



\$~7

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

+ **BAIL APPLN. 2601/2024**

**ASHOK KUMAR YADAV**

.....Petitioner

Through: Mr. Surinder Tiwana, Mr. Arun  
Sharma, Mr. Sandeep Tyagi and  
Ms. Rubina, Advocates.

versus

**THE STATE (NCT OF DELHI)**

.....Respondent

Through: Mr. Mukesh Kumar, APP for State  
with Ms. Shilpa Goel and Mr. Ashish  
Kumar, Advocates with Ms. Arti  
Singh, SI, PS-Begumpur and Ms. Arti  
Jha, SI, PS-Cyber North.  
Ms. Ruchira Goel, Advocate  
(DHCLSC) for Victim with Victim's  
mother in person.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**

**14.05.2025**

%

1. The present petition under Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly, Section 439 of Code of Criminal Procedure, 1973<sup>1</sup>) seeks regular bail in FIR No. 836/2022 dated 10<sup>th</sup> December, 2022 registered under Sections 354(D)/376/506 of Indian Penal Code, 1860<sup>2</sup> and Section 4 of the Protection of Children from Sexual Offence Act, 2012<sup>3</sup> at P.S. Begumpur.

---

<sup>1</sup> "Cr.P.C."

<sup>2</sup> "IPC"

<sup>3</sup> "POCSO Act"



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

3. Briefly, the case of the prosecution is as follows:

3.1. The present FIR was registered on the complaint of Ms. "M", mother of the victim wherein she alleged that Ashok Kumar Yadav (the Applicant), who resides in the vicinity of the victim's maternal grandparents, initially contacted the victim through Instagram and persistently stalked and coerced her into meeting him. She further stated that on 1<sup>st</sup> December, 2022, the victim disclosed to her mother that on 10<sup>th</sup> October, 2022, the Applicant had taken the victim to a hotel in Sector-24, Rohini, under the pretext of watching a movie. Upon arrival, the Applicant allegedly escorted her to a room and committed forcible sexual intercourse against her will. The victim was purportedly threatened with defamation and harm to her family if she revealed the incident, and was instructed to leave the room appearing cheerful. The complaint also records that the Applicant had handed over an Aadhaar card in the name of one Babita to the victim and directed her to use the same to gain entry into the hotel. The victim gained entry in the hotel by showing the Aadhaar card provided to her by the Applicant.

3.2. During investigation, a site plan was prepared, the medical examination of the victim was conducted, and her age was verified. As per the official records, the victim's date of birth is 30<sup>th</sup> September, 2006.

3.3. The Applicant was arrested on 10<sup>th</sup> December, 2022. He underwent medical examination, and his potency test was conducted.

3.4. A mobile phone was produced by the Applicant's uncle and was seized by the police. The DVR of the hotel was also taken into possession in an attempt to retrieve CCTV footage of the incident. However, footage



pertaining to 10<sup>th</sup> October, 2022, was unavailable. Nonetheless, the DVR recovered was forwarded to the Forensic Science Laboratory for analysis.

3.5. Statements of the Complainant and the victim under Section 164 of Cr.P.C. were recorded. Both affirmed the allegations made in the FIR, with the victim further alleging repeated instances of forcible sexual intercourse.

3.6. A copy of the hotel visitor register was obtained during investigation, which reflected that an Aadhaar card belonging to Babita, the Applicant's cousin, had been used for entry. Examination of the Applicant's mobile phone revealed WhatsApp chats in which he informed Babita about the victim's age and requested her Aadhaar card to facilitate hotel entry.

3.7. Subsequently, Sections 109/34 of IPC and Sections 6/17 of POCSO Act were added in the FIR.

4. Counsel for the Applicant urged that the Applicant has been falsely implicated by the victim's mother and submits the following in support of his request for bail:

4.1. The investigation is complete, a chargesheet has been filed, and charges were framed on 10<sup>th</sup> May, 2023. Despite this, the victim's cross-examination has not concluded for over two years due to delays attributable to the prosecution, including repeated non-appearance of the Investigating Officer and the pendency of the FSL report. This is in violation of Section 35 of the POCSO Act, which mandates that the evidence of the child must be recorded within 30 days from the date of cognizance and the trial concluded within one year.

4.2. The prosecution's case hinges solely on the allegations made by the Complainant and the victim and there is no other corroborating material that has been brought forth. As per the allegations of the victim, the sexual



assault took place in a hotel room. However, the CCTV footage recorded in the DVR installed at the hotel has been forensically examined and no CCTV footage has been found.

4.3. Although the date of the alleged incident is 10<sup>th</sup> October, 2022, the FIR was registered two months later on 10<sup>th</sup> December, 2022, without satisfactory explanation for the delay.

4.4. The Applicant is 22 years old with no prior criminal antecedents. He undertakes to comply with any conditions imposed by the Court in the event that bail is granted.

5. Mr. Mukesh Kumar, APP for the State and Ms. Ruchira Goel, counsel representing the victim strongly oppose the Applicant's request for bail. They state that the allegations in the present case are of serious nature. They also point out that the victim is being threatened of dire consequences by the Applicant's family members. Since the cross-examination of the victim is yet to be concluded, there is a likelihood that the Applicant shall influence the victim if released on bail. They also state that since the FSL report is now available, the victim's cross-examination can be concluded.

6. The Court has considered the facts of the case and the submissions advanced by the parties.

7. At the outset, it must be noted that the present FIR was lodged after a delay of two months from the date of the alleged incident. While delay in lodging the FIR is not necessarily fatal, and the delay can be satisfactorily explained in the trial. Nonetheless on a *prima facie* basis, this Court finds merit in the contention of the Applicant that having regard to the nature of allegations, the delay in lodging the FIR casts doubt credibility of the version of the prosecutrix.



8. The Court is cognizant of the statutory presumption under Section 29 of the POCSO Act, which places the burden on the accused to rebut the presumption of guilt once charges have been framed. However, this presumption, though significant, does not operate in a vacuum. It must be assessed in conjunction with the surrounding factual matrix and the evolving stage of the trial. As held by this Court in ***Dharmander Singh @ Saheb v. State***,<sup>4</sup> while the rigour of Section 29 creates a presumption of guilt of the accused, Courts are nonetheless obligated to weigh several real-life considerations when deciding post-charge bail applications. These considerations are not merely ancillary but serve as crucial indicators in the judicial balancing exercise between safeguarding the interests of the victim and ensuring that an accused person is not subjected to prolonged incarceration in a case where the evidence does not inspire immediate confidence. These factors include, *inter alia*, the age of the victim and accused, the comparative age difference, nature of their relationship, presence of threats or violence, and possibility of the accused influencing the trial.

9. Applying these parameters to the present case, the victim was approximately 16 years old at the time of the incident, while the Applicant was around 20 years of age. The age gap between the two is not so stark as to immediately suggest predatory intent. Moreover, there is no allegation of kidnapping or coercive confinement. On the contrary, the victim is alleged to have accompanied the Applicant to a hotel, and it is not in dispute that she gained entry using an Aadhaar card bearing the name of another person. Whether this was done by her voluntarily or under the Applicant's influence

---

<sup>4</sup> 2020:DHC:2838



is a question that will be determined at trial, but the fact remains that she entered the premises on her own accord and signed the register herself in the name of Babita. These circumstances, while not exculpatory, do cast a degree of ambiguity over the allegation of forcible sexual assault.

10. Pertinently, the prosecution's case is built almost entirely on the sole testimony of the victim. There are no independent witnesses, and despite efforts to retrieve CCTV footage from the hotel premises, none was found for the relevant date. The absence of corroborative evidence is not fatal, particularly in cases of sexual offences, but it does assume relevance at the stage of bail when the presumption under Section 29 is to be balanced with the overall strength of the prosecution's case.

11. It is also relevant to note that the Applicant has no prior criminal antecedents and has remained in custody since 10<sup>th</sup> December, 2022. Charges have been framed, and the trial is underway, but the victim's cross-examination remains incomplete, primarily due to procedural delays rather than any attempt by the Applicant to delay or subvert the process.

12. In light of the above discussion, this Court is of the *prima facie* opinion that the Applicant has made out a case for grant of regular bail. The unexplained delay of two months in the lodging of the FIR, the absence of CCTV footage or independent corroboration, the age proximity between the parties, and the lack of any overt influence or threat emanating from the Applicant himself weigh in favour of exercising discretion in his favour.

13. The Applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of INR 25,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:



- a. The Applicant 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;
  - b. The Applicant shall not contact the victim or any of her family members;
  - c. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;
  - d. The Applicant shall appear before the Trial Court as and when directed;
  - e. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
  - f. The Applicant shall not reside within 3 km radius of the residence of the victim and shall also furnish proof of his residence to the concerned IO. The Applicant shall also not move in the vicinity of the victim or the victim's maternal grandmother in any manner;
  - g. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
  - h. The Applicant shall report to the concerned PS on first Monday of every month.
14. In the event of there being any FIR/DD entry / complaint lodged against the Applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.



15. 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.

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

**SANJEEV NARULA, J**

**MAY 14, 2025**

*nk*