



\$~15

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

+ **BAIL APPLN. 1889/2025**

DEVA

.....Petitioner

Through: Mr. K.M. Dwivedi, Advocate.

versus

THE STATE NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Sanjeev Sabharwal, APP for the
State with SI Ambika, PS S.B. Dairy
with victim 'M' in person.

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

05.08.2025

%

1. Claiming himself to be falsely implicated in FIR No. 423/2024 dated 02.06.2024 registered at PS, Shahabad Dairy, the applicant herein is before this Court seeking bail for alleged offences committed under Section 376 of IPC and Section 4 of POCSO Act.
2. Per FIR, prosecution/prosecutrix case is that on 31.05.2024, at around 12:00 noon, the minor victim 'M', aged 14 years, daughter of 'A' and resident of XYZ, had gone to fill water from a tanker in the street. As she was passing by the house of one Deva/ Applicant, a resident of the same street, he allegedly pulled the victim inside his house by her hand, closed the gate, and committed wrongful acts without her consent. Shortly thereafter, the victim's mother came looking for her and rang the doorbell. The accused subsequently opened the door and left, and the mother took the victim home.



However, the victim did not immediately disclose the incident to her mother out of fear.

2.1 Later that day, due to a death in the neighbourhood, the mother remained engaged at the residence of the deceased. At around 4:30 PM, the victim informed her mother about the incident. Thereafter, on 01.06.2024, upon her mother's return, they made a phone call and visited the police station to report the incident. Subsequently, the victim's statement was recorded in the presence of her mother and a counsellor.

2.2 The victim was taken to Hospital along with her mother where the medical officer declared the UPT negative. Upon evaluation of the statement and MLC, it was found to be case of commission of the offences punishable under Section 376 IPC and Section 4 of the POCSO Act.

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

4. Learned counsel for the applicant submits that the prosecutrix and her mother have already been examined and discharged by the Trial Court. It is submitted that there are no other material or public witnesses left to be examined.

4.1 Learned counsel for the applicant would further contend that the testimonies of the prosecutrix and her mother are not consistent with the allegations in the FIR or the prosecution's narrative, which renders the entire case doubtful and fabricated.

4.2 Learned counsel would also submit that the impugned order dated 22.03.2025 rejecting the applicant's second bail application was passed without considering the fact that the mother of the prosecutrix had already been examined on 31.01.2025. The Trial Court erroneously held that her



evidence was still awaited, thereby reflecting non-application of judicial mind.

4.3 Furthermore, learned counsel for the applicant would submit that the prosecutrix was medically examined within 30 hours of the alleged incident, yet no signs of fresh injuries or trauma were observed. The MLC of the prosecutrix (MLC No. 3028/24) indicates no injury or positive medical finding, and the UPT was negative. Furthermore, the applicant's medical examination (MLC No. 25873/24) similarly confirmed no recent genital injury. Reliance is placed on the standard observations contained in Modi's Medical Jurisprudence & Toxicology regarding the typical signs of sexual assault which were absent in the present case.

4.4 Learned counsel would submit that though the prosecutrix deposed that she had never spoken to or met the accused prior to the alleged incident, audio recordings placed on record, played before the Trial Court with due permission, clearly establish that she was in prior contact with the applicant. Subsequently, photographs placed on record further demonstrate that the prosecutrix used to meet the applicant prior to the date of the alleged incident.

5. Learned APP opposes the bail plea, arguing that the applicant had applied for regular bail before the learned Sessions Court, however, the same was dismissed on the grounds of the gravity of the heinous crime which is punishable with the life imprisonment, and that the applicant lives in the vicinity of the victim and her family, and might threaten them.

6. Having heard, it has transpires that not only the trial has commenced after filing of the charge-sheet, but preliminary evidence qua the DNA also suggests that the possibility of false implication of the petitioner cannot be



ruled out as the FSL report qua the DNA of the accused/applicant does not match. The relevant portion of the FSL report is reproduced as below:

“The Result of FSL Analysis stated that "No male DNA profile could be generated from the source of exhibits '11' (Cervical mucus collection swab of victim), 'Im-1', 'Im-2' (Vaginal swab & smear of victim), 'It-1', 'It-2' (Urethral swab & smear of victim), 'Iv-1', 'Iv-2' (Vulval swab & smear of victim). However the female DNA profile generated from the source of exhibits '11' (Cervical mucus collection swab of victim), 'Im-1', 'Im-2' (Vaginal swab & smear of victim), '11-1'; '1t-2' (Urethral swab & Smear of victim), 'Iv-1', 'Iv-2' (Vulval swab & smear of victim) was found to be matching with DNA profile generated from the source of exhibit '1q' (Blood sample of victim)," and that The male DNA profile was generated from the source of exhibits 'Ja', '3b' (Blood sample & gauze of accused).”

7. On a court query, it is also borne out from cell phone records, that prosecutrix and applicant, in course of their friendship were regularly exchanging not only text messages through chat but also indulging in video calling each other, which is suggested that their friendship was consensual.

8. The I.O. is present in person along with the prosecutrix and in course of hearing on a query, it transpires that the prosecutrix and the applicant are/were well known to each other being the immediate neighbours and what seemed to be a friendly relationship turned ugly, resulting into lodging of the FIR in question.

9. Whether or not the applicant is culpable of any criminality arising out of his friendship with the prosecutrix is a matter of trial.

10. As far as the recording of testimony of the material witnesses, i.e. the prosecutrix and her school teacher and her mother, PW1 to PW3, had



already been recorded and they have been discharged by the Trial Court.

11. In the overall premise, I am of the view that, given the applicant has been under incarceration for one year and two months, his further custodial interrogation is not warranted, and there is no possibility of tampering with evidence as the exhibits seized are being sent to the FSL, Rohini. Thus, it appears to be a fit case for grant of bail.

12. Qua the apprehension of the applicant trying to influence the witnesses, the same appears to be unfounded in view of the testimony of the material witnesses, already having been recorded, but to obviate any such possibility, learned counsel for the applicant submits that the applicant shall give an undertaking as part of his bail condition that he shall not enter the area within 2 kilometre radius from the residence of the prosecutrix. He submits that though he is an immediate neighbour and resident of the same locality, but his family has decided to sell the same property and move to an alternative location.

13. In the premise, I am of the view that the applicant shall be enlarged on bail during pendency of the trial as well as subject to the other usual conditions to be imposed by the learned Trial Court, in accordance with law, subject to furnishing of bail bonds and surety of an equivalent amount to the satisfaction of the learned Trial Court/Duty Judge, as the case may be.

14. The Trial Court shall ensure that bail condition is put on the applicant that he shall not enter within radius of 2 kilometre from the residence of the prosecutrix, however he shall be given the latitude of one month period to vacate his house.

15. Any observation made herein above is only for the purpose of disposing of the instant bail application and not to be construed, in any



manner, as any expression on the merits of the pending case and the trial shall proceed without being influenced either way by the same. In case the applicant is found involved in any repeat offence while on bail, the prosecution shall be at liberty to seek cancellation of the bail granted to the applicant in the present case *vide* instant order.

16. The bail application is disposed of accordingly.

ARUN MONGA, J

AUGUST 5, 2025/rs