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

+ CRL.M.C. 462/2025

ABHISHEK SAXENA@ANSHULPetitioner

Through: Mr. Anup Kumar Das, Mr.
Uday Chauhan and Ms.
Aayushi Gupta,
Advocates.

versus

STATE NCT OF DELHIRespondent

Through: Mr. Sunil Kumar Gautam,
APP for the State with
W/SI Purvi, PS Tilak
Nagar.
Mr. Archit Upadhyay,
Advocate from DHCLSC
for prosecutrix.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **08.08.2025**

1. The present petition is filed by the petitioner seeking setting aside of the order dated 16.02.2024, passed by the learned Additional Sessions Judge-06 (West), Tis Hazari Court, Delhi.
2. The petitioner is an accused in FIR No. 541/2018 dated 22.10.2018, registered at Police Station Tilak Nagar, Delhi for the offences under Sections 377/363/506/34 of the Indian Penal Code, 1860 ('**IPC**') and Section 6 of the Protection of Children from Sexual Offence Act, 2012 ('**POCSO**'). The charges were framed against the petitioner by order dated 03.07.2019 for the offence under Section 377/363/34 of the IPC and Section 4 of the POCSO.
3. The record indicates that by order dated 26.05.2023, the
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petitioner was granted interim bail on the ground that the mother of the petitioner was admitted in the Hospital and the said fact was verified. The learned Trial Court also noted that the victim during the hearing has given no objection if the petitioner was released on interim bail.

4. By order dated 11.07.2023, the petitioner's application seeking extension of interim bail was rejected and due to non-appearance of the petitioner, non-bailable warrants were issued against the petitioner.

5. Further non-appearance on the subsequent dates, led to issuance of process under Section 82 Code of Criminal Procedure, 1973 ('CrPC'). The learned Trial Court by order dated 05.10.2023 noted that the process under Section 82 CrPC could not be executed due to shortage of staff and the matter was adjourned to 22.12.2023.

6. By order dated 22.12.2023, it was noted that the process have been duly executed and the notice was issued to the process server for recording of his statement and the matter was adjourned to 18.01.2024. It appears that the process server could not appear on the next date of hearing and the matter was then adjourned to 07.02.2024.

7. It is undisputed that the petitioner got arrested in FIR No. 43/2024 on 15.01.2024 and was thereafter released on bail by order dated 07.03.2024.

8. In terms of Section 82 CrPC, in case an accused pursuant to publication of proclamation fails to appear at a specified place and time required by the proclamation, the Court may after making such inquiry, pronounce him as a proclaimed offender and make a declaration to that effect.



9. It is undisputed that in the present case even though the proclamation was published as reflected in the order dated 22.12.2023, however, no inquiry could be made by the learned Trial Court in the absence of process server.

10. The record reflects that the process server appeared on 07.02.2024 pursuant to which the petitioner was pronounced to be a proclaimed person. As noted above, it is thus not a disputed position that the petitioner if in a position, could have appeared before the learned Trial Court upto 07.02.2024.

11. It is not denied that had the petitioner appeared before the learned Trial Court on 07.02.2024, no order would have been passed declaring him a proclaimed offender. The petitioner as noted above was in judicial custody on 15.01.2024 and therefore was not in a position to appear before the learned Trial Court. It appears that the learned Trial Court was not aware that the petitioner was in custody in another FIR which led to passing of the order dated 07.02.2024.

12. In view of the above, I find merit in the present petition that impugned order would not have been passed, had the learned Trial been aware that the petitioner is in judicial custody at the time of passing of order.

13. The present petition is therefore allowed. Accordingly, the order dated 16.02.2024 is set aside to the extent that it declares the petitioner as a proclaimed person.

AMIT MAHAJAN, J

AUGUST 8, 2025

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