



2024:DHC:9378



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Decision: 03rd December, 2024*
+ **BAIL APPLN. 4440/2024**
SAIFUL KHANApplicant

Through: Mr. Kashif Athar and Mr.
Faraz Mirza, Advs.

versus

STATE & ANR.Respondents
Through: Mr. Rajkumar, APP for the
State with W/SI Pooja, PS
Nand Nagri.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

CRL.M.A. 36333/2024 *(exemption form filing certified copy of annexures and true typed copy of dim annexures and also maintaining 4 inch margin on the left side of the annexures)*

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

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3. The present application is filed seeking pre-arrest bail in FIR No. 600/2024 dated 30.08.2024, registered at Police Station Nand Nagri, for offences under Sections 354(D)/506 of the Indian Penal Code, 1860 (**IPC**) and Section 12 of the Protection of Children from Sexual Offences Act, 2012 (**POCSO**).
4. Briefly stated, the FIR in the present case was registered based on the complaint filed by the complainant/victim, a 15-year-old minor girl studying in Class XI, alleging that she was subjected to severe harassment, blackmail, and sexual exploitation by the applicant, Saiful Khan, and the co-accused,

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Sameer. The complainant alleged that in November 2022, the co-accused Sameer had begun following her on her way to school and persistently asked her to be his friend. Upon her refusal, the victim informed her mother, who approached Sameer's family, leading to a temporary cessation of his actions. However, in August 2023, Sameer resumed following the victim and, in November 2023, contacted her *via* Instagram, claiming that he sought a "normal friendship." The victim reluctantly started communicating with him, and during their interactions, she shared a few photographs of herself, and in all of them she was clothed.

5. It is alleged that in May 2024, the applicant contacted the victim on Instagram, introducing himself as Sameer's friend. Despite her refusal to communicate, Saiful sent the victim a photograph where she was seen nude and threatened to make it viral unless she complied with his demands. Fearing public humiliation, the victim was coerced into communicating with Saiful through Instagram video calls. During these calls, Saiful forced the complainant to remove her clothes, which he recorded. He subsequently used these recordings to repeatedly blackmail her. She alleged that in June 2024, the applicant shared one of the victim's explicit photographs with co-accused - Sameer. Encouraged by this, co-accused - Sameer also began threatening the victim, demanding that she engage in similar video calls with him. Succumbing to the coercion, the victim complied, and co-accused - Sameer recorded these calls as well. The victim further alleged that both accused persons continuously threatened to

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make the complainant's photographs and videos public.

6. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that the allegations made by the victim are fabricated and intended to malign the applicant without any substantive evidence.

7. He submits that the applicant is a young individual with no criminal antecedents. He emphasized that the applicant had left India for employment in Riyadh, Saudi Arabia, in early September 2024, as evidenced by his visa and travel documents. He returned to India voluntarily in November 2024 upon learning about the present FIR. This demonstrates his *bona fide* to cooperate with the investigation rather than evade the process of law.

8. The learned counsel pointed out that the victim herself admitted that she has never met the applicant in person. The interactions were allegedly limited to online platforms, which, according to the counsel, does not warrant the stringent measures being invoked against the applicant.

9. He submits that the applicant is a young individual with a promising future. Incarceration at this stage would irreparably harm his career and prospects.

10. *Per Contra*, the learned Additional Public Prosecutor (APP) for the State opposes the grant of any relief to the applicants. He submits that the allegations against the applicant are serious in nature. He submits that the learned Additional Sessions Judge rightly rejected the bail of the applicant, and that

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there is no ground to interfere with the same.

11. The learned APP submits that custodial interrogation of the applicant is essential to recover the electronic devices allegedly used in the offence, ascertain the extent of the offenses, and trace the potential circulation of explicit material.

12. The State expressed concerns over the likelihood of the applicant attempting to intimidate the victim or influence witnesses if released on bail. The nature of the threats previously made by the applicant indicates a significant risk of obstruction in the course of justice.

13. It is to be kept in mind that the investigation is currently at a nascent stage. The considerations governing the grant of pre-arrest bail are materially different than those to be considered while adjudicating application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation is carried out by the investigating agency.

14. It is trite law that the power to grant a pre-arrest bail under Section 482 of the BNSS is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of ***State of A.P. v. Bimal Krishna Kundu : (1997) 8 SCC 104***, held as under:

"8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

"5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from



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those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.”

9. Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

“The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.”

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”



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15. It is settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 482 of the Bharatiya Nagarik Suraksha Sanhita (BNSS') [*State v. Anil Sharma : (1997) 7 SCC 187*]. Granting anticipatory bail to the applicant would undoubtedly impede further investigation. An order of bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

16. This court has perused the case diary and gone through the statements of the victim, mother of the victim and co-accused - Sameer. There are materials in the case diary implicating the applicant in the allegations which the police are investigating. The allegations against the applicant are of a grave and serious nature, involving the exploitation and sexual abuse of a minor girl. The applicant is accused of coercing the victim into engaging in sexually explicit acts over video calls, recording the same without her consent, and using these recordings to blackmail her repeatedly. Such acts not only violate the personal dignity and privacy of the victim but also constitute serious offences under the BNS and the POCSO Act.

17. The allegations against the applicant points towards the exploitation of a child by coercing and blackmailing her for pornographic purposes. The alleged recording and sharing of explicit material involving the minor victim is a grave offence.

19. The present case underscores the increasing misuse of social media and technology to exploit and intimidate vulnerable individuals, particularly minors. In light of the allegations,

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perusal of the statement of the victim and co-accused Sameer, this Court finds that granting pre-arrest bail would set an inappropriate precedent and undermine the societal interest in safeguarding children from such reprehensible acts.

20. The actions of the applicant exemplify the disturbing trend of exploiting the anonymity and reach of social media platforms to perpetrate sexual crimes against minors. This Court cannot ignore the broader societal implications of such acts and the urgent need to send a strong message against the misuse of technology.

21. Considering that the present case involves electronic gadgets and electronic evidence, the task of the Investigating Agency seems arduous and they need to be given a fair play in the joints to investigate the matter in the manner they deem appropriate. The matter requires thorough investigation which ought not to be curtailed by passing an order granting pre-arrest bail.

22. The relief of pre-arrest bail is a legal safeguard intended to protect individuals from potential misuse of power of arrest. It plays a crucial tool in preventing harassment and unjust detention of innocent persons. However, the court must carefully balance the individual's right to liberty with the interests of justice. While the presumption of innocence and the right to liberty are fundamental principles of law, they must be considered in conjunction with the gravity of the offence, its societal impact, and the need for a comprehensive and unobstructed investigation.

23. Considering the material on record, it cannot be held at this

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stage that the investigation is being carried out with the intention to injure or humiliate the applicant and does not indicate false implication of the applicant. The nature and gravity of allegations are serious. Specific allegations have been made regarding the applicant's alleged involvement in the commission of the offence.

24. The material presented by the prosecution establishes a *prima facie* involvement of the applicant. Granting pre-arrest bail to the applicant would undoubtedly impede further investigation.

25. The present application is accordingly dismissed.

26. 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.

AMIT MAHAJAN, J

DECEMBER 3, 2024