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

+ **BAIL APPLN. 2749/2025**

LOKESH KUMAR SHARMA

.....Petitioner

Through: Mr. G.L. Soni, Mr. A.R. Regmi, Mr.
Harshit Soni, Mr. Shubham Birla, Ms.
Shivali, Advs.

versus

THE STATE NCT OF DELHI & ANR.

.....Respondent

Through: Mr. Hitesh Vali, APP for the State
with SI Loveleen, PS Moti Nagar.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **02.09.2025**

1. This is an application for grant of anticipatory bail in case FIR No. 321/2025 under Section 6/10/17 POCSO Act registered at P.S.Moti Nagar.
2. The learned counsel for the Petitioner submitted that the case against him is false and fabricated, as he has never met the alleged victim, who has been tutored by her family to implicate him maliciously. Counsel further submits that the Petitioner and his son were unlawfully detained for over 24 hours, during which the victim failed to identify them and instead named other individuals as the offenders, after which they were released. It is emphasized that the Petitioner has fully cooperated with the investigation, and his arrest would cause undue hardship to his dependent family while violating his statutory and constitutional rights.
3. Learned APP for the State submitted that the statement of the



prosecutrix under Section 164 Cr.P.C. has been duly recorded and the same fully supports the prosecution's case. It was further emphasized that the victim in the present matter is a minor girl aged about 9 years.

4. The Court has carefully heard the rival submissions advanced by both sides on the issue of maintainability of the present bail application.

5. In '**V' (Identity masked) v. State NCT of Delhi and Another** 2022 SCC OnLine Del 2358, a co-ordinate bench of this court held that anticipatory bail is barred under Section 438(4) Cr.P.C. in cases involving offences like Section 376AB IPC and corresponding provisions of the POCSO Act. The Court clarified that despite overlap between IPC and POCSO, the legislative intent is to impose a strict embargo on anticipatory bail to deter heinous sexual offences against children, the relevant paras are reproduced under;

"15. It may be noticed that Criminal Law Amendment Act, 2018 was brought for the protection of girls from heinous crime of rape and to save the woman from the horrifying state of sexual assault. Correspondingly, the amendment was also brought in other sections relating to Penal Code, 1860, Code of Criminal Procedure, Indian Evidence Act, 1872, Section 438 and Section 439 of Cr.P.C. alongwith changes in Section 42 of POCSO Act dealing with the alternative punishment. The changes in the penal laws were provided specifically for the welfare of the women and children, keeping in view the rising crime rate and to provide for a deterrent punishment.

16. Sub-section (4) of Section 438 Cr.P.C. was inserted vide Criminal Amendment Act, 2018 w.e.f. 21.04.2018 and provides that nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub section (3) of Section 376 or Section 376AB or Section 376DA or Section 376DB of the Penal Code, 1860.



17. It may further be noticed that Section 376AB IPC was also introduced vide aforesaid amendment and provides that whoever commits rape on a woman under twelve years of age, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death.

18. Also, Section 5 of POCSO Act, 2012 defines aggravated penetrative sexual assault and Section 6 provides punishment for the same with rigorous imprisonment for a term which shall not be less than 20 years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with both.

19. A bare perusal of Section 6 and Section 376AB IPC reflects that punishment provided under Section 376AB IPC and Section 6 of POCSO Act, 2012 is same and the offence in the present case is covered, both under Section 6 of POCSO Act as well as Section 376AB IPC.

20. It may further be observed that Section 42 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) was also amended w.e.f. 21.04.2018 and provides that where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, [376A, 376AB, 376B, 376C, 376D, 376DA, 376DB], [376E, section 509 of the Penal Code, 1860 (45 of 1860) or section 67B of the Information Technology Act, 2000 (21 of 2000)], then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Penal Code, 1860 as provides for punishment which is greater in degree.

21. It is pertinent to note that Section 42A of POCSO Act provides that the provision of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.



22. In view of aforesaid legal position, by virtue of Section 42 of POCSO Act, if the offence is punishable under POCSO Act as well as Section 376AB IPC and if the offender is found guilty of such offence, he shall be liable to punishment either under POCSO Act or under the IPC, whichever provides for punishment greater in degree. It cannot be inferred that the rigor of sub-Section (4) of Section 438 Cr.P.C. stands obliterated at the stage of bail since offender stands charged with both Section 376AB IPC as well as Section 6 of POCSO Act and may be punished on conviction under Section 6 of POCSO Act instead of Section 376AB IPC. The purpose of Section 42 is to ensure that an act constituting offence under two different enactments does not lead to double punishment for the same act constituting an offence.

23. I am accordingly of the opinion that in view of sub-Section (4) of Section 438 Cr.P.C., the application for anticipatory bail is not maintainable before the learned Trial Court and the observations to this extent cannot be faulted with. The legislative intention is clear and implicit in placing embargo for grant of anticipatory bail in cases referred under sub-Section (4) of Section 438 Cr.P.C.”

6. The corresponding provision to Section 438(4) Cr.P.C. in the BNSS is Section 482(4), which reads as follows:

“Section 482. Direction for grant of bail to person apprehending arrest.

.....

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under section 65 and sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.”

7. On a conjoint reading of Section 438(4) Cr.P.C. and its corresponding provision Section 482(4) BNSS, it is evident that the legislative bar on the grant of anticipatory bail in cases of aggravated sexual offences against minors has been consistently retained. The object of this embargo is to provide stringent protection to child victims and to ensure deterrence in heinous offences of this nature. In the present case, where the prosecutrix is



a minor and the allegations attract the provisions falling within the scope of Section 482(4) BNSS, this Court finds no infirmity in the order dated 10.07.2025 passed by the learned Trial Court rejecting the application for anticipatory bail.

8. Accordingly, the application for grant of anticipatory bail is dismissed being not maintainable.

9. The petition accordingly stands disposed of.

RAVINDER DUDEJA, J

SEPTEMBER 2, 2025/na