
(2026) 01 DEL CK 1393

In the Delhi High Court

Case No : Bail Application No. 4938 Of 2025 & Criminal Miscellaneous
Application (Bail) No. 2524 Of 2025

Mohd. Zuhaib

APPELLANT

Vs

State Of Nct Of Delhi And Anr

RESPONDENT

Date of Decision : 17-01-2026

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita 2023 — Section 183, 483
Indian Penal Code, 1860 — Section 34, 354A, 375, 376, 384, 506

Citation : (2026) 01 DEL CK 1393

Hon'ble Judges : Anup Jairam Bhambhani, J

Bench : Single Bench

Advocate : Tanveer Ahmed Mir, Ariana D. Ahluwalia, Daksh Sachdeva, Shubhi Gupta, Manoj Loomba, Vansh Chawla

Final Decision : Disposed Of

Judgement

Anup Jairam Bhambhani, J

1. By way of the present petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioner seeks regular bail in case FIR No.0525/2024 dated 26.10.2024 registered under sections 376/506 of the Indian Penal Code, 1860 ('IPC') at P.S.: Malviya Nagar, South Delhi. Consequent upon completion of investigation, allegations of offences under sections 384/354A/34 IPC have been added vide chargesheet filed on 24.12.2024.

2. Notice on this petition was issued vide order dated 23.12.2025.

3. Status Report dated 02.01.2026 has been filed on behalf of the State.

4. This court has heard Mr. Tanveer Ahmed Mir, learned senior counsel appearing on behalf of the petitioner (accused); Ms. Shubhi Gupta, learned APP appearing on behalf of the State (respondent No.1); and Mr. Manoj Loomba, learned counsel appearing on behalf of the complainant/prosecutrix (respondent No.2), at length.

5. Nominal Roll dated 01.01.2026 requisitioned from the Jail Superintendent shows that the petitioner was arrested on 27.10.2024; and has been in custody for 01 year 02 months and 05 days as of 31.12.2025.

6. Investigation in the matter is complete and charge-sheet stands filed on 24.12.2024 before the learned trial court.

7. A relevant development in the matter is that vidé order dated 31.10.2025 made in SLP (Crl.) No.17229/2025 filed by co-accused Sudhanshu Kumar Upadhyay, the Supreme Court has stayed further proceedings in the subject FIR. The relevant extract of the order passed by the Supreme Court reads as follows:

"In the meantime, further proceedings pursuant to impugned FIR (No.525/2024 dated 26.10.2024 registered at Police Station Malviya Nagar, District South, Delhi) shall remain stayed."

SUBMISSIONS ON BEHALF OF THE PETITIONER

8. Based on what has come-forth in the course of investigation, Mr. Mir has drawn attention to the following allegations that emerge from the record:

8.1. That it is the admitted position, as recorded inter-alia in statement dated 28.10.2024 of the prosecutrix recorded under section 183 of the BNSS, that on the date of the alleged offences the prosecutrix was about 40 years of age; who was undergoing divorce from her husband, which culminated in an ex-parte Divorce Decree dated 27.06.2023. On the other hand, it is submitted that the petitioner is a 31-year old gym-trainer, who was employed at a gym in South Delhi at the relevant time.

8.2. That the prosecutrix came into contact with the petitioner since she used to frequent the gym and the accused was a trainer at that gym; and as per her own case as recorded in the subject FIR, she found the petitioner to be a very competent gym-trainer and in December 2022 she asked for the petitioner to be appointed her personal trainer. It is further the admitted case that thereafter, the prosecutrix became close to the petitioner.

8.3. That, according to the prosecutrix's allegation in the subject FIR, the petitioner proposed marriage to her, which she 'happily accepted'. It is the prosecutrix's allegation, that thereafter, the petitioner started visiting her home; and, on the petitioner's request, she also gave him money since he represented that now that they were about to become husband and wife, their assets were joint.

8.4. That furthermore, the allegation is that on one of the occasions when the petitioner visited the prosecutrix's house, he brought her liquor, and when she was inebriated, he made physical relations with her. The prosecutrix also alleges that when she protested the physical relations, the petitioner reassured her that since they were about to get married, she had nothing to worry about. As recited in the charge-sheet, thereafter however, the parties continued to make physical

relations.

8.5. That furthermore, the allegation is that subsequently the prosecutrix became pregnant; but on 09.05.2024 the petitioner administered to her abortion pills and the pregnancy was ended.

8.6. That a perusal of the charge-sheet would also show, that the allegation is that between the year 2022 and 2024, the petitioner had taken around Rs. 22 lacs in cash from the prosecutrix; and the prosecutrix had also gifted to him a car and a motorbike.

8.7. That it is further pointed-out, that the prosecutrix has also admitted in her statement recorded under section 183 of the BNSS, that she had accompanied the petitioner, the co-accused and another one of their friends to outstation trips. The prosecutrix says that: "We went to Manali and Kashmir. Manali in January 2024. Kashmir in May 2024. All the expenses were carried out by me."

8.8. That insofar as the prosecutrix's allegation that the petitioner reneged on his alleged promise to marry her is concerned, it is submitted that the allegation in the charge-sheet is that when she insisted that the petitioner should marry her, the petitioner asked her to convert to Islam and only then he would do so. It is pointed-out however, that in her statement under section 183 of the BNSS, the prosecutrix has admitted the following:

"He told me to convert my religion for marriage. He started becoming aggressive after abortion. My change in religion was unacceptable to me. He told me that he would marry only after conversion. On 31 July 2024 I found out that he has a fiancée since 8-9 years. I was shocked and depressed. On 1st August he threatened me in the gym. He told me that his gangster friends and community members would kill me. I ran from the gym. All the members present in gym were witnesses. On September 8, Sudanshu Upadhyay threatened to leak my nude photos. Then I found out he was the mastermind. He abused me. He asked for money. He blackmailed me. He took iwatch, apple laptop, cash lakh from me. Ravi also asked for financial favour. He also blackmailed me. On 12th July I denied marrying Zuhaib."

(emphasis supplied)

9. In light of the aforesaid position as reflected in the subject FIR, in the charge-sheet and in the prosecutrix's statement, Mr. Mir argues, that admittedly, the prosecutrix was still married at the time when she got into a relationship with the petitioner. Mr. Mir submits, that being a married woman, of a very mature age, it can hardly be contented with any seriousness that the prosecutrix was enticed into a close personal relationship by the petitioner.

10. Learned senior counsel submits, that the allegations in the charge-sheet relate to the period between 2022 and 2024, and therefore, up until 27.06.2023 (when she got divorced), the prosecutrix remained married to her previous husband and no credence can be attached to her allegation that the petitioner

had promised to marry her at least until that point in time.

11. It is further argued that the prosecutrix's own contention that she 'gifted' a car and a motorbike to the petitioner, also hardly supports any element of coercion on the part of the petitioner, and shows the voluntary nature of the relationship between the parties.

12. Mr. Mir also points-out, that since the prosecutrix had denied internal medical examination, no medical evidence has come through in the investigation supporting the allegation of forced physical relations by the petitioner.

13. Learned senior counsel submits, that a closer reading of the subject FIR, the chargesheet, and, in particular, the prosecutrix's statement recorded by the Investigating Officer ("I.O."), it will be seen that she contradicts herself in several ways, which proves the falsity of her allegations.

14. Most importantly, Mr. Mir submits, that as a consequence of order dated 31.10.2025 made in SLP (Crl.) No.17229/2025, while on the one hand trial court proceedings have now been stayed by the Supreme Court, the petitioner continues to remain in judicial custody.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

15. Arguing on behalf of the respondent No. 1 (State), Ms. Gupta submits, that as recorded in order dated 08.01.2026, on that date of hearing before this court, the prosecutrix had informed the learned APP (who had appeared on that date) that she did not wish to oppose the grant of bail to the petitioner. Ms. Gupta submits, it would appear however, that subsequently the prosecutrix has changed her stand, for reasons that are for her to explain.

16. Learned APP submits, that as the record shows, investigation in the matter is complete; charge-sheet has been filed, which is on record; but since further proceedings in the case have been stayed by the Supreme Court vide order dated 31.10.2025, no further steps can be taken in the matter before the learned trial court.

17. Ms. Gupta points-out, that vide order dated 17.04.2025 made by the Predecessor Bench in BAIL APPLN. No.1046/2025, when the petitioner withdrew his earlier bail petition, the learned Predecessor Bench had observed that in the event of any material change in circumstances, the learned sessions court would consider any bail plea that the petitioner may file, which bail petition has now been dismissed by the learned sessions court vide order dated 28.11.2025.

18. Learned APP submits, that this court may consider the case of the petitioner in the backdrop of the aforesaid circumstances.

19. Opposing the grant of bail to the petitioner, Mr. Loomba, learned counsel appearing for the prosecutrix, has made the following submissions:

19.1. That from the facts and circumstances of the case, as narrated in the

charge-sheet, it is clear that the petitioner manipulated and physically exploited the prosecutrix, taking advantage of her vulnerable position.

19.2. That, in particular, the petitioner took advantage of the prosecutrix after she had gone through a divorce, and deceitfully made a promise to marry her.

19.3. That, as recorded in the charge-sheet, the petitioner admits that he had offered to marry the prosecutrix; but later, the falsity of the proposal became clear, since the petitioner demanded that the prosecutrix should change her religion, else he would not marry her. Furthermore, it later also transpired that the petitioner already had a fiancée for 8–9 years. It is argued, that therefore this is an evident case of false promise of marriage, which vitiates the alleged consent of the prosecutrix to engage in physical relations with the petitioner.

DISCUSSION & CONCLUSIONS

20. Upon a conspectus of the submissions made; on a perusal of the charge-sheet and other material on the record, and after hearing learned counsel appearing for the parties, in the opinion of this court, the following inferences arise:

20.1. Investigation in the matter is long over. Charge-sheet stands filed before the learned trial court on 24.12.2024;

20.2. As per the nominal roll, the petitioner has been in continuous judicial custody since 27.10.2024 and has accordingly suffered judicial custody for about 01 year and 03 months as an undertrial;

20.3. Trial in the matter has been stayed by order dated 31.10.2025 passed by the Supreme Court in SLP (Crl.) No. 17229/2025 filed by the co-accused; and therefore, no further steps can be taken by the petitioner in his defence.

20.4. The relationship between the prosecutrix and the petitioner started when she met him at the gym, while her marriage was still subsisting. The petitioner is alleged to have had a fiancée even at the time when the petitioner and the prosecutrix were in a relationship. As per the charge-sheet, the petitioner and the prosecutrix engaged in physical relations on multiple occasions at her house; and also travelled together to locations in Uttarakhand and Kashmir alongwith the petitioner's friends. Furthermore, the prosecutrix is said to have lent large sums of money, running into tens of lacs, to the petitioner; and also having 'gifted' him a car and a motorbike.

20.5. It is settled law, as enunciated by the Supreme Court in *Shambhu Kharwar vs. State of U.P.*, (2024) 16 SCC 502, that in the context of a rape allegation, for a promise to be considered 'false', the allegations should indicate that the promise extended was false at the very inception, and on that basis the prosecutrix was induced into a sexual relationship.

20.6. In *Pramod Suryabhan Pawar vs. State of Maharashtra*, (2019) 9 SCC 608, the Supreme Court has further held, that a breach of a promise to marry cannot

be said to a false promise, explaining that there is a distinction between a promise given on an understanding by the maker that it will be broken, and breach of a promise that is made in good faith but is subsequently not fulfilled. It has further been held as follows:

"18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

20.7. In the same vein, in its recent decision in *Samadhan vs. State of Maharashtra*, 2025 SCC OnLine SC 2528 the Supreme Court has expressed its consternation in relation to wanton allegations of rape based on a false promise to marry, cautioning the courts in the following words:

"29. This Court has, on numerous occasions, taken note of the disquieting tendency wherein failed or broken relationships are given the colour of criminality. The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every sour relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern and calls for condemnation."

20.8. Taking cue from the foregoing precedents of the Supreme Court, this court is of the view that the element of 'deception' should be discernible from the beginning when the promise was made. A 'failed' promise to marry is not necessarily a 'false' promise to marry. In the present case, it is not possible to say, least of all at this stage, that the promise to marry allegedly extended by the petitioner was false at the very inception. As per her statement extracted above, the prosecutrix herself declined to marry the petitioner, since she said she did not want to change her religion, which is not immediately suggestive of a false promise of marriage on the petitioner's part.

20.9. All the aforesaid aspects would of course need to be examined by the learned trial court based on the evidence that is led in the course of trial. The learned trial court will have to consider whether the foregoing circumstances support the prosecutrix's allegation of forced physical relations or of lack of consent on her part.

20.10. As per the record, the co-accused Sudhanshu Kumar Upadhyay was admitted to anticipatory bail vide order dated 25.11.2024 by the learned

Additional Sessions Judge (Special Fast Track Court), South District in Bail Application No.2315/24; and has accordingly not been in custody throughout.

21. In view of the aforesaid circumstances, this court is inclined to allow the present petition, thereby granting to the petitioner – Md Zuhaib s/o Amir Ahmed Nizami - regular bail, subject to the following conditions:

21.1. The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Rupees Twenty-five Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;

21.2. The petitioner shall furnish to the I.O. a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

21.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;

21.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial. More specifically, the petitioner shall neither contact nor interact, whether directly or indirectly, with the prosecutrix or her family, in any manner whatsoever. The petitioner shall also not visit the locality in which the complainant stays.

21.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.

21.6. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.

22. Nothing in this judgment shall be construed as an expression of opinion on the merits of the pending matter.

23. A copy of this judgment be sent to the concerned Jail Superintendent forthwith.

24. The petition stands disposed-of.

25. Pending applications, if any, are also disposed-of.