to caution against the reflexive equation of a serious accusation with a denial of bail. The Court observed:-

“5. Jails in India are flooded with undertrial prisoners. ... As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the Investigating Agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

14. Bearing the aforesaid principles in mind, this Court turns to the facts at hand. Section 396 IPC is punishable with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, together with fine. The applicant has, as on date, remained in custody for a period in excess of twelve years. a period which, quite apart from already exceeding the ten year tier of imprisonment prescribed for the offence short of death or life imprisonment, constitutes a substantial fraction of even the maximum non-capital sentence that could conceivably follow upon conviction.

15. Equally significant is the pace at which the trial has proceeded. Only 15 out of 32 cited witnesses have been examined over a period exceeding twelve years. This Court had accordingly called upon the Trial Court to indicate the specific hurdles impeding the progress of the trial. It has been reported that Inspector CP Meena sought exemption from personal appearance on four occasions, namely, 24.05.2024, 25.09.2024, 06.09.2025 and 04.04.2026, while Inspector Vijay Shrotriya, the original Investigating

³(2022) 10 SCC 51.



Officer, failed to appear on as many as five occasions, namely, 24.05.2024, 18.07.2024, 29.11.2024, 12.02.2025 and 06.07.2025.

16. The evidence of Inspector CP Meena has, in the meantime, been concluded. The Trial Court has assured this Court that, subject to the appearance of the remaining witnesses, the trial may possibly be concluded within the next six months. This Court records, that similar assurances of expedition have accompanied each of the applicant's three previous bail applications since the year 2020, without any material change thereafter in the pace of the trial. On the material placed before this Court, the delay is substantially attributable to the non-appearance of police witnesses rather than to any act or omission on the part of the applicant. Therefore, the Commissioner of Police, Delhi is directed to ensure that investigation officers and police witnesses should appear on the specific dates as required by the concerned Court.

17. A copy of this order be sent to the Commissioner of Police for necessary action.

18. It has also been brought to the notice of this Court that the present case involves eight accused persons in all. four adults, including the applicant, and four Children in Conflict with Law. Of the four adult accused, three, namely, Ajai Rai, Mahesh Gupta @ Sunny, and Nar Singh Kumar Verma, have already been enlarged on regular bail. The allegations against them are stated to be similar in nature to those levelled against the applicant. While parity cannot, by itself, be treated as a determinative ground for bail, particularly where the individual roles of co-accused are shown to differ, it remains a relevant circumstance where it operates alongside the independent and substantial ground of prolonged incarceration.



19. In the facts of the present case, this Court is of the view that continued incarceration of the applicant is not warranted.

20. In view of the aforesaid, it is directed that the applicant be enlarged on regular bail subject to such conditions as may be imposed by the concerned Trial Court.

21. The application stands disposed of.

PURUSHAINdra KUMAR KAURAV, J

AUGUST 18, 2026

ab/nk