
(2025) 12 DEL CK 0041

Delhi HC

Case No: Bail Application No. 4245 Of 2025

Deshraj

APPELLANT

Vs

State Of Nct Of Delhi & Anr.

RESPONDENT

Date of Decision: Dec. 4, 2025

Acts Referred:

- Bharatiya Nagarik Suraksha Sanhita, 2023, Section 183, 309(6), 482
- Bharatiya Nyaya Sanhita, 2023- Section 3(5), 70(1), 115(2), 351

Hon'ble Judges: Vikas Mahajan, J

Bench: Single Bench

Advocate: Sandeep Sharma, RC Tiwari, Garima, Shirank, Ajay Vikram Singh

Final Decision: Disposed Of

Judgement

Vikas Mahajan, J

1. The present petition has been filed by the petitioner under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking anticipatory bail in connection with FIR No. 278/2025, under Section 70(1)/115(2)/351/3(5) BNS registered at PS-Dwarka North.

2. The case of the prosecution is that on 27.07.2025, a PCR call vide GD No. 162-A was received at 22:42 hrs. at PS Dwarka, North regarding a sexual assault incident involving a female victim/prosecutrix.

3. ASI Sunita reached the place of PCR Call and thereafter handed over the prosecutrix to the nearest police station. The prosecutrix was examined, and her statement was recorded, who stated that she had been contacted by accused Raju @ Poliya @ Shadab through Instagram and WhatsApp, who lured her on the pretext of arranging a lucrative club job.

4. On the intervening night of 26.07.2025 and 27.07.2025, the prosecutrix was called to Dwarka Mor, where she was picked up by the accused Shadab along with his associate Deshraj (petitioner herein) on a motorcycle. The accused person took her to a secluded spot near Ganda Nala, Sector 16 where both of them subjected her to gang rape and unnatural sexual assault.

5. It is further alleged that the accused person took away the mobile phone of the victim along with cash and had also assaulted her. After that, the victim was abandoned on a roadside gali by the accused persons near Magoo School from where she made a PCR call with the assistance of a passerby.

6. Mr. Sandeep Sharma, the learned Senior counsel appearing on behalf of the petitioner, submits that the petitioner was initially granted interim protection by the Court of learned Additional Sessions Judge vide order dated 16.10.2025, on the pretext that the prosecutrix was not present in the court. However, vide order dated 30.10.2025, the anticipatory bail of the petitioner was dismissed.

7. He submits that there exists a material contradiction between the initial version recorded in the FIR and the subsequent statement recorded under Section 183 of the BNSS. In the FIR, there is nothing mentioned about any alleged video being recorded by the present petitioner, but, in the statement under Section 183 BNSS, the Prosecutrix has improved her version and alleged that the petitioner had recorded a video of the scene.

8. Further regarding the allegations of theft, he submits that in the FIR, nothing has been mentioned with regard to snatching of money, however, the said allegation has been introduced in the statement under Section 183 BNSS. Further, in the said statement, it is alleged that her phone was also stolen by the main accused and the petitioner, whereas in the FIR, nowhere has it been mentioned that the phone was stolen. Rather, the Chargesheet explicitly records that the prosecutrix had refused to give her phone to the investigating authority due to "personal difficulty." Paradoxically, in the same chargesheet, it is stated that the phone of the prosecutrix has not been recovered, leading to the addition of Section 309(6) BNSS.

9. He further highlights a material discrepancy in the sequence of events. While the statement under Section 183 BNSS alleges that the victim was left in a deserted area, the FIR conversely states that she was made to sit on the bike.

10. He submits that this version is further contradicted by the State's own Status Report, which mentions that the CCTV footage shows the accused returning with the victim after the incident and dropping her near Maggo School, thereby falsifying the allegation of abandonment.

11. Moreover, he submits that the prosecutrix had refused to undergo internal examination during the first MLC. He contends that despite grave allegations of unnatural sex, gang rape, and physical assault, no serious injury was found on the body of the victim during the first MLC.

12. He further draws attention to material discrepancies in the second MLC, specifically the gross difference in identity marks compared to the first. Moreover, he points out that bruises reported in the second MLC were absent in the first; the UPT result inexplicably shifted from negative to positive, and the name of a third person, „Amit', finds mention in the first MLC.

13. Additionally, he submits that the conduct of the prosecutrix is unnatural. Elaborating on his submission, he submits that despite the fact that the petitioner did not know the main accused personally, except for some conversation two days prior, she went to meet the accused at 01:00 AM in the intervening night of 26th and 27th July, 2025 at a place approx. 39 kms away from where she works.

14. He submits that as per prosecutrix's own version, when she reached Dwarka Mor, she called the accused and from there she sat on a bike with the accused and the petitioner and went to an isolated/deserted place. He submits that such conduct of prosecutrix clearly demonstrates that she had accompanied the accused willingly without any objection or resistance.

15. Per contra, learned APP appearing on behalf of the State submits that the involvement of the present petitioner in the present case is evident from the CCTV footage collected from Muthoot Finance, Budget Bazar, Metro Pillar No. 757 area, where from it can be seen that the victim was walking with Main accused Shadab, towards the motorcycle, where the petitioner was also waiting. Further, it can also be seen from the CCTV footage that the three left together on a motorcycle.

16. He submits that, the main accused Shadab, in his disclosure statement has also disclosed that the petitioner (his nephew) committed gang rape upon the prosecutrix.

17. He further submits that the presence of third person's name in the first MLC of the prosecutrix, is because of the reason that the prosecutrix was not aware of the petitioner's name and she simply relied upon the name as told by the accused @Shadab.

18. He further submits that several raids were conducted at the petitioner's house, but his house remained locked all the time, he was found absconding at all the times since the incident, indicating deliberate avoidance of arrest and non-cooperation in the investigation, accordingly, NBWs were issued against him on 17.09.2025, by the Ld. JMFC, Dwarka Court.

19. He submits that the present petitioner is also the one who was making videos from the phone of Shadab. He submits that the accused Shadab's phone has been sent to FSL and the report is awaited.

20. I have heard the learned counsel for the petitioner, as well as, learned APP for the State and have also perused the record.

21. It is the case of the prosecution itself that the main accused Shadab, and the present petitioner were not previously known to the prosecutrix. The acquaintance of Shadab with prosecutrix was limited to a few days of interaction over social media platforms, namely Instagram and WhatsApp, wherein the prosecutrix and the accused Shadab purportedly discussed a better job opportunity for the prosecutrix in a club at Dwarka Mor.

22. The submission of Mr. Sharma as to improbable or unnatural conduct of the prosecutrix does not appear to be wholly without substance. As per prosecution version, prosecutrix left her workplace located in Kaushambi at an unearthly hour of 01:00 AM and travelled a distance of approximately 35kms by taking a Rapido bike to Dwarka Mor solely to meet the accused, Shadab for a job in club. Further, upon arriving at the destination, Shadab took the prosecutrix to the lane where another boy was present, and thereafter, the three of them sat on a bike and left for the club. Thereafter, accused led the bike into a forest, where they had beaten and molested the prosecutrix while committing gang rape upon her.

23. The timing and the distance traveled by the prosecutrix to meet Shadab, as well as, the CCTV footage showing both accused returning with the victim after the incident and dropping her near Maggo School, contradicts the theory of beatings and gang rape.

24. Further, material discrepancies have been pointed out by Mr. Sharma between the version in the FIR and the statement of the prosecutrix recorded under Section 183 of the BNSS. In the statement under Section 183 BNSS, it is alleged that the accused and the petitioner left the victim in a deserted area. However, contrary to this, the FIR states that the accused and the petitioner made the victim sit on the bike.

25. There are also discrepancies between the two MLCs conducted in the present matter, as to the nature of injuries on the person of prosecutrix, as pointed out by Mr. Sharma. Though these contradictions need not been commented upon at this stage as the probative value of the evidence and credibility of the prosecutrix's version will be seen at the trial, but such contradictions clearly tilt the balance in favour of the petitioner for grant of pre-arrest bail.

26. Further, it is matter of record that the prosecutrix refused for her internal examination conducted during the first MLC. This refusal is significant as the first MLC, being the most proximate in time to the alleged incident, is often the most crucial piece of scientific evidence. Incidentally, the prosecutrix also refused to give her mobile phone to the IO citing personal difficulty. These factors also have the potential of creating doubt about the prosecution's case, though final call on these aspects will be taken by the Trial Court during the trial.

27. It is observed that one of the primary grounds on which the Ld. Trial Court rejected the petitioner's anticipatory bail was the necessity of custodial interrogation for the recovery of the alleged stolen phone. However, the justification for custodial interrogation pales into insignificance when theory of mobile theft is contradicted by the prosecutrix's refusal to surrender her phone. On one hand, the prosecution case is that the prosecutrix refused to hand over her mobile phone to the Investigating Officer citing "personal difficulty." Intriguingly, on the other hand, Section 309(6) of the BNSS has been invoked on the premise that the prosecutrix's phone was stolen and has not been recovered.

28. Further, regard being had to the fact that the petitioner is a student of 20 years of age, with no criminal antecedents, sending him to jail and to be in the company of hardened criminals will do more harm than good.

29. In view of the above, I am of the opinion that the petitioner has made out a case for grant of an anticipatory bail. Accordingly, it is directed that in the event of petitioner's arrest, he may be released on bail subject to his furnishing a personal bond in the sum of Rs. 20,000/- with one surety of the like amount to the satisfaction of the Arresting Officer/IO concerned, further subject to the following conditions:

- i. Petitioner shall join further investigation as and when directed by the I.O concerned.
- ii. Petitioner shall not influence the witnesses in any manner or try to contact the complainant or tamper with the evidence.

30. It is clarified that the observations made herein above are only for the limited purpose of deciding the present anticipatory bail application and the same shall not be construed as an expression of opinion on the merits of the case.

31. The application stands disposed of.