

I.A. No. : 31/2026

SC No. : 103/21

FIR No. : 51/2020

U/s : 307/186/353/216/188/147/148/149/34/174-A IPC and 25/27 Arms Act

PS : Jafrabad

Shahrukh Pathan @ Khan vs. State

12.03.2026

Present : Sh. Abdul Gaffar, Sh. Sameer Khan, Sh. Danish Khan, Sh. Junaaid Nisar and Sh. Nakul Sharma counsel for the applicant/accused (through VC).
Sh. Anuj Handa Special PP for the State alongwith Sh. Shubham Pandey and Sh. Ayush Vishwakarma Adv.
I.O/SI Arvind in person.

1. The present application has been moved on behalf of the applicant/accused Shahrukh Pathan @ Khan u/s 483 of The Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS) for grant of regular bail.

2. It is submitted by the Ld. counsel for the applicant/accused that the applicant has been charged for the offence u/s 307 IPC and his act is punishable with imprisonment for Ten years and as the applicant has spent more than half of the period of sentence in custody, he deserves bail. Regarding this relief Ld. counsel for the applicant submitted that although the application has been filed u/s 483 of BNSS but the applicant must get benefit of the provision as given u/s 436-A Cr.P.C. It is further submitted that

although the Cr.P.C. has been repealed and BNSS has come into force but the provision which is more beneficial to the applicant must be taken into consideration and as such the applicant deserves bail u/s 436-A Cr.P.C.

3. On merits, the submission on behalf of the applicant is that the applicant has been languishing in jail for last about six years and trial is not coming to an end shortly. It is further submitted that till date the prosecution has examined only 15 witnesses and still to examine about 45 witnesses and as such the trial will definitely take a very long time.

4. It is further the submission on behalf of the applicant that the prosecution has already examined the eye-witnesses, material witnesses and more importantly the complainant and as such there is no apprehension that the applicant may influence any witness, if enlarged on bail and therefore, bail should be granted to him.

5. Further, it is a settled principle of law that pre-trial detention of the accused is not fair and the purpose of detention is only to secure the presence of the accused and if the accused is enlarged on bail, he will join the trial regularly and the trial will not hamper in any way.

6. Further, the accused was on interim bail on a few occasions but he never misused the liberty as granted by the Court and kept on attending

the Court proceedings in between and then surrendered before the concerned Jail Superintendent in time. As such considering the conduct of the accused, the desired relief may be granted to him.

7. Further, it is well settled principle of law that bail is the rule and jail is an exception and when the accused has already passed about six years in jail, he should be granted bail in routine.

8. Ld. counsel for the applicant/accused in support of his submission that the applicant deserves the relief in view of Section 436-A Cr.P.C. and is entitled for the benefit retrospectively, despite coming into force the BNSS, has relied upon the following judgments :

(i) Hitendra Vishnu Thakur and Ors. vs. The State of Maharashtra and Ors. MANU/SC/0526/1994

(ii) State of Punjab and Ors. vs. Bhajan Kaur and Ors. MANU/SC/7644/2008

(iii) Rattan Lal vs. State of Punjab MANU/SC/0072/1964

(iv) T. Barai vs. Henru Ah Hoe and Ors. MANU/SC/0123/1982

(v) Anil Kumar Yadav vs. Directorate of Enforcement passed by Hon'ble High Court of Jammu and Kashmir and Ladakh in CRM (M) No. 329/25

9. In support of other submissions, the Ld. counsel for the applicant has relied upon the following judgments :

- (i) **Vaman Narayan Ghiya vs. State of Rajasthan (2009) 2 SCC 281**
- (ii) **H. B. Chaturvedi vs. CBI 171 (2010) DELHI LAW TIMES 223**
- (iii) **Sanjay Chandra vs. CBI (2012) 1 SCC 40**
- (iv) **Dataram Singh vs. State of U.P. (2018) 3 SCC 22**
- (v) **Ashok Sagar vs. State 2018 SCC Online Delhi 9548**
- (vi) **Prabhakar Tiwari vs. State of U.P. (SC, Criminal Appeal No. 153 of 2020).**
- (vii) **Tabassum vs. State (NCT of Delhi) passed by Hon'ble High Court of Delhi in Bail Application No. 2775/2021**
- (viii) **Firoz Khan vs. State (NCT of Delhi) passed by the Hon'ble High Court of Delhi in Bail Application No. 945/2020**

10. In reply the submissions on behalf of the prosecution are that the present bail application is the eleventh bail application on behalf of the applicant and the earlier bail applications have been dismissed not only by this Court but by the Hon'ble High Court also. It is further submitted that after dismissal of the bail application by this Court, the applicant approached the Hon'ble High Court of Delhi and his petition for bail was dismissed by the Hon'ble High Court vide order dated 15.04.2021. It is further submitted that thereafter, this Court dismissed subsequent bail application of the applicant vide order dated 14.12.2023, in which the conduct of the applicant was noted in detail and considering the merits of the case and the conduct of

the applicant, the application was dismissed. Further, vide order dated 22.10.2024 the Hon'ble High Court of Delhi again dismissed the petition of the accused for granting bail. It is further the submission of the prosecution that since the order of the Hon'ble High Court as passed on 22.10.2024, there are no change in circumstances and as such this Court can not consider the present application and grant bail to the applicant even now.

11. It is further submitted on behalf of the prosecution that one of the prayers of the applicant is to grant him the bail for the reason that the applicant has spent one-half of the sentence in prison and deserves bail, but no relief can be granted to the applicant in view of the provision as enumerated under section 479 of BNSS, as the applicant is facing trial in one more case.

12. It is further the submission on behalf of the prosecution that the applicant cannot be given benefit of the provision of Section 436-A Cr.P.C. as the Code has now been repealed and in terms of sub-section 2 of Section 479 of BNSS, the applicant is not entitled for bail due to the fact that he has one more criminal case against him.

13. It is further submitted on behalf of the prosecution that there is no delay on the part of the prosecution and the claim of the applicant that the trial has been delayed on the part of the prosecution or the Court is not

correct. Further, the order sheets of the case clearly show that the delay has been on the part of the accused persons only for one reason or the other.

14. The court has gone through the record and heard arguments.

15. The first question before the Court is if the applicant can be granted bail for the reason that he has already undergone more than one-half of the period of sentence as given for the offence he has allegedly committed. The applicant has committed the offence punishable u/s 307 IPC and as his act did not cause hurt to any other person, if convicted, he would be liable for imprisonment which may extend to maximum ten years. As submitted by the Ld. counsel for the applicant, the applicant has been in J.C. since 03.03.2020 and as such about six years have passed.

15.1 The applicant has moved the present application u/s 483 BNSS and fairly conceded that the application under any provision of the Code of Criminal Procedure was not maintainable and only the provisions of BNSS would apply. So, now the question is if the applicant can be granted bail u/s 479 of BNSS, which is in correspondence with Section 436-A of the Cr.P.C. or u/s 436-A Cr.P.C. as prayed by the Ld. counsel.

15.2 Section 479 BNSS provides that an accused has to be released on bail if he has undergone one-half of the maximum period of imprisonment. In the present case the applicant has definitely undergone

more than one-half of the period of sentence but sub-section 2 of the said provision further provides that if an accused is facing trial in more than one offences, he cannot be released on bail. In the case in hand, the applicant is facing trial in another case in FIR No. 49/20 PS Jafrabad pertaining to Delhi riots only and as such he cannot be given benefit under this provision.

15.3 During the course of arguments Ld. counsel for the applicant contended that infact the applicant deserves relief u/s 436-A of Cr.P.C. Ld. counsel contended that although the BNSS has replaced the Cr.P.C. but the Court has to consider the provision which is beneficial for the applicant and if any benefit has accrued in favour of the applicant, the same cannot be taken away by a subsequent law i.e. BNSS.

15.4 Ld. SPP, rebutting this contention of the Ld. counsel for the applicant submitted that the saving clause u/s 531 BNSS is very clear on this aspect and in the case of the applicant, only the provision of BNSS will apply and not at all the provision of Cr.P.C. i.e. Section 436-A Cr.P.C. Ld. SPP further contended that the present application has been filed by the applicant after coming into force the BNSS and further the half period of sentence also completed when the BNSS came into force and as such in no way the bail of the applicant can be considered u/s 436-A Cr.P.C.

15.5 The judgments as relied upon by the Ld. counsel for the applicant in this regard will not be of any help to the applicant, as the saving clause of the BNSS i.e. Section 531 makes it amply clear that the present

application can be treated only under the provisions of BNSS and as such the relief as desired by the accused cannot be considered retrospectively and the benefit of Section 436-A Cr.P.C. cannot be given to the applicant. As relied upon by the Ld. SPP the case, “**State through RPF vs. Dharmendra @ Dharma**” decided by the Hon’ble High Court of Delhi in Cr.L.P.472/2024 makes this aspect very clear, that the relief to the applicant regarding his bail after undergoing one-half of the sentence period can be considered only under Section 479 BNSS and not under Section 436-A Cr.P.C.

16. Other contentions of Ld. counsel are that the applicant is behind bars for last more than six years and cannot be put into incarceration for an unending period of time. Further, the material witnesses have already been examined, as such there is no question of threatening any witnesses. Further, the applicant is not at flight risk, as while being on interim bail on few occasions, his conduct was perfect and he never misused the liberty as granted to him. Further, the delay in the case is on the part of prosecution and the applicant cannot be made to suffer for that.

16.1 As far as the delay is concerned, the Ld. SPP has given a chart of each and every date in order to show as to on whose part delay is there. The record shows that although initially it took a considerable time to examine the complainant and other witnesses but most of the times, the

delay has been caused on the part of the accused persons only, specially the present applicant. In fact on a few occasions the Court had to note that the matter was getting delayed due to the conduct of the present applicant and specially for the reason that the counsel for the applicant was not available for a very long time.

16.2 As far as the merits of the case are concerned, it is important to note that after dismissal of the previous bail applications of the applicant by this Court, the Hon'ble High Court has declined the relief to the applicant twice. Firstly, vide order dated 15.04.2021, the Hon'ble High Court considering the act of the applicant dismissed his petition and declined bail to him. Thereafter, vide order dated 22.10.2024, again the Hon'ble High Court dismissed the petition of the applicant and declined bail to him. At the relevant time, when the second petition of the applicant was dismissed vide order dated 22.10.2024 by the Hon'ble High Court, the case was at the stage of Prosecution Evidence and by that time five witnesses including the eye-witnesses had been examined and as such, as on date also, although all the material witnesses have been examined but the case is still at the stage of Prosecution Evidence and therefore, there is no change in circumstances. Accordingly, this Court is of the view that when the Hon'ble High Court has declined bail to the applicant/accused vide order dated 22.10.2024 and the circumstances have not changed, except the fact that almost one and a half years have passed, this Court should not grant bail to him even now.

17. Accordingly, the bail application is dismissed.

Nothing stated herein shall tantamount to an expression of opinion on the merits of the case.

Order dasti.

(Sameer Bajpai)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Delhi : 12.03.2026