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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2393/2025 & CRL.M.A. 19036/2025**

SHAMIM AHMAD

.....Applicant

Through: Mr. Viraj Datar, Sr. Adv
with Mr. Mohd. Irfan Ali,
Adv.

versus

THE STATE (NCT OF DELHI) & ANR

.....Respondents

Through: Mr. Sunil Kumar Gautam,
APP for the State.
SI Kriti Singh, PS
Welcome.
Ms. Khushboo along with
Mr. Jitender, Adv. for
victim.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
03.09.2025

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1. By the present bail application, the applicant seeks regular bail in FIR No. 491/2023 dated 06.06.2023, registered at Police Station Welcome, for offences under Sections 323/376D/377/506 of the Indian Penal Code, 1860 ('IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

2. It is the case of the prosecution that on 22.05.2023, the prosecutrix left from her home in hurry to visit the house of her aunt (*mausi*). On reaching the house of her aunt, the prosecutrix found the same to be locked and as she did not have her mobile with her, the prosecutrix asked passersby for a place to spend the night. It is alleged that the prosecutrix asked an auto driver,



namely, Amir, to take her to Anand Vihar, who offered to take her to his home. It is alleged that accused Amir took the prosecutrix to C-35, Raja Market, Gali No.2, where she was raped by the accused persons, including the applicant. It is alleged that accused Amir also slapped the prosecutrix and threatened to kill her if she told anyone about the incident, whereafter, the prosecutrix was dropped at the railway station. The applicant was named as one of the persons who raped the prosecutrix by accused Amir in his disclosure statement and it is alleged that the applicant owns the premises where the incident took place.

3. The DNA of the other two accused persons has matched with the DNA generated from a piece of cloth found from the place of the incident, and the DNA profile of accused Amir also matches with the DNA profile generated from the *pajami* of the victim.

4. The learned senior counsel for the applicant submits that the applicant is innocent and he has been falsely implicated in the present case. He submits that although it is alleged that the incident took place in the applicant's home, the applicant had already sold the premises prior to the date of the incident

5. He submits that there is a delay of 13 days in registration of the FIR and although the prosecutrix had stated initially that she was seventeen years of age, her age was found to be between nineteen and twenty years in the ossification test.

6. He submits that on 09.05.2024, the prosecutrix had deposed that the accused persons had tried to have sex with her but she had locked the room, however, on 29.07.2024, when the prosecutrix was called for further examination, she stated that all



the accused persons had taken ~~turn~~ to rape her.

7. He submits that as per the FSL report, the DNA profile of the applicant has not matched with the cloth found at the place of incident as well as the *pajami* of the victim, which casts a doubt on the involvement of the applicant.

8. He submits that the applicant has been in custody since 08.12.2023 and the matter is still at the stage of prosecution evidence. He further submits that the prosecutrix and her aunt have already been examined and no purpose would be served by subjecting the applicant to further incarceration.

9. *Per contra*, the learned Additional Public Prosecutor for the State and the learned counsel for the prosecutrix vehemently oppose the grant of any relief to the applicant on account of the gravity of the offence.

10. They submit that the CDR of the accused persons reflects that on the night of the incident, there were multiple calls between the accused persons.

11. They further submit that the delay in registration of the FIR was due to the prosecutrix being scared that she will be insulted, as has also been mentioned in the FIR.

12. I have heard the counsel and perused the record.

13. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, the



period of incarceration is also a relevant factor that is to be considered.

14. The allegations in the present case are heinous in nature. It is alleged that the accused persons raped the hapless prosecutrix after she was lured by accused Amir to accompany him on the promise of a safe shelter for the night. The case of the prosecution essentially rests upon the evidence of the prosecutrix, CDR connectivity between the accused persons and the FSL report, which came positive in respect of the other two accused persons.

15. It is not in doubt that that the mere statement of the prosecutrix is sufficient for establishing the offence of rape if the same inspires confidence. However, in the present case it is argued that there are glaring contradictions and improvements in the evidence of the prosecutrix.

16. In particular, much emphasis has been laid on the fact that during her examination in chief, the prosecutrix had initially stated that the accused persons had *tried* to have sex with her and subsequently stated that the accused persons had raped her. It is further argued that there is delay in registration of FIR.

17. While considering an application seeking bail, it would not be appropriate for this Court to appreciate the evidence in detail as the probative value of evidence and veracity of the case of the prosecution can only be tested during trial. However, at this stage, the benefit of the *prima facie* shortcomings in the evidence of the victim as well as delay in registration of FIR cannot be denied to the applicant in the absence of any scientific evidence against him.



18. It is settled law that in the event of there being even some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to bail. [Ref: **Ram Govind Upadhyay v. Sudarshan Singh : (2002) 3 SCC 598**].

19. The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

20. It is pointed out that eight out of the thirty-five listed prosecution witnesses, including the prosecutrix and her aunt, have already been examined, and mostly formal witnesses remain to be examined now.

21. The applicant is stated to have clean antecedents and he is also stated to have deep roots in society, whereby there is less chance of the applicant evading trial.

22. No such apprehension has been expressed by the prosecution either. Even otherwise, appropriate conditions can be imposed to allay any apprehensions of the applicant evading trial or intimidating witnesses.

23. In view of the aforesaid discussion, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall under no circumstance leave the



- country without the permission of the Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;
 - d. The applicant shall, upon his release, provide the address where he will reside, which should be at least 5 KM far from the locality where the prosecutrix resides, subject to the satisfaction of the IO/SHO. The applicant shall not change the address without informing the concerned IO/SHO;
 - e. The applicant shall, upon his release, give his mobile number to the concerned IO and shall keep her mobile phone switched on at all times.

24. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the respondent to seek redressal by filing an application seeking cancellation of bail.

25. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

26. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

SEPTEMBER 3, 2025