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

+ **BAIL APPLN. 2402/2025**

TEJ NARAYAN

.....Petitioner

Through: Mr. Neeraj Kumar Verma, Mr.
Vibhas Kumar Jha, Advocates

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Hemant Mehla, APP for the State
with SI Ambika, PS S.B Dairy
Ms. Sneha Singh, Advocate for
Victim

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
20.08.2025

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1. The present application 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. 36/2021 registered under Sections 376 and 506 of the Indian Penal Code, 1860³ and Section 4 of the Protection of Children from Sexual Offences Act, 2012⁴ at P.S. Shahbad Dairy. Subsequently, a chargesheet has also been filed under Sections 376 and 506 of IPC and Sections 4 and 6 of the POCSO Act.

2. The subject FIR came to be registered pursuant to a PCR call,

¹ "BNSS"

² "Cr.P.C."

³ "IPC"

⁴ "the POCSO Act"



received on 27th January, 2021, alleging that the Applicant, had sexually assaulted the prosecutrix. On the basis of the prosecutrix's statement recorded at the police station, the FIR was registered. The case of prosecution, emerging from the FIR and the chargesheet is summarised as follows:

2.1. The Applicant resided in the same neighbourhood as the prosecutrix, who was then about 17 years of age and would address him as 'dada'.

2.2. On 10th November, 2020, the prosecutrix was called to the Applicant's house by his granddaughter. Upon her arrival, the Applicant's wife offered her tea and thereafter left the premises. Then when the prosecutrix was about to leave, the Applicant allegedly shut the door, gagged her and committed sexual assault upon her. The Applicant then threatened to kill her father if she disclosed the incident to anyone.

2.3. The prosecutrix, constrained by fear of the Applicant's threats, did not disclose the incident to anyone at the time. When she missed her menstrual cycle, her mother consulted a doctor. An ultrasound examination on 24th January, 2021 revealed that the prosecutrix was approximately 14 weeks pregnant. On being confronted, she narrated the incident to her mother.

2.4. On 27th January, 2021, the mother of the prosecutrix made a PCR call, and took her to the police station. She produced prosecutrix's ultrasound report indicating a gestational age of approximately 14 weeks and 4 days. She was thereafter medically examined, and found UPT positive as per the MLC and referred to BSA Hospital for further examination. Consequent thereto, the FIR was registered.



2.5. On 28th January, 2021, the Investigating Officer⁵ arrested the Applicant. He was medically examined at M.V. Hospital vide MLC No. and a potency test was also conducted, wherein the doctor opined that “there is nothing to suggest that the patient cannot perform sexual intercourse.” The Applicant was thereafter produced before the Court and sent to judicial custody.

2.6. On 30th January, 2021, the statement of the prosecutrix under Section 164 Cr.P.C. was recorded before the Court, wherein she reiterated the allegations against the Applicant.

2.7. On 1st February, 2021, the prosecutrix was produced before the Child Welfare Committee, along with her mother, where orders were passed for conducting Medical Termination of Pregnancy⁶.

2.8. Pursuant thereto, on 3rd February, 2021, the IO got the prosecutrix admitted to BSA Hospital for the MTP. On 7th February, 2021, the procedure was conducted and the abortus along with blood samples was seized by the doctor and handed over to the IO, under a seizure memo. Statements of material witnesses were recorded and the exhibits were sent to FSL, Rohini, for DNA profiling. During investigation, the IO verified the age of the prosecutrix, which reflected her date of birth as 18th April, 2004.

2.9. Upon completion of investigation, a charge sheet was filed before the Trial Court. Charges were framed against the Applicant under Sections 376(2) and 506(II) IPC and Section 6 of the POCSO Act. During trial, all witnesses were examined. The FSL report opines that the Applicant was the biological father of the foetus.

⁵ “IO”

⁶ “MTP”



2.10. The Applicant's previous Regular Bail application has been dismissed by the Sessions Court vide order dated 1st May, 2025.

3. Counsel for the Applicant makes the following submissions in support of the present Application:

3.1. The Applicant has been falsely implicated in the present case. The case arises out of an altercation between him and the grandfather of the prosecutrix regarding a monetary dispute and the FIR has been lodged out of malice.

3.2. The charge sheet in the present case has already been filed and the investigation stands concluded. Material prosecution witnesses have also been examined. Therefore, it is argued that the continued incarceration of the Applicant is no longer necessary, as there is no possibility of his tampering with evidence or influencing witnesses.

3.3. There are material inconsistencies regarding the age of the prosecutrix. Attention is drawn to the existence of two birth certificates, one issued by the MCD reflecting her date of birth as 18th April, 2004, and another issued by the Government of Bihar which records her date of birth to be 18th April, 2002, which would make her a major at the time of the alleged incident. In fact, the prosecutrix's mother, during her cross-examination, admitted this discrepancy.

3.4. The FSL report pertaining to the foetus is unreliable, as the sample, though sealed on 7th February, 2021, was deposited with FSL, Rohini only on 12th March, 2021, nearly one month, casting doubt on its integrity.

3.5 The Applicant is 57 years of age and has already undergone incarceration for a period of more than four years.

4. On the other hand, Mr. Hemant Mehla, APP for the State, strongly



opposes the application on the following grounds:

4.1. The allegations against the Applicant are of a grave and heinous nature, involving the sexual assault of a minor girl.

4.2 The birth certificate sought to be relied upon by the Applicant, purportedly issued by the Primary Health Centre, Sonbarsa, District Saharsa, Bihar, was duly verified by the State. In response to the verification query, the said Primary Health Centre has categorically denied issuance of the certificate, rendering it inauthentic.

4.3. On the other hand, the birth certificate relied upon by the prosecution, reflects the date of birth of the prosecutrix as 18th April, 2004, which establishes that she was 16 years and 7 months old at the time of the incident. The Applicant, then aged about 52 years, stood in stark age disparity to the prosecutrix, an aspect further indicative of the coercive nature of the assault.

4.4. The sexual assault led to prosecutrix's pregnancy, which is corroborated by the medical record. She underwent MTP and the foetal sample preserved during the procedure was examined by FSL. The DNA report conclusively establishes the Applicant as the biological father of the foetus, thereby directly linking him with the offence.

5. The Court has considered the aforementioned contentions. The allegations against the Applicant are grave, involving the sexual assault of a minor prosecutrix, which allegedly resulted in pregnancy. Chargesheet against the Applicant has been filed and charges under Sections 376(2) and 506(II) IPC and Section 6 of the POCSO Act have been framed.

6. At this stage, there appears to be substantial material supporting the prosecution's case. The prosecutrix, in her statement recorded under Section



164 CrPC, has specifically implicated the Applicant in the act of sexual assault. Her version finds corroboration in the medical evidence, which records that she had conceived as a result of the assault. The foetal tissue preserved after the medical termination of pregnancy was subjected to DNA profiling, and the FSL report has *prima facie* established the Applicant as the biological father. This scientific evidence, taken together with the prosecutrix's consistent testimony, provides strong *prima facie* support to the prosecution's allegations.

7. The Court is conscious that the Applicant has remained in custody for over four years and six months and that the trial is now at an advanced stage, with the prosecution evidence already concluded. Ordinarily, such factors may weigh in favour of enlarging an undertrial on bail, since pre-trial detention should not, in principle, extend beyond what is reasonably necessary. The right to personal liberty under Article 21 of the Constitution guards against punitive pre-trial incarceration. However, the assessment cannot rest on custody alone. It is equally well settled that in cases involving grave offences, particularly sexual assault of a minor, the gravity of the charge, the credibility of the material on record, and the larger societal interest are crucial considerations. In the present case, the allegations are of a serious and heinous nature, and the medical and forensic evidence, including the DNA report, lends strong *prima facie* support to the prosecution. In such circumstances, the fact that the trial is nearing completion weighs against rather than in favour of bail, as it is appropriate that the process be allowed to conclude without interruption. The length of custody, standing by itself, is insufficient to justify release at this stage.

8. The Court also cannot lose sight of the significant disparity in age



between the parties. At the time of the incident, the prosecutrix was about 16 years and 7 months old, while the Applicant was approximately 52 years of age. The protection of minors from sexual exploitation lies at the heart of the POCSO Act, and the law recognises that a child of such age is incapable of giving valid consent. The wide gulf in age and maturity between the prosecutrix and the Applicant, *prima facie* reinforces the inference of coercion and the exploitative nature of the alleged act. The age factor, when considered with the other material on record, lends added weight to the prosecution's case at this stage.

9. As regards the birth certificate relied upon by the Applicant, its evidentiary value can only be assessed during trial upon proper proof and examination. At the stage of bail, however, this Court cannot overlook that the verification conducted by the State shows the certificate purportedly issued by the Primary Health Centre, Sonbarsa, District Saharsa, Bihar, to be unauthentic. A document found to be unsupported by the issuing authority cannot be treated as credible material for the purpose of bail. The reliance placed by the Applicant on such a certificate, therefore, does not advance his case.

10. Likewise, the argument that delay in forwarding the exhibits for forensic examination undermines the reliability of the FSL report is also a matter to be tested during trial. At the stage of bail, the report, read with the medical record and other material, *prima facie* connects the Applicant with the offence and cannot be discarded on the ground of delay alone.

11. At this juncture, it is apposite to refer to the judgement of the Supreme Court in the recent case of ***Bhagwan Singh v. Dilip Kumar alias***



Deepu alias Deepak and Anr.,⁷ wherein the Court emphasised that bail is a discretionary relief, to be granted or denied based on the specific facts and circumstances of each case. The Court further delineated the factors to be taken into consideration while exercising such discretion. The relevant extracts of the aforementioned judgment are as follows:

“11. The grant of bail is a discretionary relief which necessarily means that such discretion would have to be exercised in a judicious manner and not as a matter of course. The grant of bail is dependent upon contextual facts of the matter being dealt with by the Court and may vary from case to case. There cannot be any exhaustive parameters set out for considering the application for grant of bail. However, it can be noted that:

*11.1. **While granting bail the court has to keep in mind factors such as the nature of accusations, severity of the punishment, if the accusations entail a conviction and the nature of evidence in support of the accusations.***

11.2. Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

11.3. While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought to be always a prima facie satisfaction of the Court in support of the charge.

11.4. Frivolity of prosecution should always be considered and it is only the clement of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to have an order of bail.

[Emphasis Supplied]

12. In light of the foregoing, this Court finds no ground to enlarge the Applicant on bail. Accordingly, the present bail application is dismissed. Pending application(s) are also disposed of.

13. 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

⁷ 2023 INSC 761.



the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

SANJEEV NARULA, J

AUGUST 20, 2025/ab