



\$~

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

% *Judgment delivered on: 17.01.2025*

+ **BAIL APPLN. 3428/2024**

SHIV KUMAR

.....Petitioner

Through: Mr. Kunal Malhotra, Mr.
Ravinder Gaur and Mr.
Manish Ikkaria, Advocates

versus

STATE (NCT) OF DELHI

.....Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State with SI
Suresh Kumar Meena, P.S.
New Usman Pur.
Ms. Reeya Singh, Advocate
for the victim.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereafter 'BNSS'), has been filed on behalf of the applicant, seeking regular bail in case arising out of FIR bearing no. 41/2021, dated 24.01.2021, registered at Police Station New Usman Pur, Delhi for offence under Section 363 of Indian Penal Code, 1860 (hereafter 'IPC').



2. Brief facts of the present case are that on the receipt of DD No. 5A dated 24.01.2021, it was reported that two victims, a boy named 'S,' aged 8 years, and a girl named 'P,' aged 5 years, were playing outside their home. When the children did not return for a considerable period, their father, who is the complainant, had lodged a missing report, and the present FIR was registered under Section 363 of IPC. On the following day, at about 9:00 AM, the complainant had brought both the children to the police station and handed them over to the Investigating Officer (IO). The victim 'S' complained of stomach pain and was provided medication at Parwesh Chand Hospital, Delhi. Thereafter, both victims underwent counselling, and their medical examinations were conducted. During counselling, the victims disclosed that an unknown auto-rickshaw driver had taken them with him.

3. The statements of the victims were recorded under Section 164 of the Code of Criminal Procedure, 1973 (hereafter '*Cr.P.C.*'), on 24.01.2021. In their statements, the victims had revealed that while playing outside in Shastri Park, they had approached a battery-operated auto-rickshaw driver and requested him to drop them at their home. The victims also provided details about the vehicle, including the presence of a plastic mirror lying at the back of the auto-rickshaw. The victims had further stated that when they were near their home and had asked the auto-rickshaw driver to stop the vehicle, he had refused and took them to his friend's house, where he



had sexually assaulted both of them. Later that night, when the accused was asleep, the children had managed to escape by locking the accused in the room. While running, they headed toward Pushtaka. At that late hour, they encountered three other individuals, who were also sitting in the auto-rickshaw and requested to go to Pushtaka. Thereafter, both the victims had reached their home.

4. After the conclusion of investigation, charge-sheet was filed against the present applicant for offences under Sections 328/342/363/377/376AB of IPC and Sections 6/4(2) of Protection of Children from Sexual Offences Act, 2012 (hereafter '*POCSO Act*').

5. The learned counsel appearing for the applicant/accused argues that the applicant has been falsely implicated in the present case. It is contended that the FSL report in this case does not support the case of prosecution. It is argued that both the victims have not identified the present applicant, and were tutored by the I.O. to make false statements against the present applicant. It is also argued that there are material contradictions in the statements of the victim 'S' recorded before the police and the Court, as well as in the statements of the father of the victim 'S'. It is contended that the applicant has been in judicial custody since 04.02.2021 and since trial will take time to conclude, he be granted regular bail.

6. *Per contra*, the learned APP for the State argues that the medical record of both the victims reveals as to how they were brutally sexually assaulted. The learned APP for the State also draws



the attention of this Court to the statements of the victims recorded under Section 164 of Cr.P.C., and argues that both the victims, though of tender age, one who is about 6 years old and other who is 5 years old, have described how the accused had sexually assaulted them. It is submitted that the accused's act of identifying the location led to the recovery of bloodstains from the specified spot. Upon forensic analysis, these bloodstains were found to match the blood group of the victim. It is also stated that the victim who was 05 years old and was sexually assaulted, passed away in Bihar, where she was taken by her father, who is the complainant, who has described as to how she was not able to pass urine or stool, after being sexually assaulted and had died within few months of the alleged incident. Thus, it is prayed that the present bail application be dismissed.

7. This Court has **heard** arguments addressed by the learned counsel for the applicant and learned APP for the State, and has also perused material on record.

8. The allegations against the present applicant/accused, in brief, are that he, while operating a battery-operated auto-rickshaw, had lured two minor victims, aged 8 and 5 years, into his vehicle under the pretense of dropping them home. The applicant had allegedly then taken them to his friend's house, where he had sexually assaulted both children. The victims had managed to escape later that night while the accused was asleep.



9. It is noted that the ossification test of the victims revealed that victim 'S' was 6 to 8 years old, and victim 'P' was 5 to 6 years old.

10. This Court has pursued the statement given by victim 'P' under Section 164 of Cr.P.C., in which the victim had described in detail as to how she was sexually assaulted. The victim had informed the learned Magistrate that she had experienced severe pain in her stomach, and was bleeding due to the assault, while her younger brother was not injured. It was further stated that her clothes were soaked in blood, and she was in immense pain.

11. This Court also notes that during the course of investigation, CCTV footage of nearby parking areas were reviewed, and were also shown to the victims for identification. The victims had identified the auto-rickshaw in the footage, and a photograph of the vehicle was also shown to them, which they confirmed as the same vehicle used by the accused. It is also noted by this Court that after his arrest, the applicant/ accused had identified the location where the alleged sexual assault had taken place. The Bloodstains were found and lifted from the spot, and as per the FSL report, these stains matched the blood of the victim, who had tragically succumbed to her injuries.

12. This Court has also perused the testimonies of the victims and the medical evidence on record, which paint a harrowing picture of the ordeal endured by the children. Victim 'S,' a young boy aged 6-8 years, described in distressing detail how he was subjected to sodomy, while victim 'P,' a 5-year-old girl, recounted the brutal



sexual assault inflicted upon her, during which she bled profusely, with her clothes soaked in blood when she managed to return home. The extraordinary presence of mind displayed by victim 'S,' who seized the opportunity to escape with his younger sibling when the accused was asleep, sends shudders down the spine as to what they must have gone through after being kidnapped by the accused.

13. The MLC also reveals the extent of the physical and emotional pain endured by the victims, after being kidnapped. The accused, exploiting the innocence of the children, had allegedly lured them under the pretense of taking them home, only to subject them to unimaginable suffering. More disturbing is also the fact that the victim 'P' was brutally sexually assaulted, and the MLC of the victim clearly notes the tear of hymen and presence of blood. MLC of victim 'S' also reveals that he was sexually assaulted as it is mentioned in the MLC that on anal examination, a white discharge was present at anal opening and anal tear was also present. It is thus evident that both the children were brutally sexually assaulted.

14. The father of the child deposed in the Court that after the sexual assault, the victim 'P' who was only 05 years of age was unable to pass urine and stool. It remains unclear why the victim was not provided with the necessary medical treatment she required; however, her father took her to the native village, where she tragically passed away. The father has deposed that immediately after the incident, the victim had narrated to him how the assault was



committed by the accused upon her, before her death. Her statement was also recorded by the Magistrate under Section 164 Cr.P.C before she had passed away.

15. The argument advanced by the learned counsel for the applicant, that the absence of semen stains on victims 'S' and 'P,' implies that the act was never committed, holds no merit at this stage of the proceedings. Given the gravity of the allegations and the material available on record, the grant of bail on this ground cannot be acceded to.

16. The argument of the learned counsel for the applicant that there was a delay of 3 to 4 days in recording the statements under Section 164 of Cr.P.C., cannot be a ground to grant bail, as it will be explained during the trial. The statements under Section 164 of Cr.P.C. were recorded by the Magistrate which supports the prosecution case. At this stage, the prosecution's case is also supported by the testimony of the witnesses who have been examined before the learned trial Court. The victim has identified the accused, and the deceased victim had also identified the accused in police custody. The accused himself had pointed out the place of occurrence, leading to the recovery of blood stains that matched those of the victim, who unfortunately passed away. Before her death, the victim had mentioned in her statement recorded by the Magistrate that her clothes were blood-soaked. The identification of the auto-



rickshaw further strengthens the case, making it an unfit case to grant bail at this stage.

17. Therefore, in view of the foregoing discussion, and considering the overall facts and circumstances of the case, including the Call Detail Records and location data of the applicant's mobile phone – which confirm his presence at the spot, as well as the statements of the victims, this Court finds no ground to grant regular bail to the applicant at this stage.

18. Accordingly, the present bail application is dismissed,

19. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

20. In view of the above, the present petition along with pending application stands disposed of.

21. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 17, 2025/at