



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

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Reserved on: 10th July, 2025
Pronounced on: 15th July, 2025

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BAIL APPLN. 1433/2025

SUBENDU

Through Parokar/Father Mohinder Singh
S/o Sh. Shiv Singh,
R/o E-89/A, GRO, Kh. No. 56/2,
Near Dev Property,
Saudamani Public School,
Jai Vihar, Bapraula, Delhi-110043

.....Petitioner

Through: Mr. Rajesh Ranjan (through VC),
Mr. Vikash Nain and Mr. Abhishek,
Advocates.

versus

1. **STATE OF NCT OF DELHI THROUGH SHO,**
PS SAFDARJUNG ENCLAVERespondent No.1

2. **X**
Complainant)Respondent No.2

Through: Mr. Shoaib Haider, APP for the State
Mr. Prashant Vashist, Adv. for the
Complainant along with the
Complainant.
SI Surendra Das PS Safdarjung
Enclave.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



1. First Bail Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'B.N.S.S.'*) has been filed on behalf of the **Applicant, Subendu**, for grant of Regular Bail in FIR No. 71/2024 dated 26.03.2024 under Section 376/506 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) and Section 6 of POCSO Act, registered at Police Station Safdarjung Enclave.
2. The Applicant, Subendu aged about 25 years, is in judicial custody since 26.03.2024. He has filed five Bail Applications but all have been dismissed.
3. It is submitted that there were 16 Prosecution witnesses out of which three were the main witnesses and rest are all formal. These three main witnesses, namely, Prosecutrix, her father and an independent witness, Naveen Yadav, have already been examined and discharged.
4. The Statement of the Prosecutrix about she being taken to Dhawan BNB Guest House in the month of October/November in the year 2020 or of having sexual intercourse with her, are not proved by the Hotel records produced by the Prosecution. The Hotel records show their visits in 2023 and 2024 when the Prosecutrix was a full grown adult. Even if the Statement of the Prosecutrix is assumed to be true, it is explicit that the Prosecutrix willingly and knowingly entered into the sexual relationship with the Applicant. She does not allege any force or blackmailing on the basis of obscene videos by the Applicant.
5. The record of Hotel Paradise International also shows that the two never went to that Hotel before 2023/2024.



6. On one hand, the Prosecutrix has deposed in her testimony that the Applicant used to commit sexual assault on her in Rose Garden, Hauz Khas between 2017-2020 but on the other hand, she has stated that from 2018, the Applicant used to commit sexual assault on her in his Tuition Centre at R.K. Puram. These two statements are not only contradictory but it is also perplexing that when the Applicant had a safe place, i.e. his exclusively occupied Tuition Centre for executing his alleged nefarious designs, why would he take the risk of public gaze at a public place such as Rose Garden, Hauz Khas.

7. The Statement of the Prosecutrix that the Applicant had committed sexual assault multiple times on her between 2017-2020 is uncorroborated. Hence, the offence under Section 6 of POCSO Act is not made out.

8. It is further contended that the testimony of the father of the Prosecutrix, is based on hearsay evidence and is not admissible. The independent witness, Naveen Yadav, who was the teacher in the Coaching Institute in KD Campus and got acquainted with the Prosecutrix only a few days before the lodging of FIR, has also given hearsay evidence. His testimony raises suspicion as to the veracity because it is hard to believe that the Prosecutrix by then a major girl would recount her plight to a stranger male and not to her mother, elder sister or father. Manifestly, this witness was roped in for bringing an independent witness as father's testimony may have been recorded as that of an interested witness.

9. The other evidence is documentary, namely, the FSL Report of Mobile Phone, Call Data Records, Medical Reports, which are already on record. The perusal of the evidence of the Prosecution witnesses and the



documents reflects that there is a fair chance of acquittal of the Applicant, Subendu.

10. The FSL Report of WhatsApp messages explicitly show a consensual romantic relationship between the Prosecutrix and the Applicant. The Applicant's Facebook messages alleged to be sent in 2017, when the Prosecutrix was minor, have not been brought on record. It is perplexing that while the Prosecutrix has preserved the face book messages of Meenakshi Panda and Kuljeet Singh; she has not preserved or produced the facebook messages of the Applicant. There is not an iota of corroboration of her allegations pertaining to the period between 2017 and 2020 against the Applicant.

11. The FSL Report states that obscene videos and photographs of the Prosecutrix were not found on the mobile phone and laptop of the Applicant. They were found in the gallery of the Complainant's phone. FSL Report does not clarify if those videos were sent to the Prosecutrix by the Applicant. The videos found in the mobile phone of the Prosecutrix do not reveal the identity of the Applicant. Thus, the allegations of sexual intercourse are not proved. The Prosecution cannot get the benefit of Section 111A of the Indian Evidence Act. Even the WhatsApp chats on record; do not establish the factum of sexual intercourse between the two.

12. The Bail is sought on the **grounds** that the material witnesses already stand recorded and there is no apprehension of the Prosecutrix or the witnesses being influenced by the Applicant. Furthermore, the Facebook chats between the Prosecutrix and Kuljeet Singh, which are alleged to be fake Profiles created by the Applicant in the name of his friend, in order to



gain sympathy of the Prosecutrix, has been filed along with the Chargesheet. However, Kuljeet Singh is neither cited as a witness nor examined and therefore, these chats are inadmissible. Further, the FSL Report also does not corroborate them.

13. The documentary evidence is already on record and there is no likelihood of its being tampered by the Accused. There is also no chance of his influencing the formal or the official witnesses. He has no criminal antecedents and there is nothing to show that he ever tried to harm the Prosecutrix. The WhatsApp conversations do not signify any real threat or harm to the Prosecutrix or her family members.

14. The allegations under Section 6 of POCSO Act have been made after an inordinate delay of seven years. The Prosecutrix had sufficient opportunity from 2020 to 2024, post attaining her majority to report the offence but she continued to indulge in a consensual relationship, which is fully corroborated by WhatsApp messages as proved by FSL Report.

15. As per the Medico Legal Report, Prosecutrix had given the history that the Applicant had done sexual intercourse with her on the pretext of marriage. However, in a Statement under Section 164 Code of Criminal Procedure, 1973, she stated that the first sexual intercourse was consensual and the subsequent sexual intercourse were out of fear and blackmailing by the Applicant. Her own statements are contradictory. She admits that they were in consensual relationship.

16. It is further submitted that there are 13 witnesses, who are yet to depose. The Trial is likely to take long. Further incarceration of the Applicant to deny him the Bail, would not be in the interest of justice,



especially in view of fair chances of acquittal from the Charges under Section 6 of POCSO Act and Section 376 IPC..

17. It is also contended that a civil dispute arising out of failed marriage proposal, negotiations and mutual financial transactions between the Applicant and the father of the Prosecutrix, has been given a colour of criminality. The WhatsApp messages support the admissions made by father of the Prosecutrix in the cross-examination, which the Applicant and Prosecutrix were informally betrothed to each other and this fact was known to her parents.

18. However, because of irreconcilable disputes between the two families due to some hostility that transpired between the elder sister of the Prosecutrix and the Applicant in 2024 and the Applicant disclosed to the Prosecutrix that he would be moving abroad, has led to his false implication.

19. It is submitted that the Applicant is a young man with bright career prospects and further incarceration would cause irreparable injury to him. He undertakes to remain bound by whatever conditions be imposed by the Court. He has, therefore, submitted that he be granted Bail.

20. Reliance has been placed on Hussain and Anr. vs Union of India & Ors., (2017) 5 SCC 702 wherein Apex Court had held that Speedy trial is the fundamental right and denial of opportunity to prepare defense contravenes Article 21.

21. Reliance has also been placed on Dharmender Singh vs The State (Govt. of NCT, Delhi), in Bail Application No. 1559/2020 decided on 22.09.2020 by a Co-ordinate Bench of this Court wherein it was observed that Section 29 of POCSO Act does not mean that the presumption of



innocence, which is the foundational tenet of criminal jurisprudence, is to be thrown to the winds. Applying Section 29 to Bail proceedings at a stage before even the Charges are framed, would in effect mean that the Accused must prove that he has not committed the offence even before he is told the precise offence with which he is charged, which would be violence to the legal rationality. Therefore, if a Bail Application is being considered before the Charges are framed, Section 29 has no application.

22. Reliance has also been placed on *Dataram Singh vs. The State of Uttar Pradesh*, (2018) 3 SCC 22 wherein it was emphasised that the factors that need to be considered while granting Bail is whether the Accused has any opportunity to tamper the evidence or influence the witnesses.

23. If the Investigating Officer does not find it necessary to arrest Accused persons during investigations, a strong case should be made out for placing that person in judicial custody, after a Chargesheet is filed. A humane attitude is required to be adopted by a Judge, while dealing with an Application for remanding an Accused to police custody or judicial custody.

24. Further reliance has been placed on *Satender Kumar Antil vs. Central Bureau of Investigation & Anr.* and *Arnab Manoranjan Goswami vs. State of Maharashtra*.

25. ***Status Report has been filed on behalf of the State*** wherein the details of the registration of the FIR as well as the investigations undertaken on the basis of which Charge-Sheet has been filed, has been detailed. It is submitted that the Chargesheet and the Supplementary Chargesheet have already been submitted. During the trial, both the victim/Prosecutrix and her father have supported the case of the Prosecution in their respective



testimony. The earlier Bail Applications have been dismissed by the Ld. Trial Court. It is submitted that there is a likelihood of the Applicant threatening the witnesses if granted Bail. Hence, the Bail is strongly opposed.

26. Submissions heard and the record perused.

27. The FIR in the present Case was registered on the Complaint made by the Prosecutrix 'X' on 26.03.2024, when she was 22 years old. In her Complaint, she detailed that she had met the Accused in the year 2017 and the Applicant was her Tuition Teacher for Class XI and XII during the period 2017 to 2019. He befriended her on Facebook in 2017 and created two fake IDs in the name of his sister, "M P" and his friend, Kuljeet Singh, to gain the trust of the Prosecutrix.

28. On 01.08.2017, they got into consensual relationship. In the month of August, 2017, they met in Rose Garden where he groped her and kissed her. He also inserted his finger in her vagina. He continued meeting her and doing fingering/groping/kissing till the year 2020. In the year 2020 in October-November, the Applicant told her that it was important for him to have sexual intercourse before the age of 25.

29. The Prosecutrix fell in his trap. He took her to a Hotel in Mahipalpur where they had consensual intercourse. He made a video without her consent/knowledge. Thereafter, they had sexual relationship multiple times and the Applicant made her videos.

30. In the year 2023, they started developing differences because of his lies. She came to know that the Applicant was playing bluff games with her and was not a stable person. She tried to distance herself from him but the



Applicant started abusing her and threatening to kill her and her family members, if she distanced herself. He sent her an obscene video and threatened to send the same on social media, relatives, friends etc.

31. Thereafter, the Applicant has made the Complaint dated 26.03.2024 out of which FIR No. 71/2024 dated 26.03.2024 under Section 376/506 IPC and Section 6 of POCSO Act, has been registered at Police Station Safdarjung Enclave.

32. While considering the Bail, it may not be appropriate to consider the testimony of the Prosecutrix, her father and the independent witness in detail but it cannot be overlooked that the testimony of three material witnesses, has already been recorded.

33. The date of birth of the Prosecutrix is 05.08.2002. She came in contact with the Applicant for the first time in the year 2017 when she was about 15 years old. The Applicant was the Tuition Teacher in the Coaching Centre that was being run by him where the Prosecutrix had gone for the coaching.

34. In the Coaching Centre, they met and thereafter developed a relationship whereby they started going out to Rose Garden, Hauz Khas and other places. According to the Prosecutrix, the allegations are that during the period from 2017 to 2020 (that is the time when she attained majority) he was groping, kissing and inserting his finger in her vagina.

35. It is only in 2020, after she attained a majority that she was weighed by his assertions that he must have sexual intercourse before he turns 25 years and consequently, was taken to a Hotel in Mahipalpur where they had consensual relationship. According to her, he continued to do so, multiple



times under the threat of having prepared her obscene videos, which he threatened to forward to put in the social media and forwarded to her friends and relatives.

36. The Prosecutrix attained the age of 20, despite which the Applicant continued to her sexual relationship with her till 2024 when she finally made the Complaint on which the FIR has been registered. There is much evidence to explain their relationship by way of Facebook and WhatsApp Chats. However, this is not the appropriate stage to go into the merits of the Prosecution Case.

37. The Chargesheet already stands filed. There are 16 Prosecution witnesses, out of which the three material/public witnesses including the Prosecutrix has already been recorded. The 13 Prosecution witnesses, who remain to be examined, are of the record and documents and are official witnesses. Essentially, the evidence that remains to be proved is documentary or official. the Applicant is in judicial custody, since 26.03.2024, and the trial may take some time to get concluded.

38. Therefore, considering the totality of circumstances, the accused is granted Regular Bail, on the following terms and conditions:

- a) The Petitioner/Accused shall furnish a personal bond of Rs.35,000/- and one surety of the like amount, subject to the satisfaction of the learned Trial Court.
- b) The Petitioner/Accused shall appear before the Court as and when the matter is taken up for hearing;



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- c) The Petitioner/Accused shall provide his mobile number/changed mobile number to the IO concerned which shall be kept in working condition at all times;
 - d) The Petitioner/Accused shall not indulge in any criminal activity and shall not communicate or intimidate the witnesses.
 - e) In case the Petitioner/Accused changes his residential address, the same shall be intimated to learned Trial Court and to the concerned I.O.
39. The copy of this Order be communicated to the concerned Jail Superintendent, as well as, to the learned Trial Court.
40. The Bail Application is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 15, 2025/RS