

(2025) 12 DEL CK 0040

Delhi HC

Case No: Bail Application No. 3489 Of 2025

Sansar Gupta

APPELLANT

Vs

State (Nct Of Delhi)

RESPONDENT

Date of Decision: Dec. 4, 2025

Acts Referred:

- Bharatiya Nagarik Suraksha Sanhita, 2023, Section 183
- Bharatiya Nyaya Sanhita, 2023- Section 64(1)
- Indian Penal Code, 1860- Section 34, 149
- Protection of Children from Sexual Offences Act, 2012- Section 4

Hon'ble Judges: Amit Mahajan, J

Bench: Single Bench

Advocate: Gaurav Agarwal, Mukesh Kumar, Anushrestha Pratap Singh, Sunil Kumar Gautam, Seema Kushwaha, Sameer Srivastava, Swaraj Maurya, Khushboo Maurya, Aroma

Final Decision: Allowed

Judgement

Amit Mahajan, J

CRL.M.A. 27265/2025 (exemption from filing certified copy of annexures & official translations)

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

BAIL APPLN. 3489/2025 & CRL.M.A. 27266/2025 (stay)

3. The present application is filed seeking pre-arrest bail in FIR No. 337/2025 dated 31.07.2025, registered at Police Station Ambedkar Nagar, for the offences under Section 64(1) of the Bharatiya Nyaya Sanhita, 2023 ('BNS') and Section 4 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

4. Briefly stated, the FIR was registered on 31.07.2025 pursuant to a complaint given by the victim, who is stated to be sixteen years of age, alleging that on the intervening night of 26.07.2025 and 27.07.2025, she had gone to attend a party at a relative's house with her maternal aunt. Allegedly, after everyone in the party had fallen asleep after drinking alcohol and eating food, around 5AM, the applicant (cousin of the victim's aunt) forcibly established physical relations with the victim. It is alleged that the victim did not initially

disclose about the incident out of fear, however, she later informed her mother about the incident. The victim reiterated the allegations in her statement under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

5. During investigation, the victim's maternal aunt and uncle denied having any knowledge of the alleged assault. The CCTV footage showed that the applicant's sister went to sleep at 5:15 AM and the applicant only came to the sofa in hall around 6:21 AM.

6. The learned counsel for the applicant submits that the applicant is innocent and he has been falsely implicated in the present case. He submits that the allegations are motivated to coerce the applicant into marrying the applicant.

7. He submits that at the time of the incident, around seven people were present in the flat (including the applicant and the victim) and the allegations of sexual assault are implausible as none of the other persons heard anything or found anything amiss.

8. He further submits that although the incident allegedly took place on 27.07.2025, however, the complaint was given after three days on 30.07.2025.

9. He submits that the charge sheet has already been filed and the applicant has joined the investigation, whereby, no purpose would be served by subjecting the applicant to undergo incarceration.

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

11. They submit that the victim's hymen was found to be torn and the delay is explainable on account of her being scared as the applicant is her relative. They submit that there is an apprehension that the applicant may attempt to influence the witnesses and he is a flight risk as he tried to leave India on 05.08.2025.

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

13. It is trite law that the power to grant a pre-arrest bail is extraordinary in nature and is to be exercised sparingly. The relief of pre-arrest bail is a legal safeguard intended to protect Signature Not Verified individuals from potential misuse of power of arrest. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of *Siddharam Satlingappa Mhetre v. State of Maharashtra* : (2011) 1 SCC 694, elucidated some parameters to be considered before granting pre-arrest bail:

"12.

(i) *The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*

(ii) *The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*

(iii) *The possibility of the applicant to flee from justice;*

(iv) ***The possibility of the accused's likelihood to repeat similar or other offences;***

(v) ***Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;***

(vi) ***Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;***

(vii) *The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*

(viii) *While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*

(ix) *The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*

(x) *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."*

(emphasis supplied)

14. False allegations of sexual misconduct and coercion not only tarnish the reputation of the accused but also undermine the credibility of genuine cases. Hence, it is imperative for the Court to exercise utmost diligence in evaluating the prima facie allegations against the accused in each case, especially when issues of consent and intent are contentious.

15. It is the case of the prosecution that the applicant, who is a distant relative of the victim, raped the victim at 5AM at a party after everyone else had fallen asleep after consuming alcohol.

16. In the present case, pertinently, none of the individuals who were present at the party have corroborated the allegations of the prosecution. The status report mentions that the said individuals have asserted that the victim did not inform anyone in the house about the sexual assault, and that the females in the house did not consume alcohol.

17. While the statement of the victim can undisputably form the sole basis for conviction, it is also relevant to note that there is a delay in registration of FIR. Although the incident is alleged to have taken place in the early morning of 27.07.2025, however, the complaint was only given on 30.07.2025. The Hon'ble Apex Court, in the case of *Meharaj Singh (L/Nk.) v. State of U.P.* : (1994) 5 SCC 188, held as under:

"12. ...Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story..."

18. Although mere delay of a couple days alone is not sufficient to negate the possibility of the applicant's culpability and the probative value of the evidence will be appraised by the learned Trial Court, at this juncture, the delay coupled with the lack of corroboration by the other individuals present at the house entitle the applicant to grant of bail.

19. Moreover, undisputably, the applicant has joined the investigation after grant of interim protection by this Court by order dated 12.09.2025, and the charge sheet has already been filed without insisting on the applicant's arrest.

20. Insofar as the apprehensions in relation to the applicant being a flight risk as he had attempted to leave the country are concerned, it is pointed out that the concerned bookings were made by a friend and the applicant and his family were not aware of the FIR at that time. The record indicates that the tickets were scheduled for 05.08.2025, that is, only five days after registration of FIR, and the applicant ultimately missed the flight. The explanation tendered by the applicant does not appear to be improbable in such circumstances.

21. The prosecution has also expressed apprehension that the applicant may influence the witnesses if he is granted bail.

22. In the opinion of this Court, appropriate conditions can be imposed to allay any such apprehension, and bail cannot be denied to the applicant due to the same.

23. In view of the aforesaid discussion, it is directed that in the event of arrest, the applicant be released on bail on furnishing a personal bond of ₹20,000/- with two sureties of the like amount, Signature Not Verified subject to the satisfaction of the concerned SHO, on the following conditions:

- a. The applicant shall join and cooperate with investigation as and when directed by the Investigating Officer;
- b. The applicant will not leave the boundaries of the country without informing the concerned IO/ SHO;
- c. 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. The applicant shall not contact the victim or her family members either;
- d. The applicant shall give the details of his residence, which shall not be within 5 Km radius of the victim's residence, to the concerned IO/SHO. The applicant shall inform the concerned IO/ SHO in case of any change;
- e. The applicant shall give his mobile number to the concerned IO/SHO and shall keep his 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 State 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.