



2025:DHC:931



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 14.02.2025*+ **BAIL APPLN. 146/2025**

ALOK

.....Petitioner

Through: Mr. Jatan Singh, Sr. Advocate
with Mr. Amit Kumar, Ms.
Vanshika Adhana, Ms. Sakshi
Sachdeva, Mr. Gajraj Singh,
Mr. Tushar Lamba and Mr.
Siddharth Singh, Advocates

versus

THE STATE GOVT. OF NCT OF DELHIRespondent

Through: Mr. Rajkumar, APP for the
State.
Ms. Tanya Agarwal, Advocate
for prosecutrix.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J**

1. By way of the present bail application filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [hereafter 'BNSS'], the applicant/accused seeks anticipatory bail in case arising out of FIR No. 756/2024, dated 21.10.2024, registered at Police Station Shahbad Dairy, Delhi for offences punishable under Sections



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64/351(2) of the Bharatiya Nyaya Sanhita, 2023 [hereafter '*BNS*'], read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*'].

2. The present case was registered pursuant to filing of a complaint by the prosecutrix, alleging therein that in the month of October, 2023, when she and her parents had shifted to a rented accommodation in the neighbourhood of the accused, the accused had approached her, expressing his love for her. Thereafter, after one or two days, the prosecutrix had visited the shop of the accused, where he had allegedly dragged her inside the shop and had committed rape upon her. He had threatened her that he would kill her father if she will not visit his shop every Sunday. Out of fear and under duress, the prosecutrix had begun visiting the shop of the accused every Sunday, during which she was allegedly subjected to repeated sexual assault. The last such incident had occurred on September 29, 2024, when the accused had allegedly raped her in his shop. On October 10, 2024, the accused had again demanded that the prosecutrix visit his shop. Fearful of being subjected to further sexual assault, she had fled from her home and taken refuge at the house of her friend. However, later that night, she had returned home. Two or three days thereafter, she had confided in her mother about the incident of sexual assault. Her mother had made a PCR call and had lodged complaint with the police.

3. During the course of investigation, the prosecutrix was



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presented before the Child Welfare Committee (CWC), Alipur, for counselling. Documents obtained from the Primary Girls School had revealed her date of birth as 01.01.2010. The prosecutrix had thereafter undergone a medical examination vide MLC No. 2502/23, and an NGO had been informed, which provided her with counselling. Consequently, the present FIR was registered.

4. It is argued by the learned senior counsel for the applicant that the applicant is a young man aged about 24 years with no prior criminal antecedents and has been falsely implicated in the present case. It is contended that the allegations are fabricated and baseless, as the first alleged incident dates back to October 2023, nearly a year before the FIR was lodged on 21.10.2024, and the last alleged incident had taken place on 29.09.2024. The FIR has been filed after an unexplained delay of nearly a year concerning the earlier incidents and 22 days after the last alleged occurrence. It is further submitted that the prosecutrix never disclosed these allegations to anyone until 12.10.2024, when she initially filed a complaint but withdrew it on the same day. The investigating agency has failed to explain this significant delay, raising serious doubts about the credibility of the accusations.

5. It is further contended that the prosecutrix's claim regarding the incident of 29.09.2024 is entirely fabricated and contradicted by CCTV footage from the applicant's shop. The footage clearly shows that the prosecutrix had visited the shop with her sister and a child to



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purchase groceries and left shortly thereafter. She did not enter the shop alone, nor had any incident as alleged had taken place. This evidence, it is argued, establishes that the allegations are concocted with the intention of falsely implicating the applicant.

6. The learned senior counsel also submits that the present FIR is a misuse of the legal process, orchestrated at the instance of one Ashok, a local resident allegedly involved in extortion, drug trafficking, and illegal land dealings. It is alleged that Ashok, in collusion with the prosecutrix and a police officer, Mr. Pradeep, had filed a false complaint on 12.10.2024 to extort money from the applicant. Upon inquiry, the allegations were found baseless. The prosecutrix had voluntarily withdrawn the complaint the same day. It is also pointed out that the prosecutrix, along with her mother had given a statement recorded in DD No. 117 dated 12.10.2024, clearly stating that the allegations were false and were made under the influence of some other persons. The statement was given voluntarily, without coercion from the applicant or the police.

7. In light of these circumstances, it is prayed that the applicant be granted anticipatory bail.

8. On the other hand, the learned APP for the State strongly opposes the bail application, contending that the allegations against the accused are grave and serious, involving repeated sexual assault on a minor. It is submitted that during the investigation, the prosecutrix's statement under Section 164 of Cr.P.C. was recorded



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before the learned Magistrate, wherein she had reiterated and supported the allegations made in her initial complaint. The investigation is still at a nascent stage, and there is a strong likelihood that the accused may tamper with evidence or attempt to influence the survivor and material witnesses. Furthermore, the authenticity and veracity of the CCTV footage relied upon by the accused can only be ascertained after a forensic examination, and at this stage, it cannot be taken at face value. Given these circumstances, there is a significant apprehension that the accused may interfere with the ongoing investigation.

9. It is further argued that the accused has relied on certain documents, namely Annexures E and F, which purportedly contain a complaint and a settlement between the prosecutrix and the accused. However, there is no official record of these annexures, and upon inquiry, the prosecutrix and her mother have categorically denied having entered into any settlement with the accused. They have also disowned the signatures appearing on the said documents. Additionally, it is pointed out that DD No. 117A dated 12.10.2024, relied upon by the accused, pertains to a dispute between a husband and wife and is unrelated to the present case. The PCR call received under the said DD entry has been enclosed with the status report to clarify this aspect.

10. In view of the gravity of the allegations, the age of the victim, and the likelihood of the accused influencing witnesses or tampering



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with evidence, it is urged that the bail application be dismissed.

11. The prosecutrix also appeared before this Court, alongwith the legal aid counsel, and strongly opposed the present bail application.

12. This Court has **heard** arguments addressed on behalf of both the parties, and has perused the material placed on record by either side.

13. The case of the prosecution, in essence, is that the applicant/accused had repeatedly subjected the prosecutrix to sexual assault over a prolonged period, coercing her into visiting his shop under threats of causing harm to her family. The allegations against the applicant are that in October 2023, shortly after the prosecutrix and her family had shifted to the neighbourhood of the applicant, he had expressed his affection towards her, and both had started communicating with each other. It is alleged that within a few days, the prosecutrix had visited the shop of the applicant, where he had forcibly dragged her inside and committed rape upon her. Thereafter, he had allegedly threatened to kill her father if she did not continue visiting his shop every Sunday. Under duress, the prosecutrix had complied and was subjected to repeated sexual assaults until the last alleged incident on 29.09.2024. As alleged, the prosecutrix, out of fear, did not initially disclose the incidents to anyone, and only on 12.10.2024 she had confided in her mother, leading to the registration of the present FIR on 21.10.2024. The prosecutrix has stood by these allegations in the initial complaint as well as her statement recorded



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under Section 164 of Cr.P.C.

14. The contention of the applicant that the prosecutrix had previously lodged a complaint against him with the police on 12.10.2024 but had withdrawn the same on the very same day, which, according to him, casts doubt on the veracity of the allegations made in the present FIR, does not find support from the record. During the course of proceedings, the prosecutrix appeared before this Court and categorically stated that she had never filed any such complaint against the accused prior to the present FIR, nor had she made any statement withdrawing any such complaint. In light of this assertion, this Court had directed the State to file a status report to verify the claim made by the applicant. The status report submitted by the prosecution clearly states that there is no record of any previous complaint made by the prosecutrix on 12.10.2024, nor any withdrawal statement in her name is part of the record. Further, the DD entry relied upon by the applicant pertains to an entirely different case, specifically about a dispute between a husband and wife, and is totally unrelated to the present case. In the absence of any documentary or official record substantiating the applicant's claim, and in view of the unequivocal statement made by the prosecutrix before this Court, this argument of the applicant does not inspire confidence and is accordingly rejected.

15. The applicant has relied on CCTV footage, of outside of his shop, contending that it does show the prosecutrix present on the date



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of the last alleged incident, and it does not depict any act of sexual assault. In this regard, this Court is of the view that the CCTV footage has already been sent for forensic examination, and its authenticity and veracity are yet to be ascertained. Until the forensic report is available, no conclusive inference can be drawn from the footage, and therefore, at this stage, it does not aid the case of the applicant. As summed up by the Hon'ble Apex Court in ***Sumitha Pradeep v. Arun Kumar C.K.*** 2022 SCC OnLine SC 1529, the factors to be considered at the stage of grant of pre-arrest bail are (i) *prima facie* case against accused, (ii) nature of offence, and (iii) severity of the punishment.

16. The allegations against the applicant are serious and grave in nature, involving repeated sexual assaults on a minor. The prosecutrix, in her statement under Section 164 of Cr.P.C., has consistently supported her version of events, and the investigation is still at a crucial stage. Considering the overall facts and circumstances of the case, including the age of the victim, the nature of the offence, and the possibility of tampering with evidence or influencing witnesses, this Court finds no ground to exercise discretion in favor of the applicant.

17. Accordingly, the present application for anticipatory bail stands dismissed.

18. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.



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19. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J
FEBRUARY 14, 2025/zp