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

+ **BAIL APPLN. 1845/2025, CRL.M.A. 14929/2025**

SHIV SHAMBHU @LADDU

.....Petitioner

Through: Mr. Birendra Kr. Pandey, Mr. Ganesh Mishra and Mr. Deepak, Advocates.

versus

THE STATE OF NCT OF DELHI THROUGH SHO NARAINA

.....Respondent

Through: Mr. Hemant Mehla, APP for State.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **25.07.2025**

1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (corresponding to Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in the proceedings arising from case FIR No. 71/2021 dated 30th March, 2021, registered under Sections 342 and 376 of the Indian Penal Code, 1860³ and Section 6 of the Protection of Children from Sexual Offences Act, 2012⁴ at P.S. Naraina, Delhi. Pursuant to investigation, a chargesheet has been filed against the Applicant for offences under Sections 342, 376AB, and 506 of IPC, along with Section 6 of POCSO Act.

¹ "BNSS"

² "CrPC"

³ "IPC"

⁴ "POCSO"



Factual Matrix

2. The case of the prosecution, in brief, is as follows:

2.1. On 29th March, 2021, the Complainant, i.e., the victim's father, lodged a complaint stating that his daughter, aged about 4 years at the time, had stepped out of the house around 4:00 PM to play outside. When she did not return for a considerable period, he began searching for her. After some time, the child was seen coming out of the room of the Applicant, who resided in the same building. Upon inquiry, his daughter stated that the Applicant had taken her with him and given her a doll. The victim later informed her mother about the incident and disclosed that the Applicant had committed a wrongful act upon her.

2.2. On the same day, a medical examination of the victim was conducted at Deen Dayal Upadhyay Hospital, Delhi, and was recorded *vide* MLC No. 141/2021. The report noted similar allegations as stated by the victim earlier. Based on the statement of the victim's father and the MLC findings, the present FIR was registered at P.S. Naraina, Delhi. Consequently, the Applicant was taken into judicial custody on 30th March, 2021.

2.3. During the course of investigation, the victim's statement was recorded under Section 164 of CrPC before the Trial Court on 31st March, 2021, wherein she reiterated the version recorded in the MLC as well as her earlier statement under Section 161 of CrPC. On the basis of the FIR, the chargesheet stands filed, and charges have been framed against the Applicant on 28th May, 2022.

Contentions of the Applicant

3. Counsel for the Applicant urges the following grounds for seeking bail:



3.1. The Applicant has been falsely implicated and that no credible evidence exists to establish his involvement in the alleged offence. The chargesheet does not disclose a *prima facie* case for the commission of offences under Sections 376AB and 342 of IPC. Pertinently, the victim, in her deposition before the Trial Court on 8th January, 2024, failed to identify the Applicant as the perpetrator. Moreover, there are material improvements in the version of events narrated by the victim's father in his statement recorded under Section 164 of CrPC, when compared with his earlier statement under Section 161 of CrPC. Such inconsistencies cast doubt on the credibility of the prosecution's case.

3.2. The Applicant has been in judicial custody since 30th March, 2021. Despite the passage of more than four years, only one witness has been examined to date, and the trial is proceeding at an inordinately slow pace. In such circumstances, continued incarceration of the Applicant, amounts to pre-trial punishment.

3.3. The key witness i.e., the victim, has already been examined before the Trial Court, substantially mitigating any risk of witness tampering. Moreover, the investigation in the matter is complete and the chargesheet has already been filed. Therefore, the continued custody of the Applicant is not necessary for the purpose of investigation or any other proceedings. The Applicant has no criminal antecedents and that his parents are aged and ailing, having no one to look after them. The Applicant is not likely to abscond or evade the legal process, if enlarged on bail.

3.4. In support of the bail plea, Reliance is placed on the order dated 22nd April, 2024 passed by the Supreme Court in SLP (CRL.) No. 15182/2023, wherein bail was granted to the accused despite the existence of



incriminating DNA evidence. The Supreme Court, in granting relief, took note of the fact that the accused had no prior antecedents and that the prosecutrix had already been examined during trial, thereby reducing the risk of witness tampering or flight.

Contentions of the State

4. On the other hand, Mr. Hemant Mehla, APP for the State, opposes the present bail application and advances the following submissions:

4.1. The alleged offences against the Applicant are of an extremely heinous and grave nature, especially the offence under Section 376AB of IPC (which provides the punishment for aggravated penetrative sexual assault on a child below 12 years). The victim was only 4 years old at the time of the incident, making the offence all the more shocking and deserving of highest degree of judicial scrutiny.

4.2. The MLC received from DDU Hospital records a detailed history consistent with the victim's initial statements. Following the medical examination, relevant exhibits were sent for forensic analysis. The DNA report reveals that the profile generated from the Applicant's blood sample matches the DNA recovered from the victim's clothing. These findings lend substantial corroboration to the prosecution's case and establish, at the very least, a *prima facie* nexus between the Applicant and the offence.

4.3. Although the testimony of the child has been recorded, the prosecution is yet to examine other crucial witnesses, including the parents of the victim. In these circumstances, it is submitted that enlarging the Applicant on bail may compromise the integrity of the proceedings, as there remains a real and tangible apprehension of witness tampering or undue influence being exerted by the Applicant.



Analysis

5. The Court has considered the rival submissions and the material on record. It is a well-established principle that, while considering an application for bail, 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.⁵ In the present case, the allegations in the FIR pertain to a grievous incident involving a child who was merely 4 years old at the time. Such offences strike at the conscience of society and warrant a cautious approach and circumspection in the exercise of the Court's discretionary power to grant bail.

6. It is trite law that, at the stage of considering bail, the Court is not required to weigh evidence with the rigour reserved for a trial, as doing so would make the bail proceedings akin to a mini-trial.⁶ This is particularly relevant, especially since a detailed analysis of witness testimonies may result in prejudice to either party. However, since the Applicant has placed substantial reliance on the testimony of the victim to argue that her failure to identify the Applicant in court casts doubt on the prosecution's case, the Court is constrained to make a limited observation. It is noted that while the victim did not *prima facie* name the Applicant during her examination-in-chief, she subsequently named the Applicant and described the incident in detail during her cross-examination. It is settled law that the testimony of a

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

⁶ See also: *Brijmani Devi v. Pappu Kumar & Anr.*, (2022) 4 SCC 497 and *Mahipal v. Rajesh Kumar @*



witness must be read as a whole and not dissected in compartments to suit either party's narrative. The Supreme Court has consistently held that a detailed examination of evidence is unwarranted at the stage of bail, and if *prima facie* material exists, the Court must exercise restraint in granting the liberty of bail, especially in cases of heinous nature. Consequently, no inference of exoneration can be legitimately drawn from a selective or partial reading of her testimony at this stage.

7. In evaluating the question of bail, the Court is also required to accord due weight to the scientific and corroborative material gathered during the course of investigation, particularly in cases involving child victims, where testimonial inconsistencies may arise from developmental or emotional constraints. The MLC prepared by DDU Hospital records a consistent account provided by the child to her parents. The chargesheet further records that semen traces found on the victim's clothes were subjected to DNA profiling, which revealed a genetic match with the Applicant's blood sample. In the *prima facie* assessment of this Court, such forensic findings constitute compelling scientific evidence that materially reinforces the prosecution's case. At the present stage, where the threshold is not that of conclusive proof but of reasonable grounds to believe the accused's involvement, the existence of this corroborative material assumes significant weight and cannot be disregarded.

8. As for the Applicant's reliance on the order of the Supreme Court in SLP (CRL.) No. 15182/2023, it is pertinent to highlight that the observations in that case are confined to the specific factual matrix of that case. While prolonged incarceration is indeed a material consideration for the Court, the

Polia, 2020 (2) SCC 118



Supreme Court in the said order clearly stated that, “*after having perused the evidence of the prosecutrix, we are of the view that the Applicant is entitled to be enlarged on bail pending trial...*” [SIC]. Such a finding was evidently based on the strength, or lack thereof, of the evidence in that particular matter. In contrast, in the present case, this Court is of the considered opinion that the cumulative weight of the victim’s testimony and the scientific evidence on record establishes a strong *prima facie* case against the Applicant.

9. Having regard to the totality of circumstances, including the gravity of the allegations, the nature of the offence, and the stage of the trial, this Court is not persuaded to grant bail to the Applicant at this juncture. The testimonies of key prosecution witnesses, including the victim’s parents, remain to be recorded, and there exists a substantial likelihood of the Applicant attempting to influence or interfere with the course of justice. In view of these factors, the Court finds no justifiable ground to enlarge the Applicant on bail.

10. Dismissed, along with any pending application(s).

SANJEEV NARULA, J

JULY 25, 2025

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