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

\# **CNR No. DLHC010290472026**

\+ BAIL APPLN. 2595/2026

FAZAL SHAH @ ANAS .....Petitioner

Through: Mr. Deepak Kohli, Advocate.

versus

THE STATE OF NCT OF DELHI .....Respondent

Through: Mr. Tarang Srivastav, APP for State with Mr. Abhay Sahni, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 12.10.2026

1. The Petitioner, Fazal Shah @ Anas, seeks regular bail in FIR No. 369/2019, registered at Police Station Welcome, Delhi, under Sections 302/34 of the Indian Penal Code, 1860[1] and Section 27 of the Arms Act, 1959[2]. He has been in custody since 19th August, 2019.

2. The prosecution case concerns the murder of one Imran during the intervening night of 23rd and 24th July, 2019. It is alleged that the deceased's car was intercepted by three persons travelling on a motorcycle and a scooty. Danish @ Tiggi, who was riding pillion on the scooty, opened fire at the deceased. When the deceased attempted to escape, the assailants pursued him and continued firing. The Petitioner is alleged to have driven the scooty carrying Danish and participated in the pursuit.

[1] "IPC"

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3. Counsel for the Petitioner submits that the Petitioner has remained in custody since 19th August, 2019, and has already undergone more than seven years of incarceration. Although charges were framed in February 2020, the trial has progressed slowly, with only 17 out of 51 prosecution witnesses examined as of July 2026. It is contended that repeated adjournments have prolonged the proceedings, without any delay attributable to the Petitioner.

4. On merits, he points out that the allegation against the Petitioner is confined to driving the scooty, whereas the firing is attributed to co-accused Danish @ Tiggi. PW-1 Mazhar Khan and PW-2 Ashraf Ali, both cited as eyewitnesses, have failed to identify the accused persons in Court. The testimony of PW-4, HC Mahipal, is also questioned on account of discrepancies brought out during his cross-examination, particularly his failure to disclose the details of the assailants in the initial PCR call and his subsequent identification of the Petitioner at the police station. The statement of PW-14, the deceased's brother, was recorded much after the incident, which, according to him, also raises doubts about his account.

5. It is further submitted that there is no CCTV footage, recovery of the weapon of offence from the Petitioner, or forensic evidence directly connecting him with the murder. He also seeks parity with co-accused Rashid @ Cable Wala and Aman @ Shahbaz, who were granted bail in June 2021 and February 2022, respectively. Emphasising that the investigation has long been completed and the Petitioner has roots in Delhi, it is submitted that his continued detention, without any reasonable prospect of an early conclusion of the trial, is inconsistent with the protection of personal liberty under Article 21 of the Constitution. The Petitioner undertakes to attend the

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[2] "Arms Act"

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trial regularly and comply with any conditions imposed by the Court.

6. The State opposes the application, submitting that the Petitioner was an active participant in the attack. Reliance is placed on PW-4, who has identified the Petitioner in Court and maintained his account during cross-examination, as well as PW-14, who specifically named and identified him in his testimony recorded in October 2025. The State also points out that the Petitioner refused to participate in the TIP proceedings. Referring to its additional status report, the State submits that PW-14 complained of threats before the Trial Court on 5th June, 2026, and subsequently failed to identify the accused during his examination in August 2026. It is apprehended that the Petitioner may influence witnesses if released. The State further relies upon his involvement in several other serious criminal cases, including allegations of criminal activities carried out while in custody. His nominal roll records repeated prison misconduct, including recovery of mobile phones with SIM cards. It is also submitted that the Petitioner's earlier residential property has been sold and his family no longer resides there, raising concerns about his availability for trial. The plea of parity is opposed on the ground that Aman @ Shahbaz was not present at the spot, whereas Rashid @ Cable Wala, after being granted bail, absconded and was declared a proclaimed offender.

7. The Court has considered the above submissions. While considering bail in a case involving an offence as serious as murder, the Court must have regard not only to the gravity of the accusation and the severity of the punishment, but also to the nature of the evidence indicating the accused's *prima facie* involvement, his specific role, criminal antecedents and conduct, and the likelihood of his absconding, repeating the offence or interfering

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with the trial. The length of custody and the progress of the trial are also material considerations. The Supreme Court in ***State of U.P. v. Amarmani Tripathi***[3] and ***Mahipal v. Rajesh Kumar***[4] has explained that the exercise of discretion must be informed by these considerations, assessed in the circumstances of each case. The seriousness of the charge is undoubtedly important, but cannot be the sole ground for refusing bail. Equally, the Court is not required to undertake a detailed examination of the evidence or determine the credibility of witnesses at this stage. The enquiry is whether the material discloses a *prima facie* case and whether, balancing the competing considerations, continued custody is justified.

8. The evidence presently available does not permit the Court to regard the prosecution case against the Petitioner as lacking *prima facie* substance. PW-4, HC Mahipal, on whose statement the FIR was registered, has given an account of the interception of the deceased's car, the firing and the subsequent pursuit. He identified the Petitioner in Court as the person driving the scooty, with Danish @ Tiggi riding pillion and firing at the deceased. That identification was maintained during cross-examination. There are, undoubtedly, aspects of his testimony which the defence has questioned, including the information conveyed in the initial PCR call and the limits of what he personally witnessed during the pursuit. These matters will require consideration at trial. They do not, however, justify discarding his account or identification at this stage.

9. There is also the testimony of PW-14, Faisal Saifi, the deceased's brother. During his examination on 27th October, 2025, he identified the

[3] (2005) 8 SCC 21
[4] (2020) 2 SCC 118

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Petitioner and described his participation in the occurrence, including his movement on the scooty as the deceased attempted to escape. His statement to the police was admittedly recorded much later, and the delay is a matter requiring scrutiny. During his further examination in January 2026, he expressed inability to identify the weapons and vehicles. The State has reported that in his subsequent examination in August 2026, he did not identify the accused persons. These developments cannot be overlooked. Equally, his earlier testimony on oath, in which he specifically identified the Petitioner, remains part of the evidence. The weight to be attached to the different portions of his testimony, and the circumstances in which his account changed, are matters for the Trial Court. A detailed examination of those questions at the stage of bail would be inappropriate.

10. The Petitioner's alleged role must also be viewed in the context of the occurrence as a whole. The allegation is not merely that he was driving a scooty, but that he brought one of the assailants to the spot and participated in the pursuit of the deceased during an armed attack. Whether the prosecution ultimately establishes common intention is a matter for trial. For the present purpose, the role attributed to him cannot be treated as peripheral merely because he is not alleged to have fired the shots.

11. The Petitioner's criminal antecedents are a significant factor in the present assessment. The status report discloses his involvement in eight other criminal cases, including two cases of murder (FIR Nos. 278/2019 and 753/2022), an offence of attempt to murder (FIR No. 87/2017), and cases involving extortion (FIR Nos. 383/2018 and 251/2020). A conviction is also reported in FIR No. 438/2018. The State has further alleged that the Petitioner is associated with the Hashim Baba gang. Of particular concern

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are the allegations that, even while in judicial custody, he was involved in making extortion calls in FIR No. 251/2020 and communicating with co-accused through telephone calls in connection with FIR No. 753/2022. These allegations must, of course, be established in the respective proceedings, and the mere registration of criminal cases cannot be treated as proof of guilt. Nevertheless, the nature, number and seriousness of these cases are relevant to assessing the risk of further offences and interference with the trial.

12. The concern is reinforced by the Petitioner's prison record, which describes his conduct as unsatisfactory and records repeated disciplinary punishments, including for threatening co-inmates, fighting, and possession of prohibited mobile phones with SIM cards, most recently in January 2026. The State has also reported that PW-14 complained of threats before the Trial Court on 5th June, 2026, and subsequently failed to identify the accused persons. Without attributing that change in testimony to the Petitioner, these circumstances, viewed together, raise a substantial concern regarding the safety of witnesses and the possibility of interference with the administration of justice. The apprehension expressed by the State cannot, in these circumstances, be dismissed as speculative.

13. The plea of parity is also unpersuasive. The role attributed to co-accused Aman @ Shahbaz is materially different. Rashid @ Cable Wala was granted bail in circumstances involving different identification evidence, but subsequently absconded and was declared a proclaimed offender. Neither case provides a sufficient basis for extending the same relief to the Petitioner.

14. The Court is conscious that the Petitioner has remained in custody for

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over seven years and that the trial has made insufficient progress. The right to a speedy trial is an important consideration, even in cases involving serious offences. However, the length of incarceration cannot be examined in isolation from the other circumstances bearing on the exercise of discretion. Here, the Petitioner faces a serious accusation supported by eyewitness testimony attributing to him a specific role in the attack. His extensive criminal antecedents, the nature of the other offences alleged against him, and, importantly, his conduct even while incarcerated, raise substantial concerns regarding the likelihood of further criminal activity and interference with witnesses. These are not considerations which can be adequately addressed merely by imposing conditions of bail. Weighing them against the period of custody already undergone, the Court is not persuaded that the Petitioner should be released at this stage.

15. The application is accordingly dismissed. The Trial Court shall, however, accord priority to the proceedings and endeavour to conclude the remaining prosecution evidence expeditiously. Short dates shall be fixed, and the prosecution shall ensure the attendance of its witnesses.

16. The observations made herein are confined to the present application and shall not influence the Trial Court in deciding the case on its merits.

SANJEEV NARULA, J

OCTOBER 12, 2026
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