

(2025) 07 DEL CK 0909

In the Delhi High Court

Case No : Bail Application No. 1761 Of 2025 & Criminal Miscellaneous
Application No. 14237 Of 2025

Arpit Mishra

APPELLANT

Vs

State (Govt. Of Nct Of Delhi) & Anr

RESPONDENT

Date of Decision : 17-07-2025

Acts Referred:

Constitution of India, 1950 — Article 21
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 183, 528
Code of Criminal Procedure, 1973 — Section 482
Bharatiya Nyaya Sanhita, 2023 — Section 3(5), 70, 74, 78, 79, 134, 309, 351, 351(2)
Indian Penal Code, 1860 — Section 34, 380, 448
Arms Act, 1959 — Section 25, 27

Citation : (2025) 07 DEL CK 0909

Hon'ble Judges : Ravinder Dudgeja, J

Bench : Single Bench

Advocate : Maninder Singh, Ajay k. Pipaniya, Turang Pandit, Harsh Tomar,
Sanjana Nair, Janvi Narang, Anurupita Kaur, Shubhi Gupta

Final Decision : Allowed

Judgement

Ravinder Dudgeja, J

1. This is a petition under Section 482 Cr. PC read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ["BNSS"] for grant of anticipatory bail filed on behalf of the petitioner in Case FIR No. 83/2025, registered at PS Bharat Nagar, under Section 351(2), 79, and 3(5) of BNS, 2023.

2. As per the FIR registered on 19.02.2025, based on a verbal complaint by the prosecutrix, it is alleged that on the night of 16.02.2025, she received multiple abusive and threatening phone calls from an unknown number, allegedly made by the petitioner using her brother's phone. The following morning, i.e., on 17.02.2025 at around 6:00 AM, while the complainant was on a morning walk near the DFM Depot roundabout, she was allegedly pushed and threatened by two persons, later identified as the petitioner and a co-accused. It was further

alleged that the accused warned her that her brother's office would not be allowed to function. Accordingly, the FIR was registered under Sections 351(2), 79, and 3(5) of the Bharatiya Nyaya Sanhita, 2023.

3. The status report dated 06.05.2025 records that prior to the FIR, on 18.02.2025, the complainant's brother, Tarun Kaushik, had lodged a complaint before the DCPs of North-West and North Delhi, alleging that the petitioner and co-accused, in retaliation to their termination from employment, entered his office on 16.02.2025, brandished a country-made pistol, and forcibly took away two gold chains and ₹ 2 lakhs in cash. It was further alleged that the complainant was threatened over calls later that night, and that the next morning, she was groped near DMS Depot by two unidentified persons who were later identified as the petitioner and co-accused based on photographs shown to her by her brother. A request was made to register a case under Sections 74, 78, 79, 134, 309, 351, and 354 of BNS, 2023 and Sections 25 and 27 of the Arms Act. Subsequently, during the course of investigation, the complainant's statement under Section 183 of the BNSS was recorded on 21.02.2025, wherein she additionally alleged digital penetration, resulting in the addition of Section 70 of the BNS (gang rape) to the case.

Submissions of the Applicant, State and Respondent No. 2

4. Mr. Maninder Singh learned Senior Counsel for the applicant submits that the present FIR is a result of an ongoing civil dispute between the petitioner's mother and the complainant's mother concerning an agreement to sell. It is argued that there are no specific allegations of sexual assault in the FIR and such allegations have only been subsequently introduced. It is pointed out that the co-accused had sustained a serious leg injury on 16.02.2025, as evidenced by the medical documents and X-ray reports filed on record, which rendered him unable to walk properly on 17.02.2025, i.e., the date of the alleged incident, thereby undermining the allegation of rape. Further, it is contended that there was no PCR call made by the complainant on the relevant dates, and the Call Detail Records (CDRs) dated 16.02.2025 reflect that the complainant herself had made two phone calls to the co-accused.

5. It is further submitted that there are material contradictory averments made in the complaint dated 18.02.2025, in the FIR, and the statement made under Section 183 BNSS. These inconsistencies include varying versions of the incident and discrepancies with respect to the role and identification of the accused persons. Learned Counsel contends that the FIR appears to be motivated and is an abuse of the process of law, intended to falsely implicate the petitioner and co-accused in order to extort money and pressurize them in the context of the civil property transaction. The fact that the FIR was registered only after three days of the alleged incident, without any cogent explanation for the delay, further diminishes the credibility of the allegations. It is also pointed out that the prosecutrix refused to undergo medical examination, which would have been crucial in corroborating the allegations.

6. Learned senior counsel also drew attention to the absence of CCTV footage showing either the petitioner or the prosecutrix at the scene of the alleged incident, which contradicts the prosecution's case. The complaint filed by the brother of the prosecutrix on 18.02.2025, prior to the FIR, contains vague and incomplete information, including a templated placeholder "(Insert time)" which suggests it was a pre-drafted complaint and not a spontaneous account. The improvements made in the prosecutrix's later statements are stated to be afterthought, lacking evidentiary value. It is further pointed out that the prosecution's own reply dated 07.07.2025 acknowledges contradictions in the identification of the accused persons. These cumulative contradictions and omissions, it is submitted, seriously impair the prosecution's case.

7. In support of the submissions, learned senior counsel for the applicant relied upon *Prabhakar Tewari v. State of Uttar Pradesh*, Criminal Appeal No. 153/2020, where it was held that the seriousness of the offence and pendency of other cases cannot alone justify denial of bail. Reliance is also placed on *B.N. John v. State of U.P. & Anr.*, SLP (Crl.) No. 2184/2024, where the Supreme Court held that omission of vital facts in the FIR, which were within the complainant's knowledge, indicates subsequent improvements to be an afterthought. Finally, reliance has been placed upon *Jalaluddin Khan v. Union of India*, Criminal Appeal No. 3173/2024, which reiterated that bail is the rule and jail is the exception, and that denial of bail in deserving cases infringes the right to life and personal liberty under Article 21 of the Constitution.

8. Per contra, learned APP, appearing for the State, submits that during investigation, victim produced one pen-drive containing voice messages dated 16.02.2025, received on victim's brother's mobile phone from the mobile phone of co-accused Naveen Sonkar. On analysis of the audio recording, it can be heard that one person is using the abusive language. She further submits that applicant and the co-accused have been hiding themselves and are not traceable at their respective addresses. She further submits that petitioner/applicant has previously been involved in case FIR No. 94/2019 under Section 448/380/34 IPC PS Subzi Mandi. The allegations are grave and serious in nature, and therefore, grant of pre-arrest bail to the petitioner, has been strongly opposed.

9. Learned Counsel for respondent no. 2/complainant submits that the incident initially occurred on 16.02.2025, and a formal written complaint was submitted by the prosecutrix's brother to the DCP on 17.02.2025. It is contended that the Investigating Officer (IO) incorrectly recorded the facts in the FIR and failed to register the FIR under the relevant Sections, particularly with respect to the offence of robbery. It is further submitted that although the complainant initially refrained from disclosing details of rape to her brother due to social stigma, she later narrated the entire incident. However, the IO refused to incorporate the same in the formal statement. Attention has been drawn to the fact that WhatsApp calls allegedly made by the accused are not reflected in the CDRs, suggesting deliberate omission or tampering, and indicating the gravity of the

offences. The complainant, appearing through video conferencing, stated that when the police visited her house, it did not record what she had actually narrated, and the IO dissuaded her from making allegations of sexual assault by suggesting that doing so would bring disrepute to her dignity.

10. It has been further submitted that when the complainant attempted to raise her grievance with the SHO regarding the omission of rape allegations, she was denied any assistance. Furthermore, it is submitted that on 07.03.2025, the prosecutrix's brother was allegedly assaulted and robbed by the accused persons and was threatened to withdraw the complaint, for which a written complaint was filed on 30.04.2025. However, no action was taken by the IO. It is submitted that the IO has deliberately failed to incorporate crucial facts and has omitted the offence of robbery mentioned in the initial complaint dated 18.02.2025. Furthermore it is stated that the applicant has criminal antecedents being involved in FIR No. 94/2019 registered under Sections 448/380/34 IPC and has remained absconding since its registration. Lastly, reliance has been placed upon the judgment of *Neeru Yadav v. State of U.P.*, (2016) 15 SCC 422, wherein the Supreme Court held that in cases involving grave allegations, likelihood of influencing the investigation, or past criminal conduct, anticipatory bail should be declined.

Analysis and Conclusion

11. This Court has carefully considered the rival submissions advanced by the learned counsel for the petitioner, learned APP for the State, and learned counsel for the respondent no. 2/complainant. Undoubtedly, the offences alleged against the petitioner are serious in nature. However, the seriousness of the allegations alone cannot be a ground to deny anticipatory bail in the absence of cogent supporting material. As held by the Supreme Court in *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694, the nature of the accusation has to be balanced with the presumption of innocence and the right to personal liberty.

12. A comparative perusal of the initial complaint dated 18.02.2025, FIR dated 19.02.2025, and the prosecutrix's statement under Section 183 BNSS reveals stark contradictions. The FIR does not disclose any allegation of sexual assault or rape, whereas such allegations appear for the first time in the 183 statement. In her earlier version, the prosecutrix had alleged threats and abusive conduct, but later introduced graphic account of sexual allegations without any corroborative medical evidence. These discrepancies cast doubt on the reliability and spontaneity of her statements.\

13. Furthermore, the refusal of the prosecutrix to undergo medical examination despite alleging serious sexual assault further weakens the prosecution's case. The CDR records relied upon by the IO indicate that it was the prosecutrix who had contacted the co-accused and not the other way around. This discrepancy contradicts the assertion that she received threatening calls on the night of the

alleged incident. Further, the CCTV footage near the location did not capture the presence of either the prosecutrix or the petitioner.

14. The petitioner's readiness to cooperate with the investigation and his submission to join proceedings as and when directed by the IO has not been refuted by the prosecution. No material has been placed on record to indicate that the petitioner poses a flight risk or that his custodial interrogation is essential. It is pertinent to note that arrest should not be mechanical or automatic, especially where no necessity is demonstrated for custodial interrogation. Mere apprehension of non-cooperation cannot override the principle of "bail, not jail". The law leans in favour of liberty, particularly where the prosecution's version is inconsistent.

15. The learned APP has not been able to dispute that the prosecutrix's brother's complaint contained a placeholder "(Insert Time)", suggesting that the complaint may have been a pre-drafted document lacking spontaneity. These procedural lapses, along with contradictory roles assigned to the accused in different versions, raise substantial doubts. While the prosecution insists that Section 70 BNS has been rightly invoked, such a serious charge must stand on stronger footing. In *Mahipal v. Rajesh Kumar* (2020) 2 SCC 118, the Supreme Court emphasized that while considering bail in serious offences, courts must not only consider the gravity of the offence but the material on record should disclose a prima facie or reasonable ground to believe that the accused committed the offence.

16. The Apex Court in *Ajwar v. Waseem* (2024) 10 SCC 768, emphasized that while deciding bail in serious criminal cases, a holistic evaluation of multiple factors is essential. These include the nature and gravity of the offence, the accused's role, criminal antecedents, and risks of tampering with evidence, influencing witnesses, or evading justice. The overall desirability of granting bail must be weighed against the potential threat to fair trial and public interest.

17. A perusal of the record indicates that the petitioner and the prosecutrix's family were known to each other. The dispute having arisen following a fallout between the two families over an agreement to sell, cannot be ruled out. The prosecutrix, being a well educated woman preparing for Ph.D. entrance, as noted in the FIR, cannot be considered a gullible or uninformed individual, and her conscious refusal to undergo medical examination despite the nature of allegations, is a relevant factor in the investigation. Although, she claimed while appearing through video conferencing that Investigating Officer incorrectly recorded her statement and discouraged her from alleging sexual assault to protect her dignity, her educational background suggests she was fully capable of asserting her position, had she so intended. There is also a significant delay of two days in lodging of the FIR, and even therein, the incident was attributed to unknown persons. She does not name the petitioner and the co-accused in the FIR. Even though, the photographs (Annexure A6) visibly indicate familiarity between the applicant and the prosecutrix, thereby casting doubt on the version

presented in the FIR.

18. In the case of B.N. John (*supra*), the Supreme Court held that the omission of crucial facts in the FIR, which are later introduced without adequate explanation, may indicate an afterthought and cast doubt on the credibility of the prosecution's case. Similarly, in Jalaluddin Khan (*supra*), the Supreme Court reiterated that the rule of bail being the norm and jail the exception applies even in cases involving grave allegations if statutory conditions are fulfilled. In the present case, material inconsistencies, absence of medical evidence, and apparent delay in registration of FIR weakens the prosecution version. These deficiencies justify the grant of anticipatory bail subject to appropriate conditions. This approach shall maintain the balance between the complainant's grievance and the petitioner's liberty.

19. Accordingly, it is directed that in the event of arrest, the petitioner shall be released on furnishing a personal bond of ₹ 30,000/- with one surety of the like amount to the satisfaction of the Arresting Officer/IO/SHO. At the same time, the gravity of the allegations necessitates that the petitioner be bound by strict conditions to ensure non-interference with the investigation. The petitioner shall not make any contact, directly or indirectly, with the prosecutrix or her family. He shall not tamper with evidence or approach any witnesses. He shall remain available for interrogation as and when called by the IO. Any violation of these conditions shall result in automatic revocation of the relief granted herein.

20. The application stands allowed in the above terms.

21. It is clarified that the observations made in this order are solely for the purpose of adjudicating the anticipatory bail application and shall not be treated as an expression on the merits of the case or influence the trial proceedings.