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

+ **BAIL APPLN. 637/2025**

ROHIT KUMAR

.....Petitioner

Through: Mr. Akash Chauhan and Mr. Sachin Tanwar, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for the State with SI Suruchi, PS Fatehpur Beri.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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15.05.2025

1. The present Bail Application under Section 483 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'B.N.S.S.'*) has been filed on behalf of the Petitioner for grant of Bail in FIR No. 0050/2023 under Sections 328/376/506 IPC and Section 4 POCSO Act, registered at Police Station Fatehpur Beri, Delhi, pending trial before the learned ASJ.

2. It is submitted that the case of the prosecution is that on the day of incident, i.e. 02.02.2023, the applicant, who is a school bus driver, had picked the victim from her home in the morning. When they reached the school, the victim did not step out as she was ill, on which, the applicant offered to drop her home and he took the victim in the Van. But instead of dropping her home, took her possibly to his jhuggi and made some drink and thereafter committed rape on her. FIR No. 0050/2023 was registered on the same day. Investigations were carried out and chargesheet was filed on



14.02.2023 under Sections 328/376/506 IPC and Section 4 of POCSO Act.

3. The first supplementary chargesheet was filed on 15.11.2023 regarding FSL report. The second supplementary chargesheet was filed on 14.05.2024 regarding CDR and location of the applicant and the victim's mother. The charges under Section 4 POCSO Act were framed on 11.04.2023.

4. The bail is sought on the ground that he has been implicated falsely in this case. He is in judicial custody since 02.02.2023. He is a young boy of 21-22 years and has deep roots in the society. He is the only bread earner of his family comprising mother and younger brother. The testimony of PW-1 the prosecutrix as well as PW-5 mother of the victim have already been examined. Since police and forensic witnesses remain to be examined, there is no apprehension of threatening of witnesses or tampering with the evidence. Out of 21 prosecution witnesses, evidence of only 10 witnesses have been recorded and it would take time to conclude the trial, as the prosecution has already filed two supplementary chargesheet, but intends to file one more supplementary chargesheet, which would again delay the trial.

5. From the CDR filed with the supplementary chargesheet, it is evident that the victim was calling applicant and talking to him consistently and it was a consensual relationship between the two. Though she had denied this fact in her testimony, the reliance has been placed on ***X -X- X- Vs- State of NCT of Delhi*** in BAIL APPLN.2729/2022, wherein, it was observed that the intention of POCSO was to protect the children below the age of 18 years from sexual exploitation. In ***Dharmender Singh Vs. The State (Govt. Of NCT, Delhi)*** BAIL APPLN.1559/2020, the bail was granted on the possibility of reciprocal physical relationship between the accused and the



minor victim.

6. It is further submitted that there are material discrepancies in the statement of the victim given to the Medical Officer and her statement recorded under Section 164 Cr.P.C. and in her testimony in the Court. The FSL report of DNA does not substantiate the case of the prosecution. The earlier bail application filed before the learned Trial Court has been dismissed on 07.06.2024. He undertakes to abide by any conditions that may be imposed and the prayer is made for grant of bail.

7. **The status report has been submitted on behalf of the State,** wherein, the entire details of the investigations have been submitted. The bail application is opposed on the ground that in case the bail is granted, the Petitioner may hamper investigation and tamper the evidence. He may threaten the complainant and the witnesses. The offence committed by the Petitioner is of serious nature in case he is granted there is a possibility that he may commit similar offence. Furthermore, he was seriously involved in another FIR No.0102/2018 under Section 377 IPC and Section 6 POCSO Act registered at Police Station Fatehpur Beri, Delhi, wherein, the modus operandi adopted was similar, i.e. every likelihood of his jumping the bail or misusing the liberty, hence the bail is opposed.

8. Learned counsel for the petitioner submits that trial is likely to take long time. The DNA report is not supporting the case of the prosecution and in the light of observations made therein, it is evident that the incident, as alleged by the prosecutrix, is patently false and the applicant has been falsely implicated. It is further explained in respect of the earlier FIR No. 0102/2018 that the same got registered when the applicant was minor and the victim was a boy, but on the sole testimony of the victim the



Juvenile Justice Board had acquitted the applicant. It is submitted that the only formal witnesses remain to be examined, whose testimony cannot be tampered by the applicant. It is further submitted he himself is a young boy of 21-22 years and his entire life would be ruined if he is not granted bail.

9. Learned Additional Public Prosecutor for Respondent-State has opposed the bail by observing that the offence committed is of heinous nature and an application has been filed for amendment of the charge under Section 6 POCSO Act. Considering the young age of the prosecutrix and the gravity of the offence, the bail application is opposed.

10. Submissions heard and record perused.

11. It is a crime which could have been committed by no other than the applicant, who was the Van driver of the school. There is an implicit element of trust between the driver and the students he is fairing in the school Vans. For such a person to be implicated in this offence speaks volumes about the gravity of the offence, which is significant factor to be considered while granting bail. It cannot be overlooked that there was another FIR No. 0102/2018 under Section 377 IPC and Section 6 POCSO Act registered against the applicant. Though the applicant, while he was a minor, may have got acquitted but that factor in itself cannot be disregarded.

12. The testimony of prosecutrix, her mother and public witnesses have already been recorded who have corroborated the case of prosecution. Pertinently, an application for amendment of charge to Section 6 POCSO Act is also pending. Much emphasis has been laid on DNA report but that cannot be considered in isolation. It cannot be overlooked that the DNA report is corroborative evidence and cannot replace the other cogent evidence, which may be adduced by the prosecution at the stage of



considering the Bail application. No conclusive finding in respect of DNA report or the testimony can be given, which is to be considered at the stage of final arguments.

13. Considering the totality of circumstances, no case is made out for grant of bail, which is hereby dismissed.

14. The bail application is disposed of accordingly along with pending applications, if any.

NEENA BANSAL KRISHNA, J.

MAY 15, 2025/R