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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2791/2025**

MURSALIN

.....Petitioner

Through: Mohd. Shamikh, Advocate.

versus

STATE OF DELHI

.....Respondent

Through: Mr. Sanjeev Sabharwal, APP for the
State with SI Ravi Poonia, PS
Dayalpur.
R-2 in person.

CORAM:
HON'BLE MR. JUSTICE ARUN MONGA

ORDER
25.08.2025

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1. Claiming himself to be falsely implicated in FIR No. 566/2023 dated 08.08.2023 registered at Police Station, Dayalpur, the applicant herein is before this Court seeking bail for alleged offences committed under Sections 34, 342, 376, 506 of IPC and Section 6 of POCSO Act.
2. Per FIR, on 01.08.2023, only the complainant's younger sister and aunt were at home and the other family members had gone to Bulandshahr, U.P., the younger sister went out to play. When prosecutrix (aged 15 years at the time of incident) went to look for her at their relative's house, their two cousins i.e. applicant/ accused (Mursaleen) and his brother, the prime



accused (Shoaib) were present. They informed her that her younger sister was inside the house. Upon her entering the house, the applicant (her cousin brother) closed the door, following which the prime -accused forcibly pulled the prosecutrix to the floor, disrobed her and raped her twice, while the applicant restrained her and gagged her mouth. On her protest, both accused threatened to kill her father and brother if she disclosed the incident.

2.1 On 02.08.2023, when prosecutrix's family members returned from Bulandshahr, she remained silent on account of fear of the threats extended by the accused persons. On 07.08.2023, upon being questioned by her parents, she narrated the incident. In course of the investigation both the accused brothers were arrested and are in custody for the past more than two years.

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 the lines of grounds pleaded in the petition *inter alia* urging as below:-

4.1 That the applicant has been falsely implicated in the present case and that there is no material evidence on record to support the allegations against him. He would contend that after registration of the FIR in question, the applicant was called to the police station to join investigation, and in compliance, he voluntarily appeared. However, despite his cooperation, he was arrested on 08.08.2023 from the police station itself.

4.2 That the very first information regarding the incident was recorded *vide* G.D. No. 82A on 07.08.2023 at 14:53 PM, wherein it was specifically stated that one boy had committed rape upon the complainant. This information was furnished by the father of the complainant. It is clear from



the said entry that the allegation was confined to a single perpetrator. However, in the subsequent FIR, though the complainant nowhere alleged that the applicant had committed rape, but yet he was arrested. The only allegation of rape was against co-accused (Shoaib), the brother of the applicant. It was only thereafter that the complainant altered her version, introducing the presence of the applicant alongside the co-accused.

4.3 That although the complainant was medically examined on 07.08.2023, the prosecutrix did not consent to an internal examination. In her subsequent statement recorded under Section 164 Cr.P.C. on 08.08.2023, the prosecutrix alleged that the doctor and police had compelled her to state that she did not wish to undergo such examination. Moreover, the scientific evidence also does not support the prosecution case, as the FSL report categorically states that no semen or DNA profile of male origin was detected on the articles examined.

4.4 He would also argue that the alleged incident is of 01.08.2023, while the parents of the complainant returned from Bulandshahron 02.08.2023, the PCR call was made only on 07.08.2023, and the FIR in question was registered on 08.08.2023, with no plausible explanation for the delay of nearly seven days.

4.5 That the custody of the applicant is no longer required, as the challan has already been filed and the investigation stands concluded. He would further urge that the prosecutrix has already been examined as PW-1, and therefore, there is no justification to keep the applicant behind bars for an indefinite period, particularly when he has already undergone incarceration for about two years. The applicant has clean antecedents, has never been involved in any other criminal case, and no useful purpose would be served



by his continued detention.

4.6 Learned counsel would also argue that the learned Trial Court dismissed the bail application *vide* order dated 30.05.2025 on the ground that the parents of the complainant are yet to be examined and that release of the applicant may influence witnesses or hamper trial. However, the learned Trial Court failed to consider that the prosecutrix herself has already been examined, and therefore, there is no likelihood of the applicant interfering with the course of justice.

4.7 Finally, he would also contend that there is no likelihood of the applicant absconding if released on bail, and in the facts and circumstances of the case, he deserves to be released on bail by this Court.

5. Opposing the bail application, learned APP submits that the applicant is not entitled to any relief at this stage, as there exists a genuine risk of his absconding or tampering with evidence. He further submits that the learned Trial Court, *vide* order dated 30.05.2025, dismissed the applicant's bail on the ground that the parents of the prosecutrix are yet to be examined, and if released on bail, the applicant may influence the witnesses or hamper the trial.

6. I have heard the submissions of both sides and am of the considered view that this is a fit case for bail and the applicant deserves to be released during the pendency of the trial. Let us see how.

7. As per the allegations contained in the FIR, the applicant is not the main accused and it is his brother (co-accused) who is stated to be the main perpetrator of the crime in question. The testimony of the prosecutrix in respect of the applicant already stands recorded.

8. Given that the applicant has already remained in custody for



approximately 2 years and that the trial is moving at a snail's pace, further continued incarceration would serve no useful purpose, especially when the trial is not likely to conclude in the near future as it violates the fundamental rule i.e. bail is the rule and jail the exception.

9. As regards the apprehension of tampering with evidence is concerned or influencing or intimidating the witnesses, there is nothing on record to support such apprehension, which seems to be unfounded.

10. The applicant has been in custody since 09.08.2023, has cooperated throughout the investigation, and there is nothing to suggest that he would abscond, interfere with evidence, or influence witnesses. One of the primary objects of bail is to secure the presence of the accused during trial. The applicant has no criminal antecedents, poses no flight risk, and continued detention may amount to punishment before conviction, at this stage.

11. As an upshot and taking a wholesome view of the matter, the applicant is directed to be released on bail on his furnishing personal bond with solvent surety of like amount to the satisfaction of the Trial Court/Duty Judge concerned as the case may be, subject to the other usual conditions to be imposed by the learned Trial Court/Duty Court. Also, to allay the fears of applicant approaching the prosecutrix, in any manner, a specific additional bail condition shall be put that, during the pendency of the trial, the applicant shall not enter the street of the prosecutrix where she resides with her family. In case of the violation, the prosecution or the prosecutrix shall be at liberty to seek cancellation of the bail granted vide instant order.

12. 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.

13. Accordingly, the bail application stands disposed of.

ARUN MONGA, J

AUGUST 25, 2025/rs/nk