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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3225/2025 & CRL.M.As. 24984-24985/2025**
KAILASH JHAPetitioner

Through: Mr. Nitish Kumar Singh, Mr. Amit Kumar Thakur, Mr. Shashank Kumar, Ms. Prachi Priya and Ms. Pallavi Kumari, Advocates.

versus

THE STATE OF NCT OF DELHI AND ANRRespondents
Through: Mr. Hemant Mehla, APP for State.
SI Sonika, P.S. Kirti Nagar.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
09.09.2025

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1. The present bail application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023,¹ seeks regular bail in FIR No. 107/2025 registered at P.S. Kirti Nagar under Section 6 of the Protection of Children from Sexual Offences Act, 2012.²

2. The FIR was registered pursuant to a complaint filed by the Prosecutrix's aunt, alleging that the Applicant, aged 60 years, committed digital penetration on the Prosecutrix, a minor girl aged merely 8 years. On the basis of this complaint, the subject FIR was registered. Upon completion of investigation, chargesheet was filed against the Applicant under Sections 6 and 10 of the POCSO Act and Section 65(2) of the Bharatiya Nyaya

¹ "BNSS"

² "POCSO"



Sanhita, 2023³.

3. The Applicant has now approached this Court, seeking regular bail. The sole ground urged before this Court in support of the bail application is the alleged non-supply of the grounds of arrest to the Applicant. It is contended that this omission constitutes a violation of the mandate of Section 47 of the BNSS as well as Article 22(1) of the Constitution of India, 1950. In this regard, reliance is placed on the judgment of the Supreme Court in *Vihaan Kumar v. State of Haryana*,⁴ the relevant portion of which reads as follows:

21. Therefore, we conclude:

“a) The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);

b) The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;

c) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);

d) Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1);

***e) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made;** and*

³ “BNS”

⁴ (2025) 5 SCC 799.



f) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.”

[Emphasis Supplied]

4. It is pertinent to note that counsel for the Applicant has not made any submissions on the merits of the case. The sole plea advanced is that the Applicant should be released on bail on the ground that the grounds of arrest were not furnished to the Applicant.

5. The Court has considered the aforesaid submissions. The contention that the grounds of arrest were not furnished to the Applicant is effectively negated by the order of the Magistrate dated 5th April 2025, which reads as follows:

*“Present: Ld. APP for State.
Accused produced after fresh arrest.
Adv. Rahul Kumar & Sh. Vishwa Prakash Rai, Ld. counsels
for the accused.
IO/WSI Sonika, No. D 3073 in person with case file.
Accused has been produced before me after fresh arrest. Grounds
of arrest found justified. Accused has been produced within 24 hours of
arrest, has been informed of the grounds of arrest and the intimation
about his arrest has been given to his son namely Sh. Ritesh Jha.
IO has moved an application seeking 14 days JC of the accused on
the ground to prevent commission of similar offence, to conduct proper
investigation, to avoid tampering of evidence, influencing the witnesses of
the case and to ensure the presence of the accused before the court.
Ld. Counsel for the accused has opposed this application.
Submissions heard. FIR, Arrest memo and MLC perused. No fresh
external injury revealed by the MLC.
Considering the fact that investigation is still at a nascent stage
and to avoid any influence on the witness, and to ensure the production of
the accused before the concerned Court, the accused is remanded to 02
days Judicial Custody. **Accused be now produced before the concerned
court on 07.04.2025.**
Copy of this order be given dasti, as prayed. Case Papers be sent
to the concerned court.”*



6. The aforesaid order reveals that, at the time of production before the Court, the Applicant was represented by two counsel. It is significant to note that the Magistrate specifically recorded that the Applicant was duly informed of the grounds of arrest and that intimation of the arrest had also been given to his son, Mr. Ritesh Jha. Despite being so informed, neither the Applicant nor his counsel raised any objection or denied the receipt of such information at that stage. The absence of any objection or challenge to this crucial observation, at the said stage, significantly undermines the present claim of non-supply of grounds of arrest.

7. Pertinently, the Magistrate, while conducting the remand proceedings, explicitly ascertained that the grounds of arrest had been duly communicated to the Applicant, thereby ensuring compliance with the mandatory procedural safeguards under Article 22(1) of the Constitution of India, as well as the principles elaborated upon by the Supreme Court in ***Vihaan Kumar***. Therefore, the Applicant's contention regarding non-supply of the grounds of arrest is entirely without merit, and cannot be entertained as a ground for bail.

8. In light of the foregoing, and considering the serious nature of the offences under Sections 6 and 10 of the POCSO Act, the Court is of the opinion that the Applicant, aged approximately 60 years and charged with the sexual assault of an eight-year-old child, cannot be granted bail.

9. 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.



10. Dismissed along with pending applications.

SANJEEV NARULA, J

SEPTEMBER 9, 2025

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