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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 2708/2025 & CRL.M.A. 21048/2025

MANISH TANWAR

.....Applicant

Through: Mr. Vineet Jain, Adv.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP
for the State with SI
Pushpa, PS Nabi Karim.
Mr. Girish Kumar and Mr.
Sushant Singh, Adv. for
the victim / complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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16.10.2025

1. The present application is filed seeking regular bail in FIR No. 454/2024 dated 30.11.2024, registered at Police Station Nabi Karam, for the offences under Sections 74/75/351(3) of the Bharatiya Nyaya Sanhita, 2023 ('BNSS') and Section 8 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').
2. Briefly stated, it is alleged that the prosecutrix was searching for a job and the applicant's phone number was given to her by an acquaintance in this regard. It is alleged that when the prosecutrix called the applicant, he told her that he will get her a job and asked her to come to his residence. On 30.11.2024, at around 9:30AM, when the prosecutrix reached the residence of the applicant, on the stairs leading to the 1st floor, the applicant



allegedly told the prosecutrix that he will get her a job but asked as to what she could do for him. It is alleged that the prosecutrix told the applicant that she was still a minor, however, the applicant pulled her towards him forcibly, hit her chest and also touched her private part inside her pyjama. When the prosecutrix objected to the same and made noise, the applicant threatened her with dire harm. The prosecutrix informed her mother about the same, who came to the spot and called the police.

3. During investigation, the prosecutrix identified the alleged house and corroborated the allegations in her statement under Section 183 of the Bharatiya Nyaya Suraksha Sanhita, 2023. The prosecutrix further alleged in her statement that the applicant had inserted his finger in her private parts. Pursuant to the same, Section 64 of the BNS and Section 4 of the POCSO Act were added to the case.

4. The CDR analysis revealed that the prosecutrix had called the applicant once on 26.11.2024 and the CCTV footage reflected the victim's presence at the alleged spot of incident.

5. The applicant was arrested on 02.01.2025 and is in custody since then.

6. The learned counsel for the applicant submits that the applicant is innocent and he has been falsely implicated in the present case due to some personal animosity.

7. He submits that the allegations earlier pertained to only sexual assault, however, the prosecutrix has significantly improved upon her case and made allegations in relation to penetrative sexual assault subsequently. He submits that the allegations have been made with the sole purpose of implicating the applicant.



8. He submits that the conduct of the prosecutrix is also unusual as it is alleged that she went to the applicant's house, whom she had never met in her life after merely one phone call that took place four days before the incident. He submits that the prosecutrix randomly showed up at the applicant's house without informing him so as to entrap him in the false case.

9. He submits that the conduct of the mother of the prosecutrix who dropped her at the residence of the applicant, who was unknown to them is also suspect.

10. He further submits that the incident is alleged to have occurred at 9:30 AM but the PCR call was made belatedly at 1:30PM. He further submits that the incident took place in a highly congested area, despite which, no public witnesses were found by the prosecution to corroborate the allegations. He submits that there is some discrepancy in the location of the prosecutrix and the applicant as well, and the applicant at the relevant time had gone to meet his in-laws after attending an RWA meeting .

11. He submits that the video footage merely captures the prosecutrix near the place of the incident and the same does not corroborate the allegations of sexual assault.

12. He submits that the matter had been adjourned for the purpose of completion of the examination of the prosecutrix. He submits that although the prosecutrix was partly cross-examined, however, she did not appear before the Court on the last date.

13. He submits that the prosecutrix is alleged to be a minor on the basis of her school/ education certificate, which cannot be the basis for determination of age, and in the absence of any other material on record, she ought to be considered as a major.



14. He submits that the applicant has been in custody for more than ten months and the matter is at the stage of prosecution evidence.

15. *Per contra*, the learned Additional Public Prosecutor ('APP') for the State vehemently opposes the grant of any relief to the applicant on account of gravity of allegations. She submits that the cross-examination of the victim is yet to be concluded and the applicant is involved in another case for the offence under Section 308 of the Indian Penal Code, 1860.

16. She submits that the retrieved CCTV footage shows the victim rushing out of a *gali* near the place of the incident and her conduct reflects that something untoward may have happened. She submits that the CDR reflects that the victim had called the applicant on 26.11.2024.

17. The learned counsel for the victim seconds the arguments addressed by the learned APP and further submits that the prosecutrix apprehends that the applicant may try to threaten her if he is enlarged on bail.

18. He points out that this Court had dismissed the applicant's pre-arrest bail on merits after considering all the facts of the case, and no case is made out for granting any liberty to the applicant.

19. I have heard the counsel and perused the record.

20. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the



witnesses being threatened; etc. However, at the same time, the period of incarceration is also a relevant factor that is to be considered.

21. False allegations of sexual misconduct and coercion not only tarnish the reputation of the accused but also undermine the credibility of genuine cases. Hence, it is imperative for the Court to exercise utmost diligence in evaluating the prima facie allegations against the accused in each case, especially when issues of consent and intent are contentious.

22. It is the case of the prosecution that the applicant asked the prosecutrix to come to his residence on the pretext of getting her a job and he sexually assaulted her by touching her inappropriately and inserting his finger in her private parts.

23. At the outset, it is pertinent to note that this Court had essentially dismissed the pre-arrest bail application on the ground that the investigation at that time was at a nascent stage and the applicant had not joined the investigation.

24. The other arguments raised by the applicant had not been considered extensively at that stage due to the investigation being underway.

25. The case of the prosecution in the present case essentially rests on the statement of the prosecutrix as well as video footage which shows the prosecutrix near the place of the incident.

26. It is not in doubt that the mere statement of the prosecutrix is sufficient for establishing the offence of rape if the same inspires confidence. Be that as it may, in the present case, there are glaring improvements in the case of the prosecutrix which led to adding of the offence under Section 4 of the POCSO Act. The prosecutrix in her initial complaint did not allege that



the applicant had inserted his finger in her private part. As pointed out by the counsel for the applicant, there is also delay of a few hours in reporting the offence. The CCTV footage as well only captures the prosecutrix rushing out of a *gali*.

27. The probability of the applicant committing the offence while coming down from the stairs and the prosecutrix going to meet the applicant in the morning, despite concededly not knowing him on his number being provided by an acquaintance can only be ascertained after the evidence is led. At this stage, the probability of the applicant not having committed the crime cannot be ruled out.

28. While the probative value of evidence as well as the veracity of any defences raised by the applicant in relation to him not being present at the spot of the incident can only be tested during trial, however, at this stage, the benefit of the *prima facie* shortcomings in the evidence of the victim as well as delay in registration of FIR cannot be denied to the applicant.

29. Although the prosecutrix is alleged to be seventeen years of age, some doubt is also cast on the age of the prosecutrix which would be considered by the Trial Court at the relevant stage.

30. It is settled law that in the event of there being even some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to bail. [Ref. **Ram Govind Upadhyay v. Sudarshan Singh : (2002) 3 SCC 598**].

31. Offences as alleged are heinous in nature, however, it cannot be lost sight of the fact that the object of jail is not punitive but to secure the presence of the accused during the trial.

32. The applicant has been in custody for more than ten



months and the cross-examination of the prosecutrix is partly complete. This Court had adjourned the matter previously on request of the learned APP for completion of the prosecutrix's examination, however, more than one and a half months have passed since then and this Court does not consider it apposite to adjourn the matter any further for the said purpose. As the investigation is already complete, the custody of the applicant is no longer required.

33. As far as the other antecedent of the applicant for the offence under Section 308 of the CrPC is concerned, it is also settled law that criminal antecedents of an accused cannot alone be a basis for refusal of bail [Ref. ***Prabhakar Tewari v. State of U.P.:* (2020) 11 SCC 648**].

34. Insofar as any allegations relating to threats are concerned, the same can be allayed by imposing appropriate conditions. Needless to say, appropriate action will be taken by police on any complaint made by the prosecutrix and if the applicant misuses his liberty, the complainant will be at liberty to take appropriate action in accordance with law.

35. Without commenting further on the merits of the case, in the opinion of this Court, the applicant has made out a *prima facie* case for grant of bail.

36. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, 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 under no circumstance contact the complainant / other witnesses or the family members of the complainant;
- c. The applicant shall under no circumstance leave the boundaries of the country without taking permission of the learned Trial Court;
- d. The applicant shall appear before the learned 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, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

37. 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.

38. 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.

39. The bail application is allowed in the aforementioned terms. Pending application also stands disposed of.

AMIT MAHAJAN, J

OCTOBER 16, 2025/ 'KDK'

BAIL APPLN. 2708/2025

Page 8 of 8

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