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

+ **BAIL APPLN. 1118/2025**

**MUKESH**

.....Petitioner

Through: Mr. Gautam Khazanchi, Mr. Vaibhu Dubey and Ms. Anshla Varma, Advocates.

versus

**STATE OF NCT OF DELHI**

.....Respondent

Through: Mr. Mukesh Kumar, APP for the State.  
SI Sharanya S., PS: Jamia Nagar.  
Insp. Narpal Singh Yadav, SHO Jamia Nagar.  
Ms. Inderjeet Sidhu, Advocate for the Prosecutrix.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**

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**30.07.2025**

1. This is the second regular bail application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023<sup>1</sup> (corresponding to Section 439 of the Code of Criminal Procedure, 1973<sup>2</sup>) in the proceedings emanating from case FIR No. 683/2016 dated 8<sup>th</sup> July, 2016, registered under Section 363 of the Indian Penal Code, 1860<sup>3</sup> at P.S. Jamia Nagar, Delhi. Subsequently, a chargesheet was filed, adding offences under Sections 376 and 174A of IPC, along with Section 6 of the Protection of Children from

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<sup>1</sup> "BNSS"

<sup>2</sup> "CrPC"



Sexual Offences Act, 2012<sup>4</sup>.

**Factual Matrix**

2. The Applicant's previous bail application was rejected by this Court on 19<sup>th</sup> March 2024 [in BAIL APPLN. 3771/2023], considering the gravity of the allegations. Counsel for the Applicant contends that circumstances have undergone a material change since the rejection of the previous application. He submits that the Applicant has undergone a significant period of incarceration post the previous order and that the statements of both the Prosecutrix and her father have since been recorded during trial. Furthermore, it is highlighted that co-accused Dinesh Chand, who faces allegations of comparable grievousness, was granted anticipatory bail by this Court on 19<sup>th</sup> September, 2024 in BAIL APPLN. 1981/2024.

3. This case has had a chequered procedural history, marked by multiple statements of the Prosecutrix recorded under Sections 161 and 164 of CrPC, and directions by the Trial Court for further investigation. In view of this backdrop, the Court has heard the submissions of counsel for the parties as well as Ms. Inderjeet Sidhu, counsel for the Prosecutrix, at considerable length.

4. Upon registration of the FIR, the Prosecutrix initially gave a statement under Section 161 of CrPC on 25<sup>th</sup> April, 2017, wherein she stated that she was a student of Class 10 and residing with her parents. She claimed to have developed a relationship with the Applicant, Mukesh, then approximately 32 years old, who was a neighbour and a frequent visitor to her home. According to her, the two fell in love and intended to marry, but her parents

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<sup>3</sup> "IPC"

<sup>4</sup> "POCSO Act"



disapproved of the alliance. On 7<sup>th</sup> July, 2016 (on occasion of Eid), she went to the Applicant's house in Achalpur, U.P., without informing anyone in her family. Then, the Applicant, after a quarrel with his first wife, took her to Mathura, where they got married in a temple. Thereafter, she was kept in a rented room in Mathura, where the Applicant would visit weekly and provide for her expenses. The Prosecutrix claimed she refused to return to Delhi out of fear that her parents would harm her. She further stated that the police later came to Achalpur in search of her, after which she returned to Delhi. This account was reiterated in her statement under Section 164 of CrPC, which was recorded on the same day.

5. Based on the above account, the investigation initiated. Two years later, on 21<sup>st</sup> August, 2019, the Prosecutrix gave another statement under Section 161 of CrPC, wherein she supplemented her earlier version and, for the first time, alleged that the Applicant administered intoxicating substances to her by giving her some medicines, which prevented her from reporting the incident earlier. The prosecution, thereafter, filed the chargesheet on 16<sup>th</sup> October, 2019 and the Applicant was later apprehended on 10<sup>th</sup> December, 2019.

6. During trial, on 01<sup>st</sup> March, 2023, the Prosecutrix recorded her detailed testimony and gave an elaborate account of the events, including her eleven-month absence from her home in Delhi. In this deposition, she levelled serious allegations not only against the Applicant but also against other co-accused – Dinesh Chand (the Applicant's younger brother) and Raj Kumar Saxena (his brother-in-law). She described repeated incidents of physical abuse and sexual exploitation by the Applicant and further alleged that she was assaulted by his sister, Sunita, as well as by his wife, Geeta @



Shakuntala. Her testimony contained a graphic recounting of physical and sexual violence during the period she remained away from her parental home. Pertinently, the allegations set out in this deposition materially deviate from her earlier statements recorded under Sections 161 and 164 of CrPC. Taking note of these significant variations and the serious nature of the allegations introduced for the first time in court, the Trial Court, on an application moved by the State under Section 319 of CrPC, directed further investigation.

7. In compliance with aforementioned directions, the prosecution yet again recorded the statement of the Prosecutrix on 7<sup>th</sup> April, 2024, both under Section 161 of CrPC and before the Magistrate under Section 164 of CrPC.

**Contentions Seeking Grant of Bail**

8. In light of the aforementioned background, Mr. Gautam Khazanchi, counsel for the Applicant, urges the following grounds to seek bail:

8.1. The testimony of the Prosecutrix recorded before the Trial Court on 1<sup>st</sup> March, 2023, is materially inconsistent with her earlier statements dated 25<sup>th</sup> April, 2017 and 21<sup>st</sup> August, 2019, recorded under Sections 161 and 164 of CrPC, respectively. This improvisation and inconsistency in her statements severely undermine the credibility of the prosecution's case.

8.2. The further investigation, as directed by the Trial Court also stands concluded and supplementary chargesheet stands filed. The Applicant has been in custody since 10<sup>th</sup> December, 2019, and has now undergone incarceration for more than 5 years and 6 months. The statements of the Prosecutrix and her father have also been recorded before the Trial Court. Therefore, continued incarceration of the Applicant would serve no useful purpose, particularly in the absence of any possibility of tampering with or



influencing witnesses at this stage.

8.3. The Applicant has deep roots in society and resides permanently with his family at the address provided in Achalpur, Uttar Pradesh. There is no apprehension of his absconding, and he has no prior criminal antecedents. With over 20 prosecution witnesses cited, the timeline for completion of the trial remains uncertain. Therefore, further incarceration would be excessive and punitive, rather than necessary.

8.4. Co-accused Dinesh Chand has already been granted pre-arrest bail by this Court *vide* order dated 19<sup>th</sup> September, 2024. The Applicant, therefore, is entitled to parity, particularly as equally grave and serious allegations have been levelled against Dinesh, and he has been released on bail. It is also submitted that during the course of further investigation, undertaken pursuant to the Trial Court's directions, the Prosecutrix was unable to identify Dinesh Chand thereby undermining the case of prosecution.

**Contentions Opposing Grant of Bail**

9. Mr. Mukesh Kumar, APP for the State, and Ms. Inderjeet Sidhu, counsel for the Prosecutrix, strongly oppose the bail application, contending that the Applicant is involved in a grave and serious offence involving a minor at the time of the incident, and therefore does not deserve to be given any indulgence.

10. Ms. Sidhu submits that the statement of the Prosecutrix recorded on 1<sup>st</sup> March, 2023, is both detailed and consistent with the trauma she endured. The Prosecutrix, for the first time, had the opportunity to depose freely and truthfully before the Court, without any fear or external pressure. She has also offered a cogent explanation for her inability to disclose the full extent of her ordeal in the earlier statements. It is urged that victims of sexual



abuse, particularly minors, often experience psychological trauma and emotional repression that inhibit full disclosure during the initial stages of investigation. The Prosecutrix was subjected to threats and sustained intoxication, further impeding her ability to narrate the events candidly. Ms. Sidhu contends that the so-called contradictions or improvements in her statements must be understood in the context of post-traumatic reticence, not as grounds to discredit her testimony. She emphasizes that, having gradually gained emotional resilience, the Prosecutrix has now been able to recount the full extent of the abuse. The ongoing investigation pursuant to her recent deposition further reinforces the need for continued custody of the Applicant, to prevent any potential obstruction in the process.

### **Analysis**

11. The Court has considered the aforementioned contentions. It must be borne in mind that the grant or denial of bail is not to be determined solely by the seriousness of the charge, but through a holistic assessment of the legal and factual matrix concerning the particular accused. It is a well-established principle that, while considering a bail application, the Court must keep in mind several factors relating to the case, such as – whether there is any *prima facie* reasonable ground to believe that the accused has committed the offence, the nature and gravity of the accusation, severity of potential punishment, risk of the accused absconding or fleeing if released on bail, the likelihood of the offence being repeated, etc.<sup>5</sup> It is equally well settled that at the stage of considering bail, the Court is not required to weigh evidence with the rigour reserved for a trial which would make the bail proceedings

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<sup>5</sup> *Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr.* (2010) 14 SCC 496



akin to a mini-trial.<sup>6</sup>

12. The matter is at the stage of trial, and therefore, any comment on the testimonies recorded before the Trial Court would be improper and may prejudice the case of either side. However, for the limited purpose of deciding the request for bail, the Court is entitled, and indeed required, to consider whether the material on record, including the nature of the statements and the conduct of the parties, discloses circumstances warranting the Applicant's continued incarceration.

13. A comparison of the statements recorded under Sections 161 and 164 of CrPC on 25<sup>th</sup> April, 2017, with the testimony recorded on 1<sup>st</sup> March, 2023, reveals considerable divergence in narrative. While her earlier statements do not level direct allegations of sexual assault, the subsequent deposition contains an elaborate account of alleged exploitation not only by the Applicant but also by multiple co-accused. Whether these material variations are the result of trauma, fear, or other factors inhibiting her from making a full disclosure earlier, is a matter that must be left for final determination by the Trial Court on the basis of evidence that may be adduced by both sides. It suffices to note that there are material variations in the versions, which introduce a degree of uncertainty that cannot be ignored while adjudicating the question of continued incarceration. It is also pertinent to note there was a substantial gap of over five years between the recordings of the aforementioned statements – an interval that *prima facie* lends weight to the contentions of the Applicant.

14. Nonetheless, the supplementary chargesheet, pursuant to Trial Court's

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<sup>6</sup> See also: *Brijmani Devi v. Pappu Kumar & Anr.*, (2022) 4 SCC 497 and *Mahipal v. Rajesh Kumar @ Polia*, 2020 (2) SCC 118



directions, stands filed. Moreover, the statements of the Prosecutrix and her father have also been recorded. As per nominal roll as on 21<sup>st</sup> April, 2025, the Applicant has already undergone a period of custody of 5 years, 4 months and 12 days, and his jail conduct has been found to be satisfactory. Through a catena of judgments by the Supreme Court, it has been well established that the object of granting bail is neither punitive nor preventative. The primary aim sought to be achieved by bail is to secure the attendance of the accused person at the trial.<sup>7</sup>

15. The Court has also noted that the co-accused Dinesh Chand, against whom allegations of a similarly serious nature have been levelled, has already been granted pre-arrest bail by this Court *vide* order dated 19<sup>th</sup> September 2024 in BAIL APPLN. 1981/2024. In the absence of any demonstrated distinguishing factor in the Applicant's role vis-à-vis the co-accused, the ground of parity also *prima facie* weighs in favour of granting bail.

16. In light of the foregoing, the Applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of INR 50,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:

- a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;
- b. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;

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<sup>7</sup> See also: *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.



- c. The Applicant shall not contact the victim or any of her family members;
  - d. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;
  - e. The Applicant shall appear before the Trial Court as and when directed;
  - f. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
  - g. The Applicant shall not reside within 3 km radius of the residence of the victim and shall also furnish proof of his residence to the concerned IO. The Applicant shall also not move in the vicinity of the victim in any manner.
  - h. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
  - i. The Applicant shall report to the concerned PS on first, second and fourth Friday of every month;
17. In the event of there being any FIR/DD entry / complaint lodged against the Applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.
18. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.



19. Accordingly, the present application is disposed of.

**SANJEEV NARULA, J**

**JULY 30, 2025/d.negi**