

IA 1/25 in SC No. 98/18
State Vs. Parvez @ Sharif & Ors.
FIR No. 612/17
PS Seelampur

31.01.2025

Fresh bail application received by way of assignment vide orders of Ld. Principal District and Sessions Judge, vide order no. 413-425/Power/Judl./NE/KKD/Delhi/2025 dated 15.01.2025, w.e.f. 18.01.2025.

ORDER

1. Vide the present order, I shall dispose off the application filed by the applicant/accused u/s 484(2) of BNSS, 2023 seeking reduction of number of sureties, on behalf of the applicant/accused Nadeem @ Kaliya .
2. It has been submitted by the Ld. Counsel for the applicant/accused that no other bail application/application seeking reduction of number of sureties, filed by the applicant/accused is pending before the Hon'ble Supreme Court of India or the Hon'ble High Court of Delhi.
3. It has been submitted by the Ld. Counsel for the applicant/accused that the applicant/accused was granted regular bail by Ld. Predecessor of this court vide order dated 02.09.2023. As per the conditions imposed in the said order, the applicant/accused was admitted to bail subject to furnishing bail bond in the sum of Rs. 50,000/- with two sound sureties of the like amount.

4. It has been submitted by the Ld. Counsel for the applicant/accused that the application / accused belongs to a poor strata of the society. He is in JC since 28.10.2022 and in spite of being granted regular bail on 02.09.2023, he is still languishing in jail as he has been unable to procure the sureties to furnish the surety amount.

5. It is submitted by the Ld. Addl. PP for the State that the present applicant/accused has been charged with serious offence of murder and his prior conduct is not satisfactory, since he had defaulted in appearance before this Court and the Ld. Predecessor of this court had issued NBW's against him. He may abscond and flee away from the hands of justice and he may also commit similar offences in the future. Therefore, the present application is strongly opposed by the State.

6. It is trite law that the trial court has to balance and co-relate the imperative of setting prisoners at liberty pursuant to the bail order and securing their fundamental rights with the demand of producing adequate sureties as an assurance of their regular attendance at the trial and as a deterrence against the possibility of them fleeing from the justice. It is equally important that the trial court should also factor the socio-economic background of the prisoner while fixing the number and amount of sureties. At times, persons belonging to extremely poor background, simply do not have the requisite social standing or financial clout to arrange multiple sureties, therefore, at times, the UTPs belonging to poor economic strata or socially marginalized segments of the

society may not be set at liberty despite being enlarged on bail. The purpose of sureties is certainly dissuasive in intent, however, setting higher surety amounts and number of sureties may at time have punitive impact instead. The Hon'ble Supreme Court of India had dealt with the issue of constitutional promise of equality for all citizens and a realistic understanding of the socio-economic landscape of the country underlying the concept and rationale of the scope of sureties in the cases of bail in “***Moti Ram and Ors. Vs. State of Madhya Pradesh***” (1978) 4 SCC 47. Furthermore, in the landmark decision of “***Hussainara Khatoon Vs. State of Bihar***” AIR 1979 SC 1360 had mandated the consideration of the roots of an accused in the community so as to advocate a moot fact based approach in tune with the social realities to serve justice as follows:

“To determine whether the accused has his roots in the community which would deter him from fleeing, the court should take into account the following factors concerning the accused,

- 1. The length of his residence in the community.*
- 2. His/her employment status, history and his financial condition,*
- 3. His family ties and relationship*
- 4. His reputation, character and monetary condition,*
- 5. His prior criminal record including any record of prior release on recognizance or on bail,*
- 6. The identity of responsible members of the*

community who would vouch for his reliability,

- 7. The nature of the offence charged and the apparent probability of conviction and the likely sentence in so far as these factors are relevant to the risk of non appearance, and*
- 8. Any other factors in relating the ties of the accused with the society.”*

7. In the background of the above stated case laws, the fact that present applicant/accused has remained in custody even after expiry of period of 14 months after granting him regular bail, especially when it has been averred on behalf of the applicant/accused that the present applicant/accused does not have the financial wherewithal to arrange two sureties for a sum of Rs. 50,000/- and his family members are not able to arrange the said sureties and that they had attempted several times to take the loan, however, he was not able to get the same, this court is of the view that it is a fit case to exercise its powers u/s 484 (2) of BNSS, 2023, the number of sureties are hereby reduced from two to one surety. All the other conditions imposed by Ld. Predecessor of this court vide order dated 02.09.2023 shall remain in force.

8. With these conditions, the present application moved under section u/s 484 (2) of BNSS, 2023 on behalf of **applicant/accused Nadeem @ Kaliya** stands disposed off. The other conditions imposed by this court from (1) to (5) of order dated 02.09.2023

shall remain in force and the accused shall be released on bail upon furnishing a personal bond of Rs. 50,000/- alongwith one surety of the like amount to the satisfaction of this court.

9. It is needless to say that nothing stated herein shall tantamount to an opinion or expression on the merits of the case.

10. Copy of this order be sent to concerned Jail Superintendent.

11. Copy of this order be given dasti to the parties.

12. Application stands disposed off accordingly.

(ATUL AHLAWAT)
ASJ (FTC)/North-
East/KKD Courts/
Delhi/31.01.2025