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

+ **BAIL APPLN. 5066/2025**

MO. AMMAR

.....Petitioner

Through: **Mr. Rajiv Khosla, Advocate**

versus

THE STATE (GOVT. OF NCT OF DELHI)Respondent

Through: **Ms. Manjeet Arya, APP for State
with SI Renu PS Wazirabad
Mr. Mohammad Wasif and Mr.
Tayyab Khan Salmani, Advocates
with prosecutrix in person.**

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **24.02.2026**

1. By way of this application, the petitioner seeks anticipatory bail in connection with FIR No. 827/2025 registered on 08.11.2025, under Section 64(1) of the Bharatiya Nyaya Sanhita, 2023.
2. I have heard Mr. Rajiv Khosla, learned counsel for the petitioner, Ms. Manjeet Arya, learned Additional Public Prosecutor for the State, and Mr. Mohammad Wasif, learned counsel for the prosecutrix.
3. The allegations in the FIR concern an incident alleged to have taken place on 08.06.2025, when the petitioner called the prosecutrix to a location in Sangam Vihar, Delhi. It is stated that she went to the said location to meet the petitioner, alongwith her sister, who is a minor. The petitioner was present there with two other persons, being his friend and his cousin. After the petitioner's cousin left from the location, the petitioner locked the room. The allegation against the petitioner is that he



demanding that the prosecutrix take off her clothes, which she did not do. Upon the prosecutrix's refusal, the petitioner used force to take her clothes off and made a video of her. He further threatened to circulate the video, if she did not come to meet him again. The prosecutrix also alleged that he made "all relations" with her. There is also an allegation that the other individual present at the site committed "wrong acts" with the sister of the prosecutrix [a minor] and also recorded a video. The prosecutrix and her sister are stated to have gone on several occasions to meet the petitioner and the other individual, on threat of circulation of their videos. On 24.10.2025, it is again alleged that the petitioner forced himself on the prosecutrix and made another video, as well as committed physical assault on her. She also allegedly attempted suicide on 20.10.2025, due to the repeated messages from the petitioner.

4. Mr. Khosla submits that the relationship between the petitioner and the prosecutrix was, in fact, consensual, which is stated to be substantiated by reference to several electronic communications, including WhatsApp chats between the two of them, ranging from a time prior to the incident in question, and even after 24.10.2025. In particular, he submits that messages of December 2024 show the consensual nature of the relationship between the parties.

5. Mr. Khosla further draws my attention to a discrepancy in the date of the first alleged incident. In the FIR, and the statement of the prosecutrix under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ["BNSS"], the incident is stated to have occurred on 08.06.2025, whereas the Sessions Court in its order dated 02.12.2025 has referred to a supplementary statement recorded by the IO which suggests that the



incident was of 09.06.2025. According to Mr. Khosla, this change has been made to bring the allegation in consonance with the CDR of the petitioner.

6. Mr. Khosla also submits that the FIR has been registered five months after the first incident, predicated upon the petitioner's failure to meet monetary demands of the father of the prosecutrix.

7. As far as allegations with regard to threat of circulation of photos and videos are concerned, Mr. Khosla submits that no provision of the Information Technology Act, 2000, has been invoked against the petitioner, and there is no material to show circulation of any such image or video to any third party.

8. Ms. Arya and Mr. Wasif, on the other hand, submit that the allegations of rape are undeniably grave. A status report dated 06.01.2026, filed by the prosecution states that the allegations in the present case are supported by the statement of the prosecutrix made under Section 183 of BNSS. Learned counsel submit that a separate FIR [FIR No. 826/2025] under the Protection of Children from Sexual Offences Act, 2012 ["POCSO Act"] has also been registered at Police Station Wazirabad against the petitioner and others, with regard to allegations in respect of the prosecutrix's minor sister. They further submit that the electronic messages/conversations disclosed by the petitioner are incomplete, and do not include various conversations, photos and images which were available on the mobile phone of the prosecutrix, which is pending FSL examination.

9. Ms. Arya submits that the investigation is still at a nascent stage, the petitioner's phone has not even been recovered yet. She further



submits that the petitioner has been issued notices under Section 35(3) of BNSS dated 18.12.2025 and 25.12.2025, but he has not yet joined the investigation, and in fact, is evading the investigation deliberately. She submits that the custodial interrogation of the petitioner is necessary *inter-alia* for the purpose of ascertaining details of the videos and photos of the prosecutrix and its circulation thereof.

10. In rejoinder, Mr. Khosla submits that the petitioner is ready to join the investigation, and submit his mobile phone to the prosecution.

11. While considering a plea for anticipatory bail, the Court must balance the public interest in a fair and effective investigation, with the prejudice to the accused by possible deprivation of his/her liberty. The Supreme Court in *Srikant Upadhyay and Ors. v. State of Bihar and Anr.*¹, has drawn a distinction between cases of regular bail and anticipatory bail, in the following terms:

“30. We have already held that *the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the court depending on the facts and circumstances of each case.* While called upon to exercise the said power, *the court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence.* We shall not be understood to have held that the court shall not pass an interim protection pending consideration of such application as the section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases.....”²

12. Viewed from this perspective, I am of the view that this is not a fit

¹ (2024) 12 SCC 382.



case for the grant of the extraordinary remedy of anticipatory bail to the petitioner. The allegations against the petitioner are of rape, which is undoubtedly serious in nature, and is punishable by life imprisonment. While the communications referred to by the petitioner, *prima facie*, show cordial communications even after the date of the first alleged incident, this is not the stage for conducting a mini trial. Ms. Arya has pointed out that the chats placed on record are incomplete. The chats are also not in continuity, and some of them [eg. WhatsApp conversations dated 08.06.2025, 19.10.2025, 20.10.2025], do appear to contain deleted messages.

13. The prosecutrix's statement under Section 183 BNSS has corroborated the initial allegations. The investigation is still at a nascent stage.

14. The petitioner is also accused in another FIR [FIR No. 826/2025], relating to offences under POCSO Act and BNS committed against the prosecutrix's minor sister. He is, therefore, not free of other criminal involvements in similar offences.

15. Having regard to the above, the requirement of the petitioner for custodial interrogation cannot be ruled out altogether. The Supreme Court has clearly held that custodial interrogation is more effective and elicits the truth more efficiently than interrogation while the accused is clothed with the protection of the Court. Reference in this connection may be made to the judgment of the Supreme Court in *State v. Anil Sharma*³, which observed as follows:

² Emphasis supplied.

³ (1997) 7 SCC 187.



“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”⁴

The same view has been expressed in *P. Krishna Mohan Reddy v. State of A.P.*⁵

16. Further the discretion conferred upon the Court while adjudicating an application for anticipatory bail is to be exercised with due circumspection. Even if custodial interrogation may not be required, other considerations, such as the *prima facie* material available, have to be examined. In this context, reference may be made to the judgment of the Supreme Court in *Sumitha Pradeep v. Arun Kumar C.K.*⁶, wherein it was observed as under:

“12. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like Pocso and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail

⁴ Emphasis supplied.

⁵ 2025 SCC OnLine SC 1157, paragraph 19.

⁶ 2022 SCC OnLine SC 1529.



matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”⁷

17. Having regard to the nature of allegations, I am of the view that the material placed on record does not justify the exercise of discretion in favour of the petitioner. I am therefore not inclined to accept the prayer for anticipatory bail at this stage.

18. The application is accordingly dismissed.

19. It is clarified that any observations made in the present order are solely for the purpose of deciding the present bail application, and shall not influence the trial proceedings, nor shall they be construed as an expression on merits of the case.

PRATEEK JALAN, J

FEBRUARY 24, 2026
SV/AD

⁷ Emphasis supplied.