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

+ **CRL.M.C. 850/2025**

MS. R

.....Petitioner

Through: Mr. M. Hasibuddin, Adv.

versus

THE STATE (GOVT. OF NCT OF DELHI)

& ANR.

.....Respondents

Through: Mr. Sunil Kumar Gautam,
APP for the State with PSI
Varsha, PS Mehrauli,
Delhi and SI Ashutosh
Mishra.
Mr. Hritik Verma and Ms.
Bhawana Saini, Adv. for
R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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21.05.2025

1. By the present petition, the petitioner challenges the order dated 28.01.2025 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge (**ASJ**) admitting Respondent No. 2 on pre-arrest bail in FIR No. 04/2025 dated 07.01.2025 registered at Police Station Mehrauli under Section 64(2)/65(2)/115(2)/351(3)/3(5) of The Bharatiya Nyaya Suraksha Sanhita, 2023 ('BNS') and Section 6 of the Protection of Children from Sexual Offence Act, 2012 ('POCSO').

2. The FIR was registered pursuant to a complaint made by the petitioner/ mother of the victim (born on 18.12.2014). It was

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alleged that while the victim was visiting her maternal grandmother namely– “SM”, at her residence in Mehrauli, a physical altercation broke out between SM and the petitioner’s sister namely– J@T on 18.10.2024. It was alleged that when the victim attempted to intervene to protect her grandmother and started recording a video, J@T’s husband namely– Manoj Joshi @ Aarab, tore the victim’s clothes. Acting on J@T’s instigation and with the intent to force the grandmother to vacate the residence, Manoj Joshi @ Aarab allegedly placed his hand inside the victim’s undergarments and inserted his finger into her vagina. When the victim began to scream, J@T allegedly threatened her not to report the incident or lodge any complaint.

3. During investigation, the petitioner denied the internal medical examination of the victim.

4. Notice under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (‘BNSS’) was served upon Respondent No. 2, who is stated to have joined the investigation, and had produced a mobile phone containing videos of the incident that took place on 18.10.2024, which has been seized by the Police.

5. The learned ASJ, in the impugned order, while granting pre-arrest bail to Respondent No. 2, took note of the fact that the parties are related to each other and have a history of litigation. It was observed that the incident occurred with the intent to evict the victim’s maternal grandmother from the premises, which *prima facie* indicates the existence of a property dispute. The Court also observed that on investigating, the Investigating Officer of the case submitted that the incident appears to be

doubtful as there was nothing placed on record by the

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complainant to corroborate with the complaint. The Court found that inspite of the victim allegedly having recorded the incident on her mobile phone, the complaint was lodged with a delay.

6. Being aggrieved by the same, the petitioner has filed the present petition, seeking cancellation of the pre-arrest bail granted by the impugned order passed by the learned ASJ.

7. The learned counsel for the petitioner submitted that the grant of pre-arrest bail to Respondent No.2 was in ignorance of the fact that the victim is a minor, who was victimised by Respondent No. 2 and his wife in a grave crime. He submitted that Respondent No. 2 is charged with heinous offences committed under Sections 64(2)/65(2)/115(2)/351(3)/3(5) of the BNS and Section 6 of the POCSO Act, which attracts life imprisonment.

8. He submits that the victim is under trauma and is unable to go to school due to fear. It is stated that Respondent No. 2 and his wife sent people to the petitioner's house to pressurise her to withdraw the case. He states that on 09.01.2025, Respondent no. 2 along with his wife have also broken the CCTV camera installed at the ground floor of the house of the petitioner and the same has been recorded in the CCTV installed in a nearby house. He further added that on 11.01.2025 around 4:05 am, an unknown person with his face covered came to the petitioner's house and started ringing the bell, and ran away on the petitioner calling the PCR.

9. *Per contra*, the learned counsel for Respondent No. 2 submits that there is no infirmity in the impugned order, and the

same is evident from the fact that State has not preferred an

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appeal impugning the order granting pre-arrest bail. He submits that the present petition has only been filed with an intention to harass Respondent No. 2 and his wife and is therefore liable to be set aside.

10. It is pointed out that the chargesheet in the present case has been filed and charges have been framed by the learned Trial Court. The learned counsel for Respondent No.2 submits that the victim and the petitioner have been examined before the learned Trial Court. He further submits that Respondent No.2 has been joining the investigation and has not violated any bail conditions imposed on him.

11. The questions that fall for consideration in this petition are whether the learned ASJ was justified in exercising the power under Section 438 of the CrPC to admit Respondent No. 2 on pre-arrest bail and whether the petitioner has established a prima facie case for cancellation of the bail granted to Respondent No.2.

12. It is trite law that an order granting bail ought not to be disturbed unless there are strong reasons and overwhelming circumstances to do so. The party seeking cancellation of bail must establish a compelling case and demonstrate that the said order was illegal, unjust or improper.

13. The inclusion of Section 438 in the CrPC underscores the significance of personal liberty and freedom in a democratic society, upholding the timeless principle that every individual is presumed innocent until proven guilty by a court of law.

14. The power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised

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sparingly. The relief of pre-arrest bail is a legal safeguard intended to protect individuals from potential misuse of power of arrest. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra : (2011) 1 SCC 694***, elucidated some parameters to be considered before granting pre-arrest bail:

“112.

(i) *The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*

(ii) *The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) *The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event

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of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

(emphasis supplied)

15. False allegations of sexual misconduct and coercion not only tarnish the reputation of the accused but also undermine the credibility of genuine cases. Hence, it is imperative for the Court to exercise utmost diligence in evaluating the *prima facie* allegations against the accused in each case, especially when issues of consent and intent are contentious.

16. It is the case of the petitioner that when the victim was recording the incident in order to protect her grandmother, Respondent No. 2 tore her clothes and on instigation by J@T, he put his hands in her underwear and inserted his finger inside the victim's vagina with an intent to outrage her modesty.

17. As per the report dated 02.11.2024 submitted by the Investigating Officer before the learned ASJ, there had been a history of altercation between the parties over a property dispute. It is stated therein that on the day of the incident, that is, 18.10.2024, five PCR calls were made *vide* DD No. 186, 187, 188, 191, 31A in regard to an altercation between the parties, however, no allegations of sexual assault was given. It is stated that even when the petitioner and her mother visited the Police Station in regard to the PCR calls, no information regarding sexual assault was given.

18. Two witnesses namely– Karan Singh @ Kalu and Soniya Bali @ Sonu, who were present at the spot during the incident, were inquired regarding the same, to which they denied any

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incident of sexual assault on 18.10.2024. Moreover, even the statement of SM recorded on 18.10.2024 does not have any mention of sexual assault against her grand daughter against Respondent No. 2.

19. The Investigating Officer further reported that no CCTV cameras were found installed inside/ outside or in the street of the place of incident, and thus, no CCTV footage could be recovered. The report concluded that the allegations as levelled by the petitioner under POCSO Act could not be substantiated during the preliminary investigation.

20. It is further observed that Respondent No. 2 has been living separately from his wife J@T since January 2020 due to matrimonial dispute with her. The allegation that it was at the instigation of J@T that Respondent No. 2 would have committed this heinous offence seems doubtful.

21. It has to be kept in mind that in cases where the victim is a child, her statement has to be scrutinized with great care and caution as children can be easily swayed away and are prone to tutoring. It can also be a possibility that the statement is made at the behest of one of the parents. It is the duty of the Court to also examine and analyze other corroborative evidence and circumstances which are important to the case (Ref.: **Atender Yadav v State NCT of Delhi : 2013 SCC OnLine Del 4322**).

22. It is further pointed out that apart from the present case, FIR No. 636/ 2013 was registered by the petitioner against one person namely– Ajit @ Bhondi under Section 8 of the POCSO Act, wherein the petitioner is stated to have turned hostile. FIR

No. 378/ 2013 was registered against the brother of the petitioner

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under Section 363/376 of the IPC and Sections 4 and 6 of the POCSO Act. FIR No. 859/ 2018 was registered under Section 354B of the Indian Penal Code, 1860 ('IPC') by SM against her relative. In such circumstances, it is evident that the parties are involved in multiple POCSO and sexual harassment cases.

23. The possibility of getting the present complaint lodged out of spite or malice, especially when the family members have a history of registering similar cases, cannot be ruled out.

24. Even otherwise, the present case does not attract the presumption under Section 29 of the POCSO Act which provides a statutory presumption in favour of the complainant. The discretion in relation to grant of bail is to be exercised considering the facts of the case.

25. The law is well settled through catena of judgments by the Hon'ble Apex Court that the considerations for granting bail and for its cancellation are fundamentally different. Bail granted to an accused can only be cancelled if the Court is convinced that, after release, the accused has either (a) misused the liberty granted, (b) flouted the conditions of the bail order, (c) the bail was granted in contravention of statutory provisions limiting the Court's authority to grant bail, or (d) the bail was obtained through misrepresentation or fraud. In the present case, none of these situations existed.

26. It is observed that no complaint has been filed by the petitioner to any of the authorities regarding Respondent No. 2 having misused his liberty after being enlarged on pre-arrest bail.

In fact, he has joined the investigation and has handed over his

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phone to the Investigating Officer.

27. The purpose of custodial interrogation is to aid the investigation and is not punitive. The consequences of pre-trial detention are grave, and the burden of such incarceration also causes a severe effect.

28. In this case, Respondent No. 2 has admittedly cooperated with the investigation, and there is no material to demonstrate any breach of bail conditions. The petitioner's apprehensions, while understandable, do not meet the threshold for cancelling the bail.

29. In view of the above, I find no reason to interfere with the impugned order and the present petition is dismissed.

30. It is made clear that the observations made by this Court in the present order are only made for the purpose of deciding the present petition and the same shall not be taken as opinion on the merits of the case and shall not affect the trial in any manner.

AMIT MAHAJAN, J

MAY 21, 2025

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