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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1787/2025 & CRL.M.A. 14414/2025,
CRL.M.A. 14415/2025

ANASH

.....Applicant

Through: Mr. Kamlesh Kumar
Mishra, Mr. Ahsan Sanjar,
Ms. Arpita Singh, Ms.
Pragya Jaishwal & Mr.
Himanshu, Advs.

versus

STATE OF NCT OF DELHI
AND ANR.

.....Respondents

Through: Ms. Kiran Bairwa, APP
for the State
SI Bharti, PS- Wazirabad

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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08.05.2025

1. The present application is filed seeking pre-arrest bail in FIR No. 130/2025 dated 18.03.2025, registered at Police Station Wazirabad, for offences under Section 64(2)(m) of the Bharatiya Nyaya Sanhita, 2023 and Section 6 of the Protection of Children from Sexual Offences Act, 2012.

2. The FIR was registered pursuant to a complaint given by the mother of the victim stating that her daughter, who is sixteen-and-a-half-years old, had complained that she is having pain in her stomach. It is alleged that on being asked, the victim told the complainant that the applicant had been in friendly terms with her from the last two years and he had established physical relations with her in the month of February. When the MLC was conducted, the pregnancy test was found to be negative.



3. The learned counsel applicant submits that the applicant is innocent and he has been falsely implicated in the present case to coerce him and his family into meeting unlawful monetary demands.

4. He submits that the complainant's family has a notorious reputation for falsely implicating people as well.

5. He further submits that the applicant is young and his custodial interrogation is not required in the present case.

6. *Per contra*, the learned Additional Public Prosecutor for the State opposes the grant of bail to the applicant. She submits that the allegations are serious in nature and the matter is at a nascent stage.

7. She further submits that non bailable warrants have been issued against the applicant and the applicant has not cooperated in the investigation.

8. I have heard the learned counsel and perused the case diary, including the statement given by the victim.

9. It is trite law that the power to grant a pre-arrest bail is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of ***State of A.P. v. Bimal Krishna Kundu*** : (1997) 8 SCC 104, held as under:

"8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

"5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal."



9. Similar observations have been made by us in a recent judgment in *State v. Anil Sharma* [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

“The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.”

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”

10. The victim is stated to be sixteen and a half years of age and she has categorically stated in her statement that the applicant had established physical relations with her. It is stated that the physical relations were established for the first time in the month of February- March, 2025. It is further narrated that she was also taken to a hotel and the applicant again established physical relations with her despite the victim saying that they should not establish any physical relations without getting married. The victim has further stated that she missed her periods and later found out through a pregnancy test that she was pregnant. She stated that the applicant, on being informed that



the victim is pregnant, gave her pills.

11. Although the victim, in her statement, said that she does not want any legal action against the applicant, even if it is presumed that physical relations were established with the consent of the victim, the allegations would still *prima facie* fall within the definition of 'rape' as the victim was not even seventeen years of age at the time when sexual relations were established. The consent of a minor is of no consequence.

12. At this stage, it does not appear that the applicant has been falsely implicated in the present case with an intention to injure or humiliate him.

13. It is also to be kept in mind that the investigation is currently at a nascent stage. The considerations governing the grant of pre-arrest bail are materially different than those to be considered while adjudicating the application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation is carried out by the investigating agency.

14. It is stated that the applicant has not cooperated with the investigation and non-bailable warrants have been issued against him. Granting pre-arrest bail to the applicant would undoubtedly impede further investigation. An order of pre-arrest bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

15. In such circumstances, considering the serious nature of allegations which include assertions in regard to the applicant giving pills for termination of pregnancy to the minor victim as well as the stage of investigation and non-cooperation of the applicant, the applicant is not entitled to any relief at this stage.



16. The present application is, therefore, dismissed.
17. 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.

AMIT MAHAJAN, J

MAY 8, 2025
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