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

+ **CRL.M.C. 5702/2025 & CRL.M.A. 24445/2025**

PAHALMAN BUDHA MAGAR

.....Petitioner

Through: Mr. Aditya Aggarwal and Ms. Kajol
Garg, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Mukesh Kumar, APP.
SI Bintu Sharma, Special Cell.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

20.08.2025

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1. The present petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 482 of the Code of Criminal Procedure, 1973²) assails order dated 30th July, 2025 whereby the Petitioner's bail application under Section 439 of Cr.P.C has been held to be not maintainable. The perusal of the impugned order indicates that the Trial Court has rejected the bail application primarily on two grounds: (a) the pendency of Writ Petition W.P. (CRL) 1777/2025 and CRL.M. (Bail) 1176/2025 before this Court, where similar issues, particularly the alleged non-compliance with Article 22(1) of the Constitution, are under consideration; and (b) the bail application had been filed under the repealed Cr.P.C, instead of the applicable BNSS.

¹ "BNSS"

² "Cr.P.C"



2. With respect to the ground of rejection concerning the pendency of the W.P. (CRL) 1777/2025, counsel for the Petitioner, on instructions, submits that the Petitioner no longer intends to pursue the said writ petition and accordingly seeks permission to withdraw the same.
3. Accordingly, at his request, the Registry is directed to list said writ petition today itself.
4. In light of the order passed in W.P.(Crl.) 1777/2025, allowing Petitioner to withdraw the said writ petition, in the opinion of the Court, the ground relating to the pendency of the writ petition for not entertaining the bail application, no longer survives.
5. As regards the rejection of the bail application on the ground that it was filed under the provisions of the repealed statute, this Court is of the view that the application should have been considered on merits, regardless of the provision cited. It is a well-settled principle of law that merely invoking an incorrect legal provision cannot, by itself, be a ground to reject a bail application, especially in matters involving personal liberty.
6. In light of the above, since the Petitioner's bail application has not been decided on merits, the present petition is allowed and the impugned order dated 30th July, 2025 is set aside and the bail application is restored in its original number.
7. The Trial Court is requested to decide the bail application on merits in accordance with law.
8. Considering the fact that the Petitioner's bail application is remained pending since November, 2024, the Trial Court is requested to hear the same as expeditiously as possible.



9. The Petitioner is directed to appear before the Trial Court on 22nd August, 2025.

SANJEEV NARULA, J

AUGUST 20, 2025

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