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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 28th January, 2025*

+ **BAIL APPLN. 178/2025**

TOHEED KHAN
s/o Mr. Alimuddin
R/o H. No. 267, Ground Floor,
Hauz Rani,
Malviya Nagar,
South Delhi-110017

.....Petitioner

Through: Mr. Lokesh Kumar Mishra,
Mr. Haider Khan & Mr. Devansh
Sehgal, Advocates

Versus

STATE (GNCT OF DELHI) AND ANR.Respondents

Through: Ms. Meenakshi Dahiya, Additional
Public Prosecutor for Respondent
No.1-State with SI Sandeep
Victim in person

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Application under Section 483 of *Bhartiya Nagrik Suraksha Sanhita, 2023* read with Section 528 of the Act, has been filed on behalf of the Applicant seeking bail in FIR No. 500/2024, under Sections 137(2)/64 of *Bhartiya Nagrik Suraksha Sanhita, 2023* and Sections 6/21 of the *Prevention of Children from Sexual Offences Act*,

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SHARMA

Signing Date: 28.01.2025
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2012 ('POCSO Act'), registered at Police Station Malviya Nagar, Delhi.

2. It is submitted that Petitioner had applied for Regular Bail under Section 483 of *Bhartiya Nagrik Suraksha Sanhita, 2023*, which has been dismissed by the learned Additional Session Judge vide order dated 24.12.2024. It is submitted that the Applicant has been falsely implicated by the *Bua* of the victim on account of her greed for property and money. The FIR has been registered with the sole intent to extort money and the present FIR is gross misuse of process of law.

3. ***The case of the prosecution*** is that on 10.08.2024, the victim had gone missing and an FIR was got registered on 02.10.2024 on the complaint of the mother of the victim. In fact, the real story is that the Applicant and the Victim got married according to Muslim law on 04.07.2024 in the presence of the Complainant/ mother and other family members, with the consent of both the families. The *Nikahnama* has been verified and is part of the Charge-sheet. Aadhar Card of the Victim was verified, in which her date of birth is given as 14.02.2014 i.e. she was 20 years old at the time of her *nikah* and the Aadhar Card is also part of the Charge-sheet.

4. Further, as per Muslim Law the, a bride is eligible for marriage when she attains the age of puberty. After the *Nikahnama*, the Applicant and the Victim have resided together as husband and wife to the knowledge of both the families, especially the Complainant, who used to talk to the Victim on daily basis. Hence, the Complaint, on the basis of which the FIR in question has been registered, is false and fabricated.

5. According to the Applicant/Petitioner, statement of the Victim was recorded under Section 183 of *Bhartiya Nagrik Suraksha Sanhita, 2023*,



wherein she stated that she has no grudge of any kind against the Applicant/ Petitioner and has no objection if the bail is granted and also that she no longer wanted to pursue the case against him. Furthermore, the Victim is residing with the family members of the Applicant as daughter-in-law.

6. Reliance has been placed upon decisions in *Sanjay Chandra Vs. CBI* 2012 (1) SCC 40 wherein it has been noted that the *Bail is Rule and Jail is an exception*.

7. The Applicant/ Petitioner is in judicial custody since 03.10.2024. The Charge-sheet has already been filed after completion of the investigation and the matter is pending trial. There is no likelihood of Applicant /Petitioner influencing the prosecution witnesses in any manner and he is ready to abide by the terms and conditions imposed by this Court. Thus, grant of regular bail is sought by the Applicant/ Petitioner.

8. ***Status Report has been filed on behalf of the Prosecution*** wherein it is stated that on 02.10.2024, a PCR call vide DD No. 132A, dated 01.10.2024 was received in the Police Station from Jaida Bano, *Bua* of the Victim. Thereafter, a Complaint was made by Rehana, mother of the Victim, alleging that her daughter has been kidnapped on 10.08.2024. Consequently, FIR in question was registered.

9. The Victim was recovered from Bulandshahar, UP along with the Applicant. She was sent to AIIMS for medical examination and her statement under Section 180 of *Bhartiya Nagrik Suraksha Sanhita, 2023* was recorded and offence under Section 64 B of *Bhartiya Nyaya Sanhita, 2023* and Section 6 of POCSO Act were added.

10. *Learned Additional Public Prosecutor for Respondent-State*



submitted that documents of proof of age of Victim have been collected, according to which the date of birth of the Victim is 14.02.2012. However, as school documents, she was 14 years old at the time of incident. Section 21 of POCSO has been added against the father and mother of the victim. The Charge-sheet has already been filed and Supplementary Charge-sheet under Section 173(1) Cr.P.C. would be filed in due course.

11. The Victim also appeared in Court in person and has asserted that she had married the Applicant/ Petitioner according to Muslim law and she had been residing with him as husband and wife. However, after they were recovered by the Police, she was produced before CWC from where her custody has been taken by her *Bua*, who happens to be her mother-in-law.

12. **Submissions heard.**

13. The Applicant/Petitioner had got married to the Victim according to Muslim law on 04.07.2024 in the presence of the Complainant/ mother and other family members, as is corroborated by the *Nikahnama*, which has been filed alongwith the Charge-sheet. The Victim has also endorsed that she has been living with the Applicant/Petitioner as his wife and presently, she is living with her in-laws. Investigation in this case, are already complete and no custodial interrogation of the Applicant/ Petitioner is required. Charge sheet has already been filed and trial has commenced.

14. In the totality of circumstances, without going into the merits of the case, the Applicant is admitted to bail on his furnishing bail bond in the sum of Rs.25,000/- with one Surety in the like amount to the satisfaction



of the Trial Court, subject to the undertaking that:-

- (i) The Petitioner shall not misuse the liberty granted to him;
- (ii) The Petitioner shall not temper with any evidence, oral or documentary during the trial;
- (iii) The Petitioner shall give his cell phone number to the Investigating Officer and keep it operational; and
- (iv) The Petitioner shall appear before the Trial Court on every date of hearing.

15. With aforesaid, the present Bail Application is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 28, 2025

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