



2025:DHC:9335



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

Reserved on: 06.10.2025
Date of Decision: 25.10.2025

+ **BAIL APPLN. 3147/2025 & CRL. M.A. 29566/2025****AMAR PAL NANHEY**

.....Petitioner

Through: Mr. Lokesh Kumar Mishra,
Mr. Vinay Kumar, Mr. I. Khan and
Mr. Revansh, Advs.

versus

STATE (GNCT OF DELHI) AND ANR

.....Respondents

Through: Mr. Satish Kumar, APP for
State

CORAM:**HON'BLE MR. JUSTICE AJAY DIGPAUL****J U D G M E N T**

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1. The instant application has been preferred under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ read with Section 439 of the Code of Criminal Procedure, 1972², seeking the release of the petitioner, Amar Pal Nanhe, on regular bail. The petitioner is an accused in FIR No. 246/2024, registered at PS - Ghazipur, for the offences punishable under Section 376 of the Indian Penal Code, 1860³ and Section 6 of the Protection of Children from Sexual Offences Act, 2012⁴.

¹ Hereinafter "BNSS"

² Hereinafter CrPC

³ Hereinafter "IPC"

⁴ Hereinafter "POCSO Act"



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**PROSECUTION'S CASE:**

2. The gravamen of the accusation dates back to 31.07.2024, when information was received regarding the victim/prosecutrix ('R'), a minor girl aged 16 years, alleging sexual assault. The prosecutrix's complaint stated that she was in a relationship with co-accused Satbir, but that the petitioner herein and co-accused Luv Kush also committed rape upon her on various occasions, which resulted in her pregnancy and led to the Medical Termination of Pregnancy (MTP) on 05.08.2024.

3. The MLC of the prosecutrix recorded a history of sexual assault by the three named accused and returned a Positive Urine Pregnancy Test (UPT). The prosecutrix also alleged that the accused persons used video evidence to blackmail her.

4. The investigation revealed that co-accused Satbir was arrested on 01.08.2024. The petitioner and Luv Kush remained absconding until their surrender on 01.03.2025. The learned Trial Court, *vide* order dated 28.11.2024, framed charges against the petitioner under Sections 376(2)(j)/506(II) IPC and 4(2) POCSO Act.

5. The petitioner's prior application for bail was dismissed by the learned Trial Court *vide* order dated 30.07.2025, observing that in view of the gravity of the offences alleged, the age of the victim being a minor, the seriousness of the punishment prescribed, the testimony of the prosecutrix, and the conduct of the petitioner prior to his surrender, coupled with the fact that he has been in custody only since 01.03.2025, the Court was not inclined to grant the relief of bail.

SUBMISSIONS ADVANCED ON BEHALF OF THE PETITIONER:

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6. Mr. Lokesh Kumar Mishra, learned counsel for the petitioner submits that the petitioner, aged about 21 years, is a young individual with clean antecedents and has been falsely implicated in the present case.

7. It is urged that there is an inordinate delay of nearly 13 months in the registration of the FIR, which casts serious shadow on the credibility of the prosecution version. Reliance is placed upon *Shiv Chander v. State of NCT of Delhi & Anr.*⁵, wherein this Court granted bail to the accused as there was a delay of 8 hours in registering the FIR.

8. Learned counsel further submits that the investigation stands concluded, the chargesheet has been filed, and all material witnesses, including the prosecutrix, have already been examined. Therefore, continued incarceration of the petitioner serves no useful purpose.

9. It is further contended that the FSL report does not incriminate the petitioner and there is no medical or scientific evidence linking him to the alleged offence. Reliance is placed upon *Daksh Gupta v. State (GNCTD)*⁶, wherein it was observed that absence of corroborative forensic evidence weighs in favour of the accused at the stage of bail.

10. Learned counsel next submits that the alleged video, which forms part of the prosecution's case, has also not been recovered. There are material contradictions and improvements in the version of the prosecutrix, both in her complaint and testimony before the learned Trial Court. While in the FIR, she alleged that the petitioner committed rape upon her once, in her deposition before the Court, she

⁵ BAIL APPLN. 254/2021

⁶ BAIL APPLN. 192/2018



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stated that the act occurred twice. Even the age of the prosecutrix remains disputed, thereby casting serious doubt on the veracity of the prosecution case. The petitioner has drawn support from *Vivek Goswami v. State (GNCTD) & Anr.*⁷.

11. It is also submitted that the petitioner had voluntarily surrendered before the learned Trial Court, thereby demonstrating his *bona fides* and willingness to face trial. He is a permanent resident of the given address and there is no likelihood of his absconding or tampering with prosecution evidence.

12. Learned counsel lastly submits that the learned ASJ failed to appreciate the binding precedents laid down in *Sanjay Chandra v. CBI*⁸; and *Tinku Gaur @ Avinash v. State of UP*⁹, wherein it has been held that once investigation is complete and material witnesses have been examined, prolonged pre-trial incarceration is unwarranted. The petitioner undertakes to abide by all conditions imposed by this Court, to appear before the Trial Court as and when required, and not to influence any witness in any manner.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

13. *Per contra*, Mr. Satish Kumar, learned APP, appearing on behalf of the State, vehemently opposed the grant of regular bail of the petitioner, relying upon the Status Report. It is submitted that the allegations against the petitioner are grave and serious in nature, and the petition is devoid of merit.

14. It is further submitted that, as per the FSL report received in respect of the blood sample of accused Satbir, he has been confirmed

⁷ 2024 SCC OnLine Del 7462
⁸ (2012) 1 SCC 40



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to be the biological father of the child born to the prosecutrix. It is also contended that the prosecutrix has duly identified the petitioner during the course of investigation, and her testimony, being consistent and categorical, cannot be discarded at this stage.

ANALYSIS & CONCLUSION:

15. Heard the parties and perused the material on record.

16. The contention advanced on behalf of the petitioner relates to the alleged contradictions and improvements in the version of the prosecutrix and the absence of corroborative forensic or medical evidence. These submissions, however, merit circumspect consideration at the present stage, which concerns grant of bail and not final adjudication on merits.

17. It is a settled position of law that contradictions, embellishments, or inconsistencies in the testimony of prosecution witnesses can only be tested during the course of trial through cross-examination and appreciation of the entire evidentiary record. Premature evaluation of such discrepancies would amount to conducting a mini-trial, which is impermissible at the stage of bail. In this regard, reliance may be placed upon *Neeru Yadav v. State of U.P.*¹⁰, wherein the Hon'ble Supreme Court held that while adjudicating a bail application, the Court is not expected to determine whether the evidence is sufficient to establish guilt beyond reasonable doubt, but only to form a *prima facie* view based on the material before it.

18. The contention of the petitioner that the FSL report, showing

⁹ SLP (Crl.) 10215/2022, decided on 17.01.2023
¹⁰ (2016) 15 SCC 422



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co-accused Satbir as the biological father of the foetus, exonerates him, is devoid of substance. Even if the FSL report establishes that the accused Satbir is the biological father, the alleged subsequent act would not absolve the petitioner from the commission of the offence. The FSL report, therefore, neither discredits the prosecution case nor diminishes the evidentiary value of the prosecutrix's testimony, which, if found credible and trustworthy, requires no corroboration, as held in *State of Maharashtra v. Chandraprakash Kewalchand Jain*¹¹. Hence, the FSL report with respect to the petitioner and the co-accused Luv Kush, even if awaited, shall have no bearing on the outcome of the present case at this stage.

19. The argument advanced regarding the alleged delay in lodging of the FIR, though relevant, cannot be viewed in isolation in cases of sexual assault, more so when the victim is a child under the POCSO Act. Such delay, by itself, does not render the prosecution version doubtful. The Hon'ble Supreme Court has consistently held that in cases of sexual assault, particularly involving minors, delay in disclosure or in registration of FIR must be appreciated in the backdrop of the trauma, fear, and social stigma that such victims often face. In *State of Himachal Pradesh v. Sanjay Kumar*¹², the Hon'ble Supreme Court has observed as under:

“30.At the same time, after taking all due precautions which are necessary, when it is found that the prosecution version is worth believing, the case is to be dealt with all sensitivity that is needed in such cases. In such a situation one has to take stock of the realities of life as well. Various studies show that in more than 80% cases of such abuses, perpetrators have acquaintance with the victims who are not strangers. The danger is more within than outside. Most of the time, acquaintance rapes, when the culprit is a family member, are not even reported for various reasons, not

¹¹ (1990) 1 SCC 550

¹² (2017) 2 SCC 51



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difficult to fathom. The strongest among those is the fear of attracting social stigma. Another deterring factor which many times prevents such victims or their families to lodge a complaint is that they find whole process of criminal justice system extremely intimidating coupled with absence of victim protection mechanism...”

20. Having regard to the facts and circumstances of the present case, the familial relationship of the accused and the victim, and the tender age of the prosecutrix, the delay in lodging the FIR stands sufficiently explained. Such delay cannot, in itself, be treated as fatal to the prosecution case, as it is often a natural consequence of fear, hesitation, and social pressure surrounding offences of this nature.

21. Moreover, this Court is of the considered view that the non-recovery of the alleged video used to blackmail the prosecutrix, though a circumstance to be duly examined at the stage of trial, cannot by itself be a decisive factor for grant of bail at this stage. The existence or otherwise of such evidence is a matter of proof which shall be tested through the rigours of trial.

22. The petitioner’s voluntary surrender and cooperation with the investigating agency, though indicative of *bona fides*, do not, by themselves, create any vested right to bail when weighed against the gravity of the allegations. As regards the contention concerning the age of the prosecutrix, the same is a matter of evidence to be determined at trial. The prosecution has produced official records indicating minority of the prosecutrix at the relevant time, and the authenticity thereof can only be tested during trial. At this stage, such contention does not merit acceptance.

23. The plea that the petitioner has clean antecedents and voluntarily surrendered is duly noted. However, the same, by itself, cannot be determinative for grant of bail in a case involving offences



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punishable under Section 376 IPC read with Section 6 of the POCSO Act, which carry stringent punishment including life imprisonment. The gravity of the offence, coupled with the categorical identification of the petitioner by the prosecutrix, weighs against the petitioner at this stage.

24. This Court is mindful of the principle that bail, not jail, is the rule; however, this principle cannot be applied mechanically in cases involving grave and heinous offences as those punishable under Section 376 IPC read with Section 6 of the POCSO Act. The grant of bail in such matters requires the Court to exercise heightened circumspection, bearing in mind not only the presumption of innocence but also the gravity of the offence, the nature of the allegations, and the societal impact of the crime. The precedents relied upon by the petitioner in *Sanjay Chandra (supra)* and *Tinku Gaur @ Avinash (supra)* are distinguishable and misplaced, as the ratio laid down therein must be appreciated in the context of the peculiar facts of each case. Furthermore, in *Tinku Gaur @ Avinash (supra)*, the accused had remained in custody for more than five years, whereas the petitioner herein has been in custody only since 01.03.2025. While the principle of personal liberty is of paramount importance, the same must be balanced against the right of the victim and the collective interest of society.

25. In view of the foregoing discussion, this Court is of the considered opinion that no case is made out for grant of regular bail to the petitioner at this stage. The allegations against the petitioner are grave and serious, the prosecutrix has consistently identified the petitioner. The inconsistencies pointed out by the petitioner are not of such magnitude as to render the prosecution case inherently



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improbable or fabricated at this stage.

26. Accordingly, the present regular bail application stands dismissed. Pending application(s), if any, stands disposed of.

27. It is clarified that nothing stated herein shall be construed as an expression on the merits of the case. The learned Trial Court shall proceed independently and uninfluenced by any observations made herein.

28. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J.

OCTOBER 25, 2025/gs/dd