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

+ **BAIL APPLN. 295/2025**

DILEEP KUMAR

.....Petitioner

Through: **Mr. RCS Bhaduria, Advocate.**

versus

THE STATE N.C.T. OF DELHI

.....Respondent

Through: **Mr. Sanjeev Sabharwal, APP for the State with Inspector Surender Kumar, SI Khushboo Yadav, PS – Kalkaji. Mr. Harshit Jain, Mr. Rahul Kumar, Mr. Harsh Kataria and Mr. Abhishek Chaudhary, Advocates for complainant.**

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

21.08.2025

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1. The applicant is before this Court having remained under incarceration since 11.01.2022, seeking indulgence of this Court for grant of bail during pendency of the trial in the criminal proceedings arising out of FIR No. 551/2021 dated 08.08.2021, for alleged offence under Sections 363 of the IPC, registered at P.S. Kalkaji, Delhi. Subsequently, Sections 323, 344, 366A, 370, 376, 377, 506, 509, 120-B of IPC and Sections 6, 12, 17 of POCSO were added in the chargesheet.

2. Briefly stating, per FIR, the case set up by the prosecution is that on 08.08.2021 at about 3:00 PM, the complainant's daughter (victim), aged about 15 years, went to Nehru Place along with her aunt's daughter, aged



about 7-8 years, carrying Rs.10/-, stating that she intended to get her torn suit stitched. After some time, the aunt's daughter returned alone and informed that the complainant's daughter had left with someone in an auto. Despite search, the complainant and his family could not trace her, whereupon he suspected that some unknown person had kidnapped the victim. Investigation led to unearthing of commission of various offences as above.

3. In the aforesaid backdrop, I have heard the rival contentions and perused the case file.

4. Learned counsel for the applicant/accused would argue on lines of grounds taken in the petition *inter alia* urging as below:-

4.1 Learned counsel for the applicant would contend that the applicant has been falsely implicated in the present case and has remained in custody since 11.01.2022, i.e. approximately for about three years and seven months. He would further submit that the investigation stands concluded and the charge sheet has already been filed, and the matter is now at the stage of prosecution evidence, where material witnesses, namely PW-1 (the alleged victim), PW-2 (Head Master), PW-3 (mother of the victim), PW-4 (doctor) and PW-5 (formal witness), have been examined and cross-examined. He would submit that the testimonies suffer from material contradictions and do not establish the age of the victim in accordance with law and PW-4 and PW-5 have merely proved medical documents, while PW-3's testimony is hearsay and cannot be relied upon.

4.2 He would further argue that the applicant's arrest itself was illegal and contrary to directions of the Supreme Court, as he was called to the police station without notice under the pretext of enquiry and was then arrested



without intimation to his family members. The prosecution has also made a false claim that the applicant resided at the premises where the victim was allegedly kept, whereas his correct address, already verified in the charge sheet, is different. Even when the victim was found, the applicant was not present at the spot and was subsequently called to the police station. Nothing incriminating has ever been recovered from him or at his instance.

4.3 Learned counsel would also contend that although the prosecution has cited 24 witnesses, only 5 have been examined so far, and the conclusion of the trial is likely to take considerable time. Hence, no fruitful purpose would be served by keeping the applicant in custody for an indefinite period.

4.4 He would further submit that bail cannot be denied merely because allegations are serious in nature. Gravity of offence is a factor to be considered only at the stage of conviction after trial, not during the pendency of proceedings. If the applicant is ultimately acquitted, the years spent in jail cannot be compensated.

4.5 He would also submit that the applicant has clean antecedents and poses no threat of tampering with evidence or absconding. He has a permanent residence, is willing to furnish surety, and undertakes to abide by all conditions that this Court may impose. He would also urge that grant of bail is the rule and refusal an exception, bail cannot be withheld as a measure of punishment. Even assuming prima facie guilt, pre-trial incarceration amounts to indirect punishment before conviction.

4.6 Finally, learned counsel would also submit that the applicant cannot fathom committing such a crime as he himself has four minors and being a father. It is unthinkable for him to indulge in any such activity that has been attributed to him.



5. Opposing the above submissions, the learned APP for the State argues that the applicant is not entitled to any relief at this stage, as there remains a genuine risk of him absconding or tampering with the evidence.
6. I am of the view that it is a fit case for bail. Let us see how.
7. The applicant has already remained in custody for approximately 3 years and 7 months, and the trial is moving at a snail's pace, with only 5 out of 24 prosecution witnesses examined so far. This prolonged pre-trial detention, coupled with the slow progress of proceedings, are contributory factors in favour of granting bail.
8. Further incarceration would serve no useful purpose, as the trial is unlikely to conclude in the near future, and continued detention would amount to punitive confinement before conviction, contrary to the settled principle that bail is the rule and jail the exception, especially when the applicant is neither a flight risk nor a threat to the fairness of the trial.
9. As regards the apprehension of tampering with evidence, it is pertinent to note that the material evidence has already been seized and is securely in the custody of the prosecution, rendering such apprehension illusory. One of the primary objects of bail is merely to secure the presence of the accused during trial. The applicant has been in custody since 11.01.2022, has cooperated throughout the investigation, and there is nothing to suggest that he would abscond, interfere with evidence, or influence witnesses. He has deep roots in society and no criminal antecedents.
10. Taking wholesome view i.e. the applicant has been in custody since 11.01.2022 (over three years and seven months), while investigation is complete, the charge sheet filed, and key witnesses examined, with



testimonies showing contradictions. The trial is likely to take considerable time, causing undue hardship. The applicant has clean antecedents, poses no flight risk, and continued detention may amount to pre-trial punishment, at this stage.

11. Continued custody would also cause irreparable hardship to his family, he being the sole breadwinner for his wife, ailing parents, and four minor children, who are stated to be living in penury and near starvation during this period.

12. Accordingly, the application is allowed. Applicant is directed to be released on bail on furnishing of bail bond and surety to the satisfaction of the learned Trial Judge/Duty Judge as the case may be and subject to the usual conditions to be imposed by the learned trial Judge/Duty Judge.

13. Nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same is only for the purpose of the disposing of the present bail application.

14. Accordingly, the bail application stands disposed of.

ARUN MONGA, J

AUGUST 21, 2025/kd