

(2025) 08 SC CK 0245

In the Supreme Court Of India

Case No : Criminal Appeal No. 3495 Of 2025 (@ Special Leave Petition
(Criminal) No. 5370 Of 2025)

Ashok Dhankad

APPELLANT

Vs

State Of Nct Of Delhi And Anr

RESPONDENT

Date of Decision : 13-08-2025

Acts Referred:

Constitution of India, 1950 — Article 21Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 483Code of Criminal Procedure, 1973 — Section 439, 439(1)Indian Penal Code, 1860 — Section 34, 188, 269, 302, 307, 308, 323, 325, 341, 342, 364, 365, 419, 420, 452, 467, 506Arms Act, 1959 — Section 25, 25(1)(B), 27(1), 54, 59Rajasthan Public Examination (Prevention of Unfair Means Act), 2022 — Section 3, 10

Citation : (2025) 08 SC CK 0245

Hon'ble Judges : Sanjay Karol, J;Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : Siddharth Mridul, Joshini Tuli, Joginder Tuli, Ishaan Kapoor, Gargi Khanna, Minnat Ullah, Madhurima Mridul, Deepak Chhikara, Sohil Batra, Taniya Qureshi, Sonu Kumari, Vikramjit Banerjee, Mukesh Kumar Maroria, Amit Sharma b, Prakash Gautam, Shubhendu Anand, Alabhya Damija, Mahesh Jethmalani, Ravi Sharma, Sumit Shokeen, Anjani Kumar Rai, Vaibhav Thaledi

Final Decision : Allowed

Judgement

Sanjay Karol, J

1. Leave granted.

2. The grant of bail constitutes a discretionary judicial remedy that necessitates a delicate and context-sensitive balancing of competing legal and societal interests. On one hand lies the imperative to uphold the personal liberty of the accused -an entrenched constitutional value reinforced by the presumption of innocence, which remains a cardinal principle of criminal jurisprudence. On the other hand, the court must remain equally mindful of the gravity of the alleged offence, the

broader societal implications of the accused's release, and the need to preserve the integrity and fairness of the investigative and trial processes. While liberty is sacrosanct, particularly in a constitutional democracy governed by the rule of law, it cannot be construed in a manner that dilutes the seriousness of heinous or grave offences or undermines public confidence in the administration of justice. The exercise of judicial discretion in bail matters, therefore, must be informed by a calibrated assessment of the nature and seriousness of the charge, the strength of the prima facie case, the likelihood of the accused fleeing justice or tampering with evidence or witnesses, and the overarching interest of ensuring that the trial proceeds without obstruction or prejudice.

3. The case at hand is one such case, where this Court has been called upon to ensure the above-mentioned balance. The present Appeal has been preferred by the complainant against the final judgment and order dated 4th March 2025 passed by the High Court of Delhi at New Delhi in Bail Application No. 2654/2024 whereby Respondent No. 2, Sushil Kumar (hereinafter the 'Accused') came to be enlarged on regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with FIR No. 218/2021 under Sections 308, 325, 323, 341, 506, 188, 269, 34 of the Indian Penal Code, 1860 (hereinafter 'IPC') and Sections 25, 54, 59 of the Arms Act, 1959.

4. At the outset, we would be well served to remind ourselves of the observations made by three learned judges of this Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan* (2005) 2 SCC 42 which are as follows:

"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..."

[See also: *Sanjay Chandra v. Central Bureau of Investigation* (2012) 1 SCC 40; *Vinod Bhandari v. State of Madhya Pradesh* (2015) 11 SCC 502]

Prosecution case against the Accused

5. As per the charge sheet, police investigation revealed that on the intervening night of 4th - 5th May 2021, the Accused and his associates abducted one Mr. Ravindra @ Bhinda and Mr. Amit @ Khagad from Shalimar Bagh and Mr. Sagar, Mr. Jai Bhagwan @ Sonu and Mr. Bhagat @ Bhagtu from Model Town, New Delhi.

All of them were taken to Chhatrasal Stadium, where they attacked them with wooden lathis and sticks, with an intention to kill them due to personal enmity. The Accused persons also fired gunshots, due to which a PCR call was received wherein the caller reported that two men fired gunshots near Chhatarsal Stadium.

6. ASI Jitender Singh took reins of the investigation and arrived at the spot of the alleged crime. On enquiry, the police party were informed that the Accused and his associates, after beating the injured persons, fled away.

7. At the spot of the incident though five vehicles were found, but none was present. A 'parna' stained with blood was recovered from the registered vehicle of the Accused, one amongst five. The four other vehicles belonged to his associates and upon a search of the said vehicles, a loaded double barrel gun was found with 3 cartridges of live ammunition. Additionally, two wooden sticks were recovered. Blood samples were taken from different spots and objects from the scene of the crime.

8. The police party were informed that the injured persons had been taken to BJRM Hospital, Jahangir Puri, New Delhi for treatment. Upon arriving at the hospital, ASI Jitender Singh recorded their MLCs. One of the injured persons, Mr. Sagar, succumbed to his injuries while undergoing treatment. His postmortem captured the cause of death as, "cerebral damage as a result of blunt force/object impact. All injuries are ante-mortem in nature." Thereafter, a charge under Section 302, IPC was also added against the Accused and his associates.

9. During investigation, one of the associates, Mr. Prince, came to be arrested. A mobile device recovered from his possession, which held within it, which had a video recording of the incident, allegedly depicting the Accused attacking the injured persons with deadly weapons. The mobile was sent for FSL examination, and the expert report concluded that, "no sign of edit/adulteration/tampering was observed in the video file."

10. The Accused was absconding at the time of investigation and consequently, on 15th May 2021, non-bailable warrants were issued against him. On 18th May 2021 the Delhi Police announced cash reward for any information about his whereabouts. He was finally arrested on 23rd May 2021.

11. Trial commenced against all the Accused. Charges were brought under Sections 302, 307, 308, 364, 365, 452, 323, 342 along with other Sections of the IPC and Sections 25(1)(B) and 27(1) of the Arms Act, 1959. As on date 35 out of 189 witnesses stand examined by the Trial Court and all other 21 accused persons, apart from the present Accused, continue to remain in custody with respect to the subject FIR.

Our View

12. We have heard the parties at length. Mr. Siddharth Mridul, learned Senior Counsel appeared for the Appellant-complainant. The NCT of Delhi was represented by Mr. Vikramjit Banerjee, learned Additional Solicitor General, and

Mr. Mahesh Jethmalani, learned Senior Counsel was for the Accused. The learned senior counsel for the Appellant-complainant has prayed for bail granted to the Accused by the High Court of Delhi to be set aside. The significant points of challenge are that the Courts below did not take the conduct and influence of the Accused, as also the seriousness of the allegations into consideration. The learned Additional Solicitor General appearing on behalf of the State of NCT of Delhi has supported the case of the Appellant-complainant and has further submitted that the Accused is attempting to influence witnesses.

13. Meanwhile, Mr. Mahesh Jethmalani, learned Senior Counsel for the Accused, has submitted that the Courts below correctly passed the impugned order releasing the Accused on bail. To buttress his submission, he emphasized that the Accused has never misused the liberty of temporary bail, granted to him on earlier occasions. Further, he submitted that given the nature of evidence on record, the Accused is entitled to bail.

14. At the outset, we must clarify that setting aside an order granting bail and cancellation of bail are two distinct concepts. While the former contemplates the correctness of the order itself, the latter pertains to the conduct of the Accused subsequent to the order granting bail. Judicial pronouncements of this Court have time and again reiterated this position.

Law on the issue

15. This Court in *Jayaben v. Tejas Kanubhai Zala* (2022) 3 SCC 230, while setting aside the order granting bail to the Accused therein, had expounded that different considerations must be applied while considering an order of releasing an Accused on bail and an application for cancellation (which would include breach of bail conditions). Moreover, the Court observed that the conduct of the accused subsequent to an order granting bail would not be relevant while considering an appeal against such order.

16. The discussion of this Court in *Y v. State of Rajasthan* (2022) 9 SCC 269 underscored that an order granting bail can be tested on illegality, perversity, arbitrariness and being based on unjustified material. While setting aside the order granting bail, the Court made the following observations:

"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 439CrPC 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.* [*Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] this Court held as follows : (SCC p. 513, para 12)

"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 misconducted 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."

17. In the present case, it is necessary to determine whether the High Court while granting bail to Respondent 2-accused has properly exercised its discretion under Section 439 CrPC by following various parameters laid down by this Court. A bare perusal of the impugned order [Omprakash v. State of Rajasthan, 2021 SCC OnLine Raj 3499] passed by the High Court does not suggest that the Court has considered any of the relevant factors for grant of bail."

17. A division bench of this Court in Meena Devi v. State of U.P. (2022) 14 SCC 368 had observed to similar effect:

"26. At the cost of repetition, it may be highlighted that the considerations that weigh with the appellate court when called upon to examine the correctness of an order granting bail is not on the same footing when it comes to examining an application moved for cancellation of bail. The yardstick for testing the correctness of an order granting bail is whether the court below has exercised its discretion in an improper or arbitrary manner thereby vitiating the said order. When it comes to assessing an application seeking cancellation of bail, the appellate court looks out for, amongst others, supervening circumstances or any violation of the conditions of bail imposed on the person who has been accorded such a relief."

(emphasis supplied)

18. More recently, this Court in State of Rajasthan v. Indraj Singh Etc. 2025 SCC Online SC 518, while setting aside the bail granted to a person accused of an offence under Sections 419, 420, 467 of the IPC and Section 3 & 10 of the Rajasthan Public Examination (Prevention of Unfair Means Act), 2022, placed reliance on an earlier decision of this Court in Ajwar v. Waseem (2024) 10 SCC 768 and observed:

"8.3 The discussion made in Ajwar v. Waseem³ by a coordinate Bench of this Court (which included one of us, i.e., Amanullah J.) is on point. The relevant paragraphs are as under:-

"Relevant parameters for granting bail

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. [Refer : Chaman Lal v. State of U.P. [Chaman Lal v. State of U.P., (2004) 7 SCC 525 : 2004 SCC (Cri) 1974]; Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977]; Masroor v. State of U.P. [Masroor v. State of U.P., (2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368]; Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765]; Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527]; Anil Kumar Yadav v. State (NCT of Delhi) [Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129 : (2018) 3 SCC (Cri) 425]; Mahipal v. Rajesh Kumar [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558].]

27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In P v. State of M.P. [P v. State of M.P., (2022) 15 SCC 211] decided by a three-Judge Bench of this Court [authored by one of us (Hima Kohli, J.)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1) CrPC in the following words : (SCC p. 224, para 24)

"24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237]. To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and

interference by the appellate court."

Considerations for setting aside bail orders

28. The considerations that weigh with the appellate court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima facie case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused."

(emphasis supplied)

19. The principles which emerge as a result of the above discussion are as follows:

- (i) An appeal against grant of bail cannot be considered to be on the same footing as an application for cancellation of bail;
- (ii) The Court concerned must not venture into a threadbare analysis of the evidence adduced by prosecution. The merits of such evidence must not be adjudicated at the stage of bail;
- (iii) An order granting bail must reflect application of mind and assessment of the relevant factors for grant of bail that have been elucidated by this Court. [See: *Y v. State of Rajasthan* (Supra); *Jaibunisha v. Meherban & Ors* (2022) 5 SCC 465 and *Bhagwan Singh v. Dilip Kumar @ Deepu* (2023) 13 SCC 549]
- (iv) An appeal against grant of bail may be entertained by a superior Court on grounds such as perversity; illegality; inconsistency with law; relevant factors not been taken into consideration including gravity of the offence and impact of the crime;
- (v) However, the Court may not take the conduct of an accused subsequent to the grant bail into consideration while considering an appeal against the grant of such bail. Such grounds must be taken in an application for cancellation of bail; and
- (vi) An appeal against grant of bail must not be allowed to be used as a retaliatory measure. Such an appeal must be confined only to the grounds discussed above.

20. Keeping in view the above expositions of law, this Court is of the view that

the High Court has erroneously passed an order releasing the Accused on bail. While considerations such as the period of custody and testimonies of key prosecution witnesses having been recorded are relevant, the Court erred by inter alia, not considering the grievous nature of the crime, the possibility of influencing the trial by the Accused and the conduct of the accused during investigation.

21. It is a matter of record that after registration of the subject FIR, inter alia against the Accused, he remained absconding and evaded arrest. This had resulted in the passing of the Order at Annexure P2, by the learned Metropolitan Magistrate - 03, North: Rohini, whereby non-bailable warrants had to be issued against him and his associates, securing their custody. Despite such warrants being issued, his whereabouts remained unknown and consequently, on 18th May 2021, as per Annexure P3, the Delhi Police, declared a cash reward for giving information about the Accused as he was evading custody and remained absconding. Despite a submission to this effect before the High Court, the above facts did not form part of the consideration of the order releasing him on bail. The High Court ought to have taken this relevant fact into its deliberation, while adjudicating the entitlement of the present Accused for regular bail.

22. This Court must also be cognizant of the seriousness of the allegations against the Accused. As per the allegations in the FIR, the national capital was made into a criminal playground to settle scores, with no regard for the law of the land. The accused persons, allegedly abducted certain individuals; violently attacked them with dangerous weapons; and caused grievous injuries. The injuries were of such nature that they resulted in the unfortunate death of the Complainant's son.

23. From the contents thereof, it is also borne that a loaded firearm was recovered from the vehicle of these persons. Other weapons stained in blood were also recovered from the spot of the crime. Moreover, it cannot be disputed that the recording of the alleged incident was found in the phones of one of the co-accused persons. While the veracity of the above evidence is a matter of trial, but there can be no doubt that these allegations are shocking and serious in nature.

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 Kumar* (2023) 13 SCC 549. 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 examined, 28 have turned hostile.

26. The cumulative result of the above discussion is that the impugned order cannot be sustained. We clarify that the above observations are only for the purpose of examining the order granting bail and should not be construed as remarks on the merits of the main matter before the Trial Court.

27. In view of the above, the impugned order passed by the High Court of Delhi in Bail Application No. 2654/2024 titled as Sushil Kumar vs. State of NCT of Delhi, is set aside. The present Appeal is allowed. Let the Accused/Respondent No. 2 surrender before the concerned Court within one week. It shall 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.

Pending applications, if any, are disposed of.