

IA No. 01/2025
SC No. 10/2020
State Vs. Vishwash Kumar Kashyap
FIR No. 79/2019
PS: NDRS
U/s: 302/34 IPC

06.03.2025

This is 10th application under Sec. 483 BNSS (including bail applications filed under Sec. 439 Cr.PC) filed on behalf of applicant/accused namely Vishwash Kumar Kashyap for grant of regular bail

Present : Sh. Pankaj Kumar Ranga, Ld. Addl. PP for the State.
Sh. Saurabh Upadhyay, Aakash Yadav and Salil
Dixit, Ld. Counsels for applicant/accused.
IO/Inspector Yakub Khan in person.

Ld. Counsels for accused/applicant submits that no bail application is pending before the Hon'ble High Court of Delhi and Hon'ble Supreme Court of India.

Reply to the bail application as well nominal roll have been filed by IO and Jail Superintendent respectively. Same are taken on record.

Ld. Counsels for accused/applicant submit that accused is in JC since 17.09.2019. They submit that accused/applicant has been falsely implicated in the present case. They submit that eyewitness PW-5 Sh. Vijay has already been examined as PW while other eyewitness namely Munna Bhai Time Pass has been dropped by the Ld. Addl. PP for the State. They submit that the testimony of PW-5 Sh. Vijay is suffering from contradictions and hence cannot be relied upon. They

further submit that the place of arrest of accused/applicant is disputed. They also submit that the blood of deceased was not found on the weapon of offence. They also submit that speedy trial is the fundamental right of accused/applicant and till date only eight PWs have been examined and several PWs are yet to be examined. They further submit that no public witness remains to be examined as PW. With respect to change of circumstances after the dismissal of earlier bail application of accused/applicant, the eyewitness i.e. PW-5 Sh. Vijay has been examined as PW. They further submit that the trial will be take long time and no fruitful purpose will be served by keeping the accused/applicant in JC and hence he should be granted bail.

Per contra, Ld. Addl. PP for the State submits that the accused/applicant has committed heinous offence of murder. He submits that the testimony of eyewitness PW-5 Sh. Vijay is of sterling quality and he has supported the case of prosecution. He further submits that the FSL report is not in favour of accused/applicant as it does not speak that blood of some other person was found on the weapon of offence or on the earth controls collected by the IO from the spot of incident. He submits that the DNA could not be generated from the blood taken from the weapon of offence and the earth controls due to degradation of blood samples. He further submits that the bail application of accused/applicant was dismissed by the Hon'ble Supreme Court of India on 06.05.2024. He further submits that earlier bail application of accused/applicant was dismissed by Ld. ASJ vide order dated 21.12.2023 and thereafter no substantial changes

have taken place. He further submits that accused/applicant is previously involved in other case of robbery. He further submits that if the accused/applicant is granted bail, he may again commit the offence. He further submits that the overall jail conduct of accused/applicant has found to be unsatisfactory. He submits that the present application should be dismissed.

I have heard the submissions and perused the record.

The alleged offence committed by the accused/applicant is heinous in nature. Ld. Counsels for accused/applicant have argued that the testimony of eyewitness PW-5 Sh. Vijay is suffering from material contradictions while Ld. Addl. PP for the State has argued that the testimony of PW-5 Sh. Vijay is of sterling quality. This court is aware that as per judgment of Hon'ble Supreme Court of India titled as '**Satish Jaggi Vs. State of Chhatisgarh & Ors.**', *the testimony of witnesses cannot be looked into at the time of hearing of bail application. However, as per established principles of law, a bird's eye view of the testimony of witnesses may be taken.* Eyewitness PW-5 Sh. Vijay has supported the case of prosecution. The accused/applicant is involved in another case of robbery and the said factum is against the accused for the purpose of present bail application. Overall jail conduct of accused/applicant has been found to be unsatisfactory as per the nominal roll filed on behalf of Jail Superintendent and multiple punishments have been imposed upon him due to his conduct. As per the nominal roll, the total period of custody of accused/applicant is five years, five months and nineteen days. It

is true that the speedy trial is the fundamental right of the accused. The present case has been received by this court by way of transfer and thereafter the eyewitness PW-5 Sh. Vijay has been examined and short adjournments are being granted in the present case to ensure speedy trial. The FSL report cannot be said to be in favour of accused/applicant or against the prosecution as DNA could not be extracted from the exhibits as the samples got putrified.

The changes in circumstances for the purpose of bail application are to be seen in the light of law laid down by Hon'ble Apex Court in this regard.

Hon'ble Supreme Court of India in case titled as **State of Maharashtra Vs. Captain Buddhikota Subha Rao cited as AIR 1989 SC 2292** has held that the successive bail applications can be entertained by the Court when the substantial case is established by the accused, which would entitle him for getting bail in successive bail application. The Court should not pass the order of releasing him on bail in successive bail application merely establishing some cosmetic change during the period between two applications would entitle the accused for bail.

Similarly in **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anr. (2005) 2 SCC 42** Hon'ble Supreme Court of India has observed as under:-

“This Court also observed that though the accused has a right to make a successive application for grant of bail, the Court entertaining such subsequent applications has duty to consider the reasons and grounds on which the earlier bail applications

were rejected and in such cases the Court also has a duty to record what are the fresh grounds which persuaded it to take a view different from one taken in earlier application”.

In **Kalyan Chandra Sarkar (Supra)**, it was also held that successive bail applications cannot be entertained only on the ground that accused is in custody for a long period.

The earlier bail application of accused/applicant was dismissed by the Ld. Predecessor vide order dated 21.12.2023 after which only few witnesses have been examined. Moreover, the bail application of accused/applicant has also been dismissed by the Hon’ble Supreme Court of India vide order dated 06.05.2024.

Applying the law laid down by the Apex Court in **Captain Buddhikota Subha Rao (Supra) and Rajesh Ranjan @ Pappu Yadav (Supra)**, this Court is of considered opinion that there are no substantial changes in circumstances after the dismissal of earlier bail application to consider the present bail application.

Accordingly, keeping in view the gravity of the offence, the stage of trial, previous involvement of accused/applicant in other case, overall jail conduct of accused/applicant and no change in circumstances, this Court does not find merit in the present bail application.

Accordingly the present bail application filed under Sec. 483 BNSS for grant of regular bail is hereby dismissed.

The observations made herein shall not have any effect on the merit of case.

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The bail application stands disposed off accordingly.

Copy of this order be given Dasti to all concerned.

(Virender Kumar Kharta)

ASJ/FTC-02(CENTRAL)

TIS HAZARI COURTS:DELHI :06.03.2025