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

+ **CRL.M.C. 2817/2019 & CRL.M.A. 11354/2019**

BABY B***

.....Petitioner

Through: Mr. Amanpreet Singh, Mr. Ishaan Karki, Mr. Shiva Mehrotra, Ms. Shivangshi Mitra and Ms. Rishika Rishabh, Advocates.

Versus

STATE OF NCT OF DELHI & ANR

.....Respondents

Through: Mr. Mukesh Kumar, APP for the State.
SI Ankit Sagar, PS: Neb Sarai.
Mr. Prashant Mendiratta and Mr. Arjun Sharma, Advocates for R-2.

+ **CRL.M.C. 2818/2019**

BABY B***

.....Petitioner

Through: Mr. Amanpreet Singh, Mr. Ishaan Karki, Mr. Shiva Mehrotra, Ms. Shivangshi Mitra and Ms. Rishika Rishabh, Advocates.

Versus

RAKESH KUMAR GUPTA & ANR

.....Respondents

Through: Mr. Mukesh Kumar, APP for the State.
SI Ankit Sagar, PS: Neb Sarai.
Mr. Prashant Mendiratta and Mr. Arjun Sharma, Advocates for R-2.



CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **31.07.2025**

1. The Petitioner, by way of CRL.M.C. 2818/2019 under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973¹, seeks cancellation of bail granted to the Accused/Respondent No. 2 on 24th December, 2018 by the ASJ-01 Special Court (POCSO), South District, Saket Courts, New Delhi. Parallely, by way of CRL.M.C. 2817/2019 filed under Section 482 of CrPC, he assails the subsequent order dated 25th March, 2019 in S.C. No. 725/2018 titled ***State v. Rakesh Kumar Gupta***, whereby permission was granted to the Accused to travel abroad during the pendency of the trial.

Factual Matrix

2. Briefly stated, upon perusal of the chargesheet, the facts of the present case are as follows:

2.1. The FIR was registered on the basis of a complaint lodged by the Petitioner/Complainant, who was of 16 years at the time of the complaint. She stated that during her visit to India, as part of a student exchange programme between her school in France and partner schools in India, she was residing at the residence of the Accused, having been paired with his daughter under the said programme.

2.2. The Complainant alleges that on 18th October, 2018, at around 8:00 PM, while she was packing her belongings for an upcoming trip to Jaipur, the Accused entered her room and began advising her about the trip. During

¹ "CrPC"



the course of the conversation, he moved closer to her, hugged her, and said, “*don’t worry, it is going to be okay*”. She initially could not comprehend his intentions. It is further alleged that the Accused then held her shoulder and attempted to touch her chest while saying, “*good girl*”. He proceeded to hug her tightly in a manner that made her uncomfortable, and which caused her pain. The Complainant further alleges that the Accused took her hand and forcibly tried to place it between his legs. Although she attempted to withdraw her hand, the Accused persisted. As he left the room, the Accused allegedly turned back to look at her, and she noticed that he appeared visibly aroused. The incident left the Complainant traumatised. The following day, while enroute to Jaipur with her classmates and teachers, she broke down and disclosed the incident to one of her teachers, who subsequently informed the Embassy.

2.3. On 23rd October, 2018, the subject FIR was registered under Section 8 of the Protection of Children from Sexual Offences Act, 2012², read with Section 354 of the Indian Penal Code, 1860³. The Complainant’s statement under Section 164 of CrPC was recorded before the Metropolitan Magistrate on 24th October, 2018. Subsequently, on 29th October, 2018, at the request of the DCP (South), a Look-Out Circular⁴ was issued against the Accused.

2.4. On 30th October, 2018, based on an application moved by the State, Non-Bailable Warrants⁵ were issued against the Accused, directing him to appear before the Sessions Court on 23rd November, 2018. In the meantime, the Accused filed an application for seeking pre-arrest bail, which was

² “POCSO Act”

³ “IPC”

⁴ “LoC”

⁵ “NBWs”



rejected by the Sessions Court on 31st October, 2018.

2.5. The Accused then approached this Court by filing BAIL APPLN. 2736/2018 seeking pre-arrest bail. However, the application was dismissed as withdrawn on 22nd November, 2018. Then the Accused surrendered on 25th November, 2018. He, thereafter, filed his first regular bail application before the Sessions Court, which was rejected *vide* order dated 28th November, 2018. Meanwhile, the police filed its final report under Section 173 of CrPC on 20th December, 2018. Upon consideration of the said report, the Sessions Court took cognizance of the offences under Section 354 of IPC, read with Sections 8 and 10 of POCSO Act.

2.6. The Accused, subsequently, filed a second regular bail application, which was finally allowed by the Sessions Court through the order dated 24th December, 2018. The said order granting bail is impugned in CRL.M.C. 2818/2019. Thereafter, *vide* order dated 25th March, 2019, impugned in CRL.M.C. 2817/2019, the Accused was permitted to travel abroad, subject to certain conditions, including a specific direction that he shall not travel to France without prior permission of the Court.

Contentions of the Complainant:

3. Counsel for the Complainant raises the following grounds impugning the aforementioned orders:

3.1. The allegations against the Accused are of a grave and serious nature, involving sexual assault on a minor girl aged 16 years. Given the gravity of the offence and its implications under the POCSO Act, the Sessions Court ought to have exercised caution and applied stricter scrutiny before granting regular bail.

3.2. At the time of the alleged incident, the Complainant was residing in



the Accused's home under a student exchange programme. The Accused, having been designated as her local guardian, stood in a position of trust and responsibility. It is submitted that the alleged acts constitute a gross violation of that fiduciary obligation, and the breach of such trust ought to have weighed heavily against the grant of bail.

3.3. NBWs had been issued against the Respondent, and subsequently, an LoC was also issued. These developments, it is urged, clearly suggest that the Accused posed a flight risk. The Sessions Court, however, failed to account for this material consideration at the time of granting bail.

3.4. The Accused's earlier application for pre-arrest bail had been rejected by the Sessions Court. The grant of regular bail, without sufficient change in circumstances, reflects a failure to appreciate the prior judicial reasoning and lacks cogent justification.

3.5. In his first regular bail application, the Accused had made frivolous and unsubstantiated allegations, including the suggestion that the Complainant had fabricated the incident in order to claim "molestation insurance" in her country. The Sessions Court, while rejecting the earlier application, had expressly discarded this contention. However, this critical aspect finds no mention in the order granting bail and, therefore, reflects a non-application of mind.

3.6. The Complainant is suffering from Post-Traumatic Stress Disorder⁶ arising from the incident. Her trauma has, thus far, prevented her from returning to India to participate further in the proceedings or to depose before the Trial Court.

Contentions of the Accused/Respondent No. 2:



4. On the other hand, Mr. Prashant Mendiratta, opposes the petitions and submits that:

4.1. The law governing cancellation of bail is well settled. Interference by a superior court with an order granting bail is not to be undertaken lightly and must be predicated upon cogent, supervening circumstances such as misuse of liberty, attempts to tamper with evidence, or evasion of the judicial process. Mere reference to the gravity of the offence, without more, cannot by itself justify cancellation.

4.2. The criticism that the Sessions Court failed to appreciate the seriousness of the allegations is unfounded. The impugned order, though concise, records valid and sufficient reasons for the grant of bail, including the conclusion of investigation and the filing of the chargesheet. Once investigation stood concluded and the accused was no longer required for custodial interrogation, there existed no compelling reason for continued incarceration, particularly in view of the settled principles governing grant of bail.

4.3. The contention that Respondent No. 2 posed a flight risk is wholly unfounded. It is submitted that he voluntarily surrendered before the Court after exhausting all available remedies for pre-arrest bail. Thereafter, he has participated in the proceedings diligently and has appeared before the Trial Court on each and every date without seeking exemption. There is no material on record to suggest that the Accused has attempted to evade the process of law at any point after the grant of bail.

4.4. As regards the delay in trial, it is submitted that the same is not attributable to Respondent No. 2. On the contrary, the delay primarily stems

⁶ “PTSD”



from the prosecution's inability to ensure the presence of the Complainant, who resides abroad. The record reflects that the Accused has not sought to protract the proceedings and has fully cooperated with the trial process.

4.5. As to the submission regarding the fiduciary relationship between the parties, the same was already known to the Court at the time bail was granted and does not constitute a subsequent change of circumstance. Moreover, the presumption of innocence continues to operate in favour of the Respondent until proven guilty, particularly considering that more than six years have elapsed since the date of registration of the FIR, and the trial has not reached conclusion. If the Respondent were to be kept in custody, it would amount to pre-conviction detention would be manifestly arbitrary and excessive.

4.6. The Complainant's reliance on alleged psychological trauma is disputed. It is submitted that no verified medical material has been placed on record to establish a formal diagnosis of Post-Traumatic Stress Disorder, nor is there any credible explanation on record linking the delay in her examination to such alleged trauma.

Analysis

5. The Court has considered the aforementioned contentions. Before turning to the merits of controversy, it is apposite to reiterate the well-settled principles governing the cancellation of bail. In a consistent line of precedents this Court has emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. Once bail has been granted, it should not be cancelled in mechanical or routine manner, unless there are strong and cogent reasons indicating that the concession of bail has been misused or



that the accused has attempted to subvert the administration of justice. The Supreme Court, in **Deepak Yadav v. State of U.P.**⁷, has held that cancellation of bail must rest on substantial grounds, such as post-bail conduct disclosing misuse of the concession, attempts to influence witnesses, or interference with the administration of justice. Mere seriousness of the offence or the allegation alone is not a ground to cancel bail, once liberty has been granted.

6. It would be apposite to refer to judgment of the Supreme Court in **Dolat Ram v. State of Haryana**⁸:

“4. Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

7. These principles have been reiterated in **CBI v. Subramani Gopalakrishnan**⁹:

“23. It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are,

⁷ (2022) 8 SCC 559.

⁸ (1995) 1 SCC 349

⁹ (2011) 9 SCC 296



interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

8. At the same time, it is equally well-established that the order granting bail must reflect due application of mind to the material on record and the nature and gravity of the accusations. The Supreme Court in ***Vipan Kumar v. State of Punjab***¹⁰ has emphasized as follows:

“In addition to the caveat illustrated in the cited decision(s), bail can also be revoked where the Court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system. The Court has repeatedly viewed that while granting bail, especially anticipatory bail which is per se extraordinary in nature, the possibility of the accused to influence prosecution witnesses, threatening the family members of the deceased, fleeing from justice or creating other impediments in the fair investigation, ought not to be overlooked”.

[Emphasis Supplied]

9. In the present case, the allegations set out in the FIR are of a serious nature, involving an alleged act of sexual assault on a minor. The fact that the Complainant is a foreign national who was visiting India under a student exchange programme, and was residing in the home of the Accused during

¹⁰ 2021 SCC OnLine SC 854.



the relevant period, adds a layer of sensitivity and gravity to the matter. These circumstances warranted a careful approach in assessing the application for bail.

10. The relevant portion of the impugned order dated 24th December, 2018, by which the Accused was granted bail, is extracted below:

“Submissions considered. Record perused.

As per prosecution case, the complainant/victim is a resident of France and is studying there and as a part of student exchange programme between the school of the victim and Delhi Public School, the daughter of accused had gone to the house of complainant/victims during May June 2018 and as a part of same exchange programme, the victim came to India and stayed at the house of the accused with his daughter On 18.10.2018, at around 8 pm, in the evening, when the victim was packing her bags for going to Jaipur, the accused came to her room and sexually assaulted her by touching her breast and by strongly hugging her.

On the aforesaid complaint of the victim, FIR in question u/s 354 IPC and section 8 of POCSO Act was registered. The accused was arrested in the present case on 25.11.2018 and since then he is in judicial custody i.e. for about one month. The accused is 60 years old having old age ailments and having no previous criminal antecedent. Investigation has been completed.

*In the overall facts and circumstances of the case, without commenting on the merits of the case, the application is allowed and it is directed that accused Rakesh Kumar Gupta be released on bail subject to his furnishing a personal bond in the sum of **Rs.40,000/-** with one surety of like amount. This order shall also be subject to the condition that after release on bail, the accused will not, directly or indirectly, try to contact the victim or her family members and will not tamper with the prosecution evidence in any manner.*

*Case is now fixed for arguments on charge for **21.02.2019.**”*

11. The factors that appear to have primarily weighed with the Sessions Court while granting bail were: (i) the age of the accused, and his medical condition (ii) the absence of any prior criminal antecedents, and (iii) the fact that investigation had been concluded. These are, no doubt, relevant considerations in bail jurisprudence. However, the impugned order reflects a limited engagement with the context of the allegations and does not



demonstrate any meaningful assessment of the nature or gravity of the accusation, the vulnerability of the Complainant, or the underlying fiduciary relationship alleged to exist between the parties. When dealing with an offence involving a minor, particularly under a special statute such as the POCSO Act, it is expected that the Court would apply some degree of scrutiny to the factual allegations and the surrounding circumstances, even at the stage of bail. In other words, even though investigation stood concluded at the time of the bail hearing, the overall matrix of the case, including the seriousness of the offence, the potential impact on the victim, and the risk of undermining public confidence in the administration of justice must also be weighed.

12. That said, what ultimately weighs with this Court, and dissuades it from interfering with the bail order at this stage, is the considerable passage of time since the order was passed. The bail was granted on 24th December, 2018, and nearly six years have since elapsed. During this period, the Accused has remained compliant with the terms of bail and has consistently participated in the proceedings. It is also not disputed that the Accused has travelled abroad on two occasions with prior permission and returned each time, thereby substantially dispelling any apprehension of flight risk. Furthermore, it is significant that the Complainant had already left the country at the time of lodging the FIR. The possibility of the Accused interfering with witnesses or tampering with evidence was, therefore, limited at the very threshold, and remains so today.

13. Insofar as the merits of the case is concerned, it is evident that the prosecution's case is essentially resting on the statement of the Complainant, which constitutes the primary evidence in support of the allegations. These



allegations are controverted by the Accused and therefore, the merits of the case would have to be determined by the Trial Court, on the basis of the evidence adduced by the parties during the course of trial. In such circumstances, and applying the settled principles governing cancellation of bail, as noted in the foregoing analysis, this Court is of the view that, despite the gravity of the allegations, there is no demonstrable misuse of liberty or any supervening circumstance that would warrant cancellation of bail at this stage. The record does not disclose any breach of bail conditions or conduct that would amount to subversion of the trial process. The Court, therefore, finds no compelling ground to interfere with the impugned bail order at this belated stage.

14. As regards the impugned order dated 25th March, 2019 permitting the Accused to travel abroad, the record indicates that the Accused has availed of such permission on two occasions and has returned to India in compliance with the conditions imposed. This conduct significantly mitigates the apprehension of flight risk. The Court also notes that a specific condition was incorporated in the said order restraining the Accused from travelling to France without prior permission, an embargo to which the Accused has raised no objection. Having regard to the above, and in the absence of any violation of the conditions imposed, this Court finds no ground to interfere with the said order at this stage.

15. It is also pertinent to note that in CRL.M.C. 2818/2019, this Court had, by order dated 7th April, 2025, directed the Sessions Court to submit a report indicating the status of the trial. Pursuant thereto, a progress report has been received. As per the said report, four witnesses have been examined and cross-examined, and one additional witness has been partly



examined. The report further records that the examination of the Complainant and the Counsel Head of Chancery, Embassy of France in India, is still pending due to their unavailability. It appears that the Counsel Head of Chancery has since returned to France and is no longer in a position to depose in India, as confirmed by the Embassy's communication dated 7th December, 2023. The Complainant, who is a permanent resident of France, has also expressed her inability to travel to India for recording of testimony, citing, *inter alia*, financial constraints.

16. In view of these circumstances, the Sessions Court, *vide* order dated 28th December, 2024, allowed the Complainant's testimony to be recorded *via* video conferencing. Directions were accordingly issued to the Ministries of Law and Justice and Home Affairs to initiate a formal request to the Embassy of India in France for appointing a coordinator to facilitate the requisite arrangements. However, despite such directions, the necessary coordination could not be effectuated. The Sessions Court issued further directions on 7th December, 2024, but the Complainant remains unserved, primarily due to procedural non-compliance with the guidelines issued by the concerned Ministries.

17. In view of the foregoing, and in the interest of expeditious disposal of the trial, the Union of India, through the Ministry of Law and Justice and the Ministry of Home Affairs, is directed to take all necessary and effective steps to facilitate the recording of the Complainant's testimony through video conferencing, at the earliest. The concerned Ministries shall coordinate with the Embassy of India in France to ensure compliance with the procedural requirements and to appoint a liaison officer, if necessary, to assist in securing the Complainant's appearance. A compliance report in this



regard shall be furnished before the Trial Court within a period of six weeks from today.

18. The present petitions are disposed of, along with pending application(s), if any.

SANJEEV NARULA, J

JULY 31, 2025/d.negi