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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 207/2025 & CRL.M.A. 1428/2025

ANIL PATHAK

.....Petitioner

Through: Mr. Soibal Gupta and Mr. Himanshu
Swami, Advocates.

versus

STATE OF (NCT OF DELHI)

.....Respondent

Through: Mr. Ajay Vikram Singh, APP for the
State.

SI Pooja, PS Bhalswa Dairy.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

11.02.2025

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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. 995/2022, under Sections 363/376/377 of the IPC and Section 6 of the POCSO Act, registered at P.S. Bhalswa Dairy.
3. The case of the prosecution as per the status report dated 06.02.2025 authored by Insp. Surender Singh Yadav, SHO PS Bhalswa Dairy is as under:-

“1. Most respectfully it is submitted that on dt. 22/12/22 complainant “V” (father of victim) came to police station and stated that his daughter “S”, Aged 03 years 09 months is missing since 6:30 PM, then on the statement of complainant “V” a case u/s 363 IPC was registered.

2. On dt. 22.12.22 at 7:43 AM a PCR call vide DD No. 22A was received in which caller Adarsh told that he found a girl crying in a park which is at the shoreline of Bhalswa lake.

3. During further course of investigation, victim “S” was sent to BJRM Hospital for counselling and medical examination where victim “S” was admitted vide MLC No. 218497/22. From there victim “S” was referred to Higher centre BSA Hospital Rohini, where victim “S” was admitted



vide MLC No. 3083/22. After medical examination, seized exhibits (Sexual evidence collection kit, Outer clothes, Inner clothing) with sample seal were handed over to SI Roshan Sir. Then present case was handed over to SI Richa.

4. During further course of investigation, SI Richa thoroughly checked the CCTV's from place of incident to the home of the victim. On the basis of CCTV footages, a person namely Anil Pathak was identified by the people of area. In one of the CCTV footage from box no. 057308 dt. 21.12.22 at time 18:00:45-18:00:55 accused Anil Pathak alongwith the victim was seen to get into an auto having plants on the roof of auto. After searching on internet, the auto driver was identified as Mahender Kumar having auto number DL1RV5742. After that the statement of the auto driver was recorded and auto driver was cited as a witness in the present matter. Auto driver Mahender kumar stated that a person alongwith a girl got into his auto and when he asked him about where he wanted to go then he didn't tell anything. Due to traffic, auto was moving slowly so that the person alongwith the girl got down from the auto without giving fare to him and crossed the road.

5. During further course of investigation, in search of accused SI Richa alongwith staff went to the address of the accused but his son Aman told that his father is not at home from 22.12.22 and also switched off his mobile phone. SI Richa took the mobile numbers of accused and got the CDR of those mobile numbers. On the basis of CDR analysis, the accused was followed by the search team and on dt. 26.12.22 accused was apprehended from the mukundpur chowk with the help of an eye witness auto driver Mahender Kumar, After interrogation accused Anil Pathak was arrested and from his personal search a mobile phone of Xiomi having Vodafone sim was found and the same was seized alongwith the adaptor of Xiomi and deposited into Malkhana.

6. During further course of investigation SI Richa alongwith staff & accused Anil Pathak went to his address. Requested to join investigation to his neighbours, one of his neighbours namely Manish Kumar joined an investigation and then went into the house of the accused and thereafter asking from the accused, the clothes & shoes worn by the accused on the date of the incident were seized. Some blood stains were also noticed on the clothes of the accused.

7. During further course of investigation FSL Team and Crime Team were called to inspect the place of offence. Photographs and crime team report were handed over to IO SI Richa. With the help of FSL Team some exhibits were lifted from the place of offence : a) Blood stain lifted with soil (marked as S.No.1), b) Blood stained soil (marked as S.No.2), c)



Blood stained soil(marked as S.No.3), d) suspected fluid from spot (marked as S.No.4), c) Hair Strands (Marked as S.No.5) and handed over to IO SI Richa.

11. During further course of investigation on dt. 30.12.22, the statement u/s 164 CrPC of victim got recorded in Kalawati Saran Hospital by Ld MM Sh. Jitender Rohini court in which victim told that she was playing and an uncle took her away with him on road. After that Victim started crying and she looks afraid. Victim didn't tell anything. Court observed that victim is still under trauma and is not able to recollect the correct facts. It appears that she needs some more time to get her statement recorded.

14. During further course of investigation on dt. 30.01.23 again the statement u/s 164 CrPC got, recorded by Hon'ble court of Ms. Nidhi Chitkara, MM Mahila Court in which victim clearly mentioned about the hurt in private parts by the accused person.

15. During further course of investigation on dt. 07.02.23 verified age proof of the victim was collected in which her D.O.B. is 21/03/2019.”

4. Learned counsel appearing on behalf of the applicant submits that the survivor has made certain contradictory statements with regard to the identity of the present applicant. It is submitted that in her cross-examination, she has stated that the applicant is not the person who is involved in the present case. It is further submitted that the FSL report with respect to the mixed biological stains collected from the inner (undergarment) of the survivor, shirt of the survivor, shirt of the accused, jeans of the accused and vegetative material with earth cannot be relied upon as there is a missing link in the chain of custody with regard to the sample being taken and thereafter despatched to FSL. Reliance has been placed on the judgment of the Hon'ble Supreme Court in *Rahul vs. State of Delhi* Ministry of Home Affairs & Anr. 2022 INSC 1176 and of the Hon'ble High Court of Judicature at Madras in *CRL.A. No. 372/2020 in Indiran vs. State* represented by Inspector of Police,



Thudiyulur Police Station, Coimbatore District dated 03.07.2024. The reliance has been placed on aforesaid judgments to show that the link of custody from the drawing of the sample, depositing the same in the malkhana and thereafter sending for the FSL has to be proved in accordance with law and in the present case as per learned counsel for the applicant the blood sample was taken by the Investigating Officer, however, in the seizure memo it has been shown that the Investigating Officer seized it from another police personnel. Learned counsel appearing on behalf of the applicant further states that the latter was arrested on 27.12.2022 and in the cross-examination of the auto-driver (PW-6), he states that he had identified the applicant one day after the incident. Learned counsel for the applicant submits that if in these circumstances he back-times the dates, then the testimony of the said witness is not supporting the case of the prosecution as the incident had taken place on 21.12.2022 and therefore, the date of identification would come to 22.12.2022 but as per the case of the prosecution, he was arrested on 27.12.2022.

5. *Per contra*, learned APP for the State submits that the offence is heinous in nature and the applicant has been identified by the survivor. It is also pointed out that the auto driver, in whose auto the applicant had taken the survivor, has also identified the applicant.

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

7. This Court has seen the testimony of the survivor who has been examined as PW-1. In the testimony, when the applicant was shown to the survivor, she stated that the applicant had taken her to a '*jheel*', where there was '*meeti*'. As per the case of the prosecution, the survivor was taken to a jungle area near the Bhalswa Dairy Boat Club, from where the earth samples



were taken. It is further noted that she had clearly stated that she received the injuries for which the surgery was conducted on account of the present applicant. She also in her own manner states that the applicant had hit her on her vagina. The MLC further records a vaginal tear of approximately 6 cm and rectal wall tear of approximately 6-8 cm. It is a matter of record that when the survivor was discovered, she had to undergo surgery for repair of vaginal and rectal tear. It has also come on record that in the CCTV footage collected by the Investigating Officer during the course of investigation, the applicant was identified going along with an unidentified child. Even as per the FSL report, mixed biological stains collected from the inner (undergarment) of the survivor, the shirt of the survivor, the shirt of the accused, jeans of the accused and vegetative material with the earth (collected from the spot), are duly matched with the blood sample of the survivor and the present applicant. So far as the missing link in the custody of samples is concerned, the trial is going on and the Investigating Officer will be examined and relevant questions can be put to the witness. The entries in the malkhana register of the samples and their corresponding deposit at FSL shall be required to be examined. The Court has also gone through the testimony of PW-6, the auto driver who has categorically come on record to identify the person who has sat in his auto along with the small girl in his lap. It is also stated that the said person was intoxicated and he had got down from the TSR (auto) along with a child carrying in his lap and had travelled a distance of 100 steps and had gone away somewhere.

8. In these circumstances, no case for regular bail has been made out.
9. The present application is dismissed and disposed of accordingly.
10. Pending application(s), if any, also stands disposed of.



11. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
12. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.
13. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

FEBRUARY 11, 2025/sn/Pc

Click here to check corrigendum, if any