

Shailesh Kumar vs State Of Nct Of Delhi on 29 January, 2025

Author: Amit Sharma

Bench: Amit Sharma

\$~5

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 3667/2024
SHAILESH KUMAR

STATE OF NCT OF DELHI
Through:

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA
ORDER

% 29.01.2025

1. This hearing has been done through hybrid mode.

2. The present application under Section 483 of the BNSS (Section 439 of the Cr.P.C.) seeks regular bail in case FIR No. 398 / 2022, under Sections 323/342/365/367/368/370/376(2)(n)/506/509/34/120B of the IPC and Section 6 of the POCSO Act and Section 4/5/6 of the Immoral Traffic Prevention Act, 1956 (hereinafter referred to as, 'ITP Act'), registered at P.S. Khyala.

3. The case of the prosecution, as per status report dated 28.10.2024 authored by Insp. Vinod Kumar, SHO PS Khyala, against the present applicant is as follows: -

"It is submitted that on 19/04/2022, a PCR call vide DD No. 121A dated 19/04/2022 was received in PS Khyala regarding kidnapping of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 22:41:02 a girl. The call was entrusted to IO/SI Indrajeet for further necessary action. IO rushed to the spot where it was revealed that caller "P" is

a friend of victim "T". She got to know about kidnapping by call from victim herself that one person namely Deepak came to Madras Colony, Khyala Delhi and kidnapped her from her rented house. She further mentioned that "T" came to her around a month ago seeking help from her as she was forced to work as a prostitute by alleged Deepak. It was also mentioned by the caller that victim "T" and Deepak has one child without getting married. Caller "P" arranged room on rent in Madras Colony, Khyala, Delhi for victim "T" for her help in the night of 19/04/2022. On this PCR call, a team lead by IO/SI Indrajeet was formed and search of the victim initiated. Team reached to Mahipalpur after taking location of the victim's mobile phone. The alleged Deepak was answering the phone call of victim "T" and he was convinced by the TO to come to Aerocity Metro Station to take the child. Deepak along with other 2 persons namely Sunil & Shailesh came to Aerocity Metro Station in Grey Wagon-R Car No- HR-29-AA-31 02. On seeing the police party, they ran away from there in very recklessly manner. With the help of technical surveillance, the team reached near Diamond Inn PG Mahipalpur Delhi and made search for the victim at Diamond Inn PG. The victim/Prosecutrix "T" was found illegally detained by alleged Deepak, Shimpy @ Kajal Dlo Sh. Jitu Sanwaria, Sanjay Sio Bholu Rai, Sunil Sio Mulayam Mandali and Shailesh Sio Yogendra Kumar in Room No- 301, Diamond PG, A- Block Mahipalpur. The Victim "T" was rescued and she stated that alleged Deepak, Sanjay, Shimpy and Kajal kidnapped her from Khyala, Delhi and confined her in that room. The victim was found in injured condition.

2. The victim along with the above mentioned suspected persons was taken to Police Station Khyala, Delhi. Thereafter her counseling was conducted by the DCW Counselor. As the victim/Prosecutrix "T"

having multiple injuries on her body, so Medical Examination of the victim was got conducted at DDU Hospital Han Nagar New Delhi vide MLC No. 3521/2022 on which, it is mentioned by the that A/H/O Patient was brought to causality for medical examination A/H/O physical assault as told by self & BIB. Gynecology Dr. mentioned that Victim was brought by police, AJH/O kidnapping on 19/04/22, according to victim, she was living with her boyfriend name~ Deepak from 5 years and also had a child (boy) with him. According to victim Deepak used to force him to make sexual contact with different people for money for 5 years. The accused Deepak had been using the victim This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 22:41:02 for sexual business. When the victim refused to continue the same, the accused used to beat her so badly. According to victim, she refused to stay with Deepak and come to her friend's house & been living from 29/03/22 near Subhas Nagar. Yesterday on 19/04/22, victim was abducted by her boyfriend Deepak & physically assaulted her & UTP Positive".

3. It is further submitted that statement of the victim was recorded, wherein she stated that she was living with Deepak in Live-in and she has a baby boy about 05 years ago, when she was about 13-14

years old, Deepak promised her to get married with her and took her with him Deepak forcefully committed rape with her continuously without her will and indulged her in prostitution work since last 05 years forcefully Whenever, she refused to do the work, he used to beat her very badly. He used to send her to her customer for prostitution to earn money. His friend namely Sanjay, Sunil, Shailesh, Shilpy @ Kajal and Kajal are working with him in the prostitution work. Sanjay, Sunil, Shailesh were used to take her to their customer for prostitution. Deepak and his friends have also done the same with other girls also. They are running a sex racket in Delhi by ensnaring innocent girls. She along with her son left Deepak and starting living separately. In the night of 19/04/22, Deepak along with his friends namely Sanjay, Kajal and Simpy @ Kajal came in his car Tata Nexon and kidnapped her from Khyala Delhi and they beaten her badly and confined her in the room of Sanjay and Simpy @ Kajal at R. No. 301, Diamond Inn PG, Mahipalpur, Delhi.

As per the statement of victim, Contents of the MLC and circumstances, a case vide FIR No. 398/22 u/s 323/342/365/367/368/370/376(2)(n) /506/ 509/34 IPC and 06 POCSO Act & 4/5/6 ITP Act was registered at Police Station Khyala New Delhi.

4. During the course of investigation of the case, 06 accused persons namely (1) Deepak S/o Sh. Suresh Pratap Singh, (2) Sanjay S/o Sh. Bholu Yadav, (3) Sunil Kumar S/o Sh. Mulayam Mandal, (4) Shailesh Kumar S/o Sh. Yogender Yadav (Present applicant), (5) Simpy @ Kajal D/o Sh. Jeetu Sawana and Kajena Khatoon @ Kajal were arrested in the present case.

5. That statement U/s 164 Cr.P.C of the victim was recorded, wherein she corroborate her FIR version and made serious allegations against all accused persons including the present applicant specifically.

6. During the course of investigation, section 120B IPC was added in the case. As per ossification report, Victim's age is 17 to 20 Years.

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 22:41:03 Statements u/s 161 Cr.P.C. of witnesses were recorded accordingly.

7. After completion of investigation, charge sheet in the case was filed before the Hon'ble Court. Charge against the accused persons has been framed on 28.11.2022. There are total 33 witnesses in the present case and 08 of them have been examined."

4. Learned counsel for the applicant has submitted that the survivor/PW- 1 in the present case has not made any allegations of rape, molestation or sexual assault in her statement under Section 164 of the CrPC as well as in her testimony recorded before the learned Trial Court. It is further submitted that only a vague allegation of the applicant being friend of accused, Deepak, who was forcing the survivor to indulge in prostitution has been made against him. It is further submitted that the testimonies of the survivor and other public witnesses have been recorded before the

learned Trial Court and the applicant has been in custody since 20.04.2022. It is further submitted that the applicant was released on interim bail on earlier occasions as well and he had not misused the liberty granted to him.

5. Per contra, learned APP for the State, assisted by the learned counsel for the survivor, has submitted that the allegations made against the applicant are serious in nature as the survivor/PW-1 in her testimony recorded before the learned Trial Court has supported the case of the prosecution. It is further submitted that the present applicant had provided assistance to the main accused, Deepak, as well as the other co-accused persons in the commission of the offences alleged in the present FIR.

6. Heard learned counsel for the parties and perused the record.

7. Admittedly, besides the allegations made against Deepak, the survivor/PW-1, in her testimony recorded before the learned Trial Court, had stated that the present applicant alongwith co-accused, Sunil and Sanjay, who This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 22:41:03 were his drivers, who used to accompany the aforesaid Deepak to various customers. No allegation of sexual assault has been made by the survivor/PW- 1 against the present applicant. Insofar as the apprehension of the applicant from the spot is concerned, attention of this Court has been drawn towards the testimony of the survivor/PW-1, wherein, she had stated that the present applicant had come in car after Deepak and other co-accused persons, Simpy @ Kajal, Kajena Khatun @ Badi Kajal, Sanjay, had forcibly taken the survivor/PW-1 from her rented accommodation. Role of the present applicant will be determined after the culmination of the trial after appreciation of the evidence.

8. The testimony of the survivor/PW-1 and her friend/PW-3 has been recorded before the learned Trial Court. Trial in the present case is pending. Out of 33 witnesses cited in the chargesheet, 8 prosecution witnesses have been examined so far.

9. Perusal of the nominal roll dated 05.11.2024, shows that the applicant has been in custody since 20.04.2022 and, as on 02.11.2024, he has undergone incarceration for a period of 2 years 5 months 18 days. Nominal roll further shows that he was released on interim bail on two earlier occasions and he has duly surrendered after the expiry of the same without misusing the liberty granted to him.

10. In the totality of the facts and circumstances of the present case, the present case is allowed and he is directed to be released on bail on his furnishing personal bond in the sum of Rs. 25,000/- along with one surety of like amount, further subject to following conditions: -

- i. The applicant shall not leave India without prior permission of the learned Trial Court.

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 22:41:03 ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.

iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.

iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times. v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.

11. The application is allowed and disposed of accordingly along with all pending applications, if any.

12. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case and any observations made herein are only for the purpose of the present bail application.

13. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.

14. Order be uploaded on the website of this Court forthwith.

AMIT SHARMA, J JANUARY 29, 2025/nk Click here to check corrigendum, if any This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2025 at 22:41:03