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

+ **BAIL APPLN. 3246/2025**

MALKHA @MALKHAN

.....Petitioner

Through: Ms. Ayushi Mittal and Mr. Kunwar
Samrat Singh, Advocates.

versus

STATE OF NCT OF DELHI AND ANR.

.....Respondents

Through: Mr. Sanjeev Sabharwal, APP for the
State.
Mr. Ankit Ambasta and Ms. Apoorva
Solanki, Advocates for respondent
no.2.

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

24.09.2025

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1. The applicant herein is before this Court seeking regular bail, having remained under incarceration since 30.10.2024, i.e. approximately 1 year, in a criminal case arising out of FIR No. 592/2024 dated 30.10.2024 for the alleged offences punishable under Section 376 of the IPC and Section 6 of the POCSO Act, registered at Police Station Swaroop Nagar, Delhi.
2. Briefly speaking, per FIR, the case set up by the prosecution is that the victim is a 15-year-old girl who lives with her mother, two sisters, and brother. Her father passed away eight years ago, and her family's financial situation is not good. To support the family, her mother works at a bottle warehouse in Swaroop Nagar, which the complainant would



sometimes visit with her.

2.1 While there, she met a 22-year-old male coworker named Malkha (applicant herein). They became friends, and she started visiting the warehouse more frequently. In February 2024, Malkha asked her to marry him and have physical relations. Although she initially refused, he pressured her, and she eventually complied. He continued to have physical relations with her at the warehouse.

2.2 In August 2024, when she realized she was pregnant, she told Malkha. He advised her not to tell anyone, promising they would leave town, get married, and start a new life. She kept the pregnancy a secret from her family.

2.3 On 30.10.2024, she had stomach pain. Her mother discovered her condition, and the complainant revealed everything. Her mother brought her to the police station. She was taken to the hospital for a medical examination, which confirmed her pregnancy, and she returned to the police station to have her statement recorded. Legal action should be taken against Malkha for his actions.

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

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

4.1 That the respondent no.2/ complainant lodged a report dated 30.10.2024 with regards to alleged rape on various occasions at a glass warehouse where the accused and complainant used to work and also proposed the complainant for marriage.

4.2 That when the prosecutrix missed her mensuration cycle in August,



2024, she informed the same to the accused and he promised her to get married soon to which the complainant agreed. Further when the mother of the complainant found the baby bump, she took her to the Police Station-Swaroop Nagar, Delhi on the basis of which present case FIR bearing no. 592 of 2024 was registered on 30.10.2024. The accused was arrested on the same date and is behind the bars since 30.10.2024. Further, the complainant/respondent No. 2 delivered a baby girl on 05.12.2024, who is more than 9 months old now.

4.3 That in the present case all the allegations are false. The gestational average age at the time of lodging an FIR was 32 weeks. Apparently, there is an inordinate delay of 8 months in lodging of the FIR for which there is no plausible explanation.

4.4 That the complainant has been examined and has deposed in her chief examination itself that the physical relations between her and accused were made with her consent only. She has also stated her age as 17 years old in her chief examination, she has also stated therein that when she met the accused for the first time, she informed her age to him above 18 years. She further deposed that the first sexual intercourse was occurred only after 6 to 7 months after their meeting.

4.5 That the Petitioner filed Bail application which was dismissed vide order dated 02.04.2025 stating that the court is not bound to grant bail to the accused merely on the ground that the survivor and her family have not opposed the bail application. Further, the Id. Court mentioned that from the perusal of chief examination as well as cross examination of the victim clearly shows that it is not the case of survivor that no penetrative assault was committed upon her, the consent of the minor girl of 14 years or 15



years is not a consent at all.

4.6 That the quashing petition u/s 528 of BNSS, 2023 was preferred by the Petitioners in connection with the FIR No. 592 of 2024 against the Petitioner lodged at Police Station- Swaroop Nagar, Delhi u/s 376 of Indian Penal Code, 1860 and 6 of POCSO Act, 2012 and the proceedings with respect to the above-mentioned FIR. The said Quashing Petition is sub-judice before this Court. No specific directions were given by this Court and further directed to list the matter on 24.11.2025.

4.7 That the Respondent No. 2 has no objection if the bail is granted to the Petitioner as they have a 8 months old baby girl born out of their love relationship and want to live together for the welfare of the baby girl.

4.8 That to secure the ends of justice and to prevent the abuse of the process of court of going for a long trial when prima facie case is not made out, it is important to grant the bail in connection with the criminal proceedings initiated against the Petitioner/accused as the Petitioner is ready to take the responsibility of baby girl and victim.

4.9 That the FIR is manifestly riddled with mala fide intention and has been maliciously instituted with ulterior motive for wreaking vengeance on the accused and in pressure created by the mother of the complainant.

4.10 That there is an inordinate delay of around 8 months after the alleged incident in filing FIR. This implausibly explained delay as complainant/respondent No. 2 was 32 weeks pregnant at the time of lodging an FIR.

4.11 That it is clearly mentioned by the complainant in FIR that she did not inform about her pregnancy or sexual assault as alleged, it was her mother who took her to the Police Station after she noticed the baby bump.

4.12 That the continuance of the proceeding is thus nothing but an empty



formality. Section 483 BNSS, 2023 could, in such circumstances, be justifiably invoked by the Hon'ble High Court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the Courts below.

5. Opposing the above submissions, the learned APP for the state argues that the instant bail application is *sans* merit and the applicant is not entitled to any relief at this stage as the offence committed by the applicant is heinous in nature, as there remains a genuine risk of him absconding, influencing or intimidating witnesses, and tampering with crucial evidence.

5.1 He would further contend that the victim and the witness are both minors, and there is a grave possibility that the accused may exercise influence or cause intimidation and there is also a strong apprehension that the petitioner/accused may abscond and jump bail if granted the same.

6. On a query put to learned APP for the State, he does not dispute that the testimony of the prosecutrix stands concluded and thus, I am of the view that there is no possibility of the applicant either influencing her or intimidating in any manner since her examination as well as cross-examination has already been carried out.

7. Having heard, I am of the view that there may be some substance in some of the arguments addressed on merits by the learned counsel for the applicant but the same is a matter of trial. However, at this stage, in light thereof, it is otherwise a fit case for bail. Let us see how.

8. Matter was earlier heard on 15.09.2025 when the following order was passed:-

“Learned APP for the State seeks a short accommodation to seek instructions on a query put to him as to why the bail



should not be granted given the fact that the victim/prosecutrix, who is stated to have given birth to a child from the relationship, which she states was consensual, though, she was merely 13 years old and gives her no objection stating that in the absence of the father of the infant, she is unable to feed him and the infant would die of starvation in case the accused is not let out.

Let the needful be done.

List on 24.09.2025.”

9. On resumed hearing today, learned APP submits that the prosecutrix along with her infant can be made to live in Nirmal Chhaya during pendency of the trial. However, the prosecutrix refuses to do so and states that going to the Child Welfare Centre at Nirmal Chhaya is akin in imprisonment. She does not wish to go there and her mother is also present in the Court who is a natural guardian and strongly opposes such a suggestion made by the learned APP. She states that she has no means to feed herself or the infant and beseeches that father of the infant be enlarged on bail forthwith as she wishes to live with him so that he can bring up the baby. Her (victim's) mother states the same, when query was put to her.

10. The victim as well her mother/complainant (Respondent No. 2), both present in court, have no objection to bail, as the parties have an 8-month-old daughter from their relationship and wish to live together for the child's welfare.

11. The FIR suffers from an unexplained eight-month delay, lodged only when the complainant was 32 weeks pregnant, and the complainant herself admitted she had not informed anyone earlier, with the FIR registered only after her mother intervened.

12. The applicant has already remained in custody for approximately 1



year. 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 an exception.

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

14. The applicant has been in custody since 30.10.2024, 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.

15. The applicant is stated to be the sole breadwinner of his family and he is responsible to tend to them as they are dependent on him for survival. In his absence, the family is moving towards literal starvation and penury.

16. As an upshot and taking a wholesome view of the matter, I am of the view that it is a case of bail at this stage.

17. Thus, 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.

18. 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.



19. Accordingly, the bail application stands disposed of.

ARUN MONGA, J

SEPTEMBER 24, 2025

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