



\$~3

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

+ **BAIL APPLN. 2291/2024**

AJAY

.....Petitioner

Through: **Mr. Sachin Pahwa, Advocate**

versus

STATE NCT OF DELHI

.....Respondent

Through: **Mr. Mukesh Kumar, APP for the State with Mr. Karandeep Singh, Advocate along with SI Akansha, PS Maidan Garhi, New Delhi**
Mr. Zeeshan Diwan, Advocate (DHCLSC) with Mr. Harsha, Mr. Krisha Dutta Multani, Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

03.02.2025

%

1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (erstwhile Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in proceedings arising from FIR No. 116/2023 registered under Section 376 of the Indian Penal Code, 1860³ and Section 6 of Protection of Children from Sexual Offences Act, 2012⁴ at P.S. Maidan Garhi. Subsequently, a chargesheet was filed and the

¹ "BNSS"

² "Cr.P.C."

³ "IPC"

⁴ "POCSO Act"



Petitioner has been charged with offences under Section 376 of IPC and Section 6 of POCSO.

2. A copy of the status report has been handed over across the Board and taken on record.

3. In brief, the case of the prosecution is as follows:

3.1. A complaint was received from Ms. 'K' stating that she is studying in 11th class. She stated that she knows Mr. Ajay (Petitioner) since last five years as she used to go for tuition at the Petitioner's house where she developed a relationship with him. On the pretext of the promise to marry, the Petitioner started having physical relationship with the Prosecutrix, since 2020, at the time when she was a minor. The most recent instance was in 2023. The Petitioner refused to marry her.

3.2. On the basis of aforementioned, investigation was carried out in the instant FIR, which led to the filing of the chargesheet. Charges have been framed against the Petitioner under Section 376 of IPC read with Section 6 of POCSO Act.

3.3. During investigation, medical examination of Ms. 'K' was conducted at AIIMS Hospital, New Delhi through MLC No. 1880/23 dated 22nd March, 2023 whereby it was recorded "*Pt giving history of sexual intercourse with her boyfriend Ajay, 25 years, first in 2020 and then on many occasions, last in February 2023.*" The Prosecutrix had refused for internal gynae examination. On the same day, the medical/potency test of the Petitioner was also conducted through MLC No. 1885/23 at AIIMS Hospital, New Delhi.

3.4. Statement of the Prosecutrix under Section 164 of Cr.P.C. was recorded wherein she reiterated her version as noted in the FIR.



3.5. Prosecutrix provided a copy of her 10th Class Marksheet wherein her date of birth is 1st January, 2005, implying that she was 15 years old at the time of the first incident in September, 2020.

3.6. Petitioner's earlier request seeking regular bail was dismissed by the Sessions Court, Saket through order dated 24th May, 2024.

4. In the above background, counsel for Petitioner submits that the Petitioner has been incarcerated since 22nd March, 2023. He submits all the material/key witnesses have been examined and discharged and accordingly, there is no possibility of the Petitioner influencing the witnesses or tampering with any evidence. On merits, he submits that the Petitioner has been falsely implicated. The instant FIR was registered in 2023 for an offence Section 6 of POCSO Act in relation to a time when she was allegedly minor. There is no explanation whatsoever for the delay in registering the instant FIR except for the vague allegation that the Petitioner had been coercing her not to register the FIR. He further points out that the Prosecutrix has since married and is now living at a different occasion.

5. Mr. Mukesh Kumar, APP for the State and Mr. Zeeshan Diwan, counsel for the Prosecutrix strongly opposes the request made by the Petitioner. They submits that the allegations and offence for which the Petitioner has been charged with are serious in nature and therefore, the Petitioner's request ought not to be granted. It is also pointed out that trial is approaching to conclusion and only Investigating Officer is left to be examined. Thus, there is a strong risk that the Petitioner will not comply with the bail conditions.

6. On merits, they submit that the testimony of the Prosecutrix is in consonance with her statement made initially under Section 161 and 164 of



Cr.P.C. The Petitioner has not been able to establish his innocence in the trial. Further, since the trial is nearly at the stage of conclusion, the Petitioner should await the decision of the trial.

7. The Court has considered the afore-noted contentions. The Petitioner has been in custody since 22nd March, 2023. Two prosecution witnesses are yet to be examined in the trial proceedings. As per the allegations in the FIR, the entire case of the prosecution hinges on the sole testimony of the Prosecutrix, who is alleging an unfulfilled promise to marry. Notably, there is no other scientific evidence to support her testimony. Although the Prosecutrix has made allegations with respect to the physical relationship pertaining to the year 2023, however, for the offence under Section 6 of POCSO Act, the period specified is of the year 2020. In this regard, the delay is only sought to be explained on the basis of the alleged coercion by the Petitioner dissuading her for making the complaint. These are questions of fact that must be examined and establish in trial.

8. As regards the apprehension of the prosecution that the Petitioner may abscond if released on bail, in the opinion of the Court, sufficient conditions can be imposed so as to mitigate this possibility.

9. In view of the above, the present application is allowed and the Petitioner is, therefore, directed to be released on bail on furnishing a personal bond for a sum of INR 25,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court, on the following conditions:

a. The Petitioner shall cooperate in any further investigation as and when directed by the concerned IO;



- b. The Petitioner 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;
 - c. The Petitioner shall not contact the Prosecutrix or any of her family members;
 - d. The Petitioner shall under no circumstance leave the country without the permission of the Trial Court;
 - e. The Petitioner shall appear before the Trial Court as and when directed;
 - f. The Petitioner 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 Petitioner shall not reside within 5 km radius of the residence of the Prosecutrix and shall also furnish proof of his residence to the concerned IO. The Petitioner shall also not move in the vicinity of the Prosecutrix in any manner;
 - h. The Petitioner 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 Petitioner shall report to the IO at the concerned Police Station on the first Monday of every month during the period he is on bail.
10. In the event of there being any FIR/DD entry / complaint lodged against the Petitioner, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.
11. 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.

12. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

FEBRUARY 3, 2025/ab