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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3587/2024

HARBANS SINGH @ MD. MUJTABA

.....Petitioner

Through: Mr. Amit Chadha, Sr. Advocate
alongwith Mr. Kuldeep Jauhari, Mr.
Sanjog Singh, Mr. Saarthak Sethi,
Mr. Sahil Ahuja, Mr. Satish Tripathi,
Mr. Prashant Joshi and Mr. Anubhav
Tyagi, Advocates.

versus

STATE (GNCT) OF DELHI & ORS.

.....Respondents

Through: Mr. Tarang Srivastva, APP for the
State with SI Himanshu Chahar, P.S.:
Govindpuri, Delhi.
Ms. Nasreen, Advocate for the
complainant alongwith the
complainant (in-person).

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

11.03.2025

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By way of the present petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioner seeks regular bail in case FIR No. 0367/2024 dated 05.07.2024 registered under sections 376/354/354-B/506 of the Indian Penal Code, 1860 ('IPC') and sections 6/10 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') at P.S.: Govind Puri, Delhi ('subject FIR').

2. Notice on this petition was issued *vide* order dated 04.02.2025, pursuant to which Status Report dated 04.02.2025 has been filed.
3. Nominal Roll dated 08.11.2024 has been received from the concerned Jail Superintendent.



4. The court has heard Mr. Amit Chadha, learned senior counsel appearing on behalf of the petitioner; Mr. Tarang Srivastva, learned APP appearing on behalf of the State; as well as Ms. Nasreen, learned counsel appearing on behalf of the complainant at considerable length.
5. The complainant (mother of the prosecutrix), who is present in court, has also been heard.
6. Written submissions have been filed on behalf of the petitioner as well as by the State.
7. Briefly, the allegations against the petitioner are that he has committed offences under sections 376/354/354-B/506 IPC and sections 6/10 of the POCSO Act against his step-daughter (the prosecutrix), namely the daughter of the complainant, who (latter) is stated to be the petitioner's second wife.
8. For completeness, it may be recorded that the complainant's marriage to the petitioner is her second marriage. Furthermore, there is ongoing matrimonial discord between the complainant and the petitioner; and proceedings under the Protection of Women from Domestic Violence Act 2005 ('DV Act') as well as under the Code of Criminal Procedure 1973 ('Cr.P.C.') are pending between the two, in which proceedings the complainant has sought various reliefs against the petitioner.
9. In this backdrop, Mr. Chadha, learned senior counsel appearing for the petitioner has made the following principal submissions :
 - 9.1. It is submitted that there is unreasonable and unexplained delay in registration of the subject FIR on 05.07.2024, inasmuch as the petitioner is alleged to have committed offences against the



prosecutrix for the first time in 2017, *i.e.*, about 07 years ago; and offences are alleged to have been committed by the petitioner last on 24.04.2024 *i.e.*, about 70 days prior to the date of registration of the subject FIR. Accordingly, it is argued, that the subject FIR has been lodged belatedly, as an afterthought, and with ulterior motive with the intention of usurping the petitioner's property in which the complainant and the prosecutrix are presently residing.

- 9.2. Mr. Chadha submits, that the prosecutrix was examined first on 03.07.2024 at the Nehru Homeopathic Medical College & Hospital, Defence Colony, New Delhi; but as per the attending doctor's statement recorded on 15.07.2024 under section 180 BNSS, the prosecutrix did not disclose anything to them about having suffered any sexual abuse at the hands of the petitioner at that time. It is pointed-out that subsequently on 04.07.2024, the complainant took the prosecutrix to the HAH Centenary Hospital, Hamdard Nagar, New Delhi, which is a short distance from her residence; but yet again, the OPD Slip of that hospital only records that the prosecutrix was suffering from anxiety, generalized weakness and dizziness, with no whisper of any allegation that the prosecutrix had suffered any sexual assault at the hands of the petitioner. It is accordingly argued, that the allegations of sexual assault against the petitioner are clearly an afterthought and have been made with ulterior motive, in furtherance of the complainant's intention of grabbing the petitioner's property by having him jailed.



- 9.3. It is argued that the victim was about 17 years of age at the time when the FIR was registered, and therefore she was mature enough to understand the nature of the acts allegedly committed against her even on 24.04.2024; and yet she did not disclose any of those acts to her mother (the complainant) or to anyone else, which raises serious doubts about the credibility of the prosecutrix's claims.
- 9.4. Learned senior counsel further submits, that there are serious inconsistencies and contradictions as between; (i) the prosecutrix's statement recorded under section 183 BNSS; (ii) the narration contained in the subject FIR; and (iii) what the prosecutrix is stated to have informed the doctors who conducted her medical examination, which inconsistencies undermine the credibility of the prosecutrix's allegations.
- 9.5. It is further submitted that the prosecutrix's medical reports also do not support the allegations of sexual assault; but only show that the prosecutrix was suffering from anxiety and nothing more. Mr. Chadha submits, that during her medical examination, the prosecutrix had refused any internal medical examination or sampling; and the court may therefore draw an adverse inference against her arising from such refusal.
- 9.6. It is also pointed-out that the prosecutrix's medical history shows that she was addicted to tobacco and smoking, which may explain her behavioural issues, which issues have nothing to do with any alleged sexual abuse at the hands of the petitioner.



- 9.7. Learned senior counsel submits, that despite the allegation that the petitioner sexually assaulted the prosecutrix last on 24.04.2024, the audio recordings and transcribed WhatsApp chats between the petitioner and the prosecutrix show, that even after that date, the prosecutrix had made several calls and sent several messages to the petitioner, urging him to return home; which contradicts her claim that she was fearful of, or traumatised by, the petitioner.
- 9.8. Mr. Chadha submits, that despite having left the company of the prosecutrix and the complainant on 25.04.2024, the petitioner continues to send money for the maintenance, school fee and household expenses of the complainant and the prosecutrix.
- 9.9. Learned senior counsel also argues, that though chargesheet has been filed, charges are yet to be framed in the matter; and therefore the statutory presumption under section 29 POCSO Act would not apply against the petitioner.
- 9.10. *De-hors* the above submissions, Mr. Chadha urges the court to consider that the petitioner is about 72 years of age, with the history of triple-vessel coronary artery disease, for which he had undergone stenting in September 2021; and that his heart function has deteriorated from 55% to about 40-45% while in judicial custody. It is submitted, that the petitioner also suffers from diabetes and hypertension, which require regular medical supervision. In this behalf, it is pointed-out that *vide* order dated 21.11.2024, this court had granted to the petitioner



interim bail on medical grounds (which was extended from time-to-time and finally lapsed on 06.02.2025, as recorded in order dated 04.02.2025 passed in the present proceedings); and in that order this court had recorded that the jail doctors had said that they lacked the infrastructure for regular monitoring and management of the petitioner's heart related issues.

- 9.11. Furthermore, learned senior counsel points-out, that the petitioner has already availed interim bail on medical grounds, as mentioned above; and there is no allegation that he misused the liberty granted to him.
- 9.12. It is submitted that the petitioner's nominal roll shows that he has been in judicial custody for about 08 months *i.e.*, from the time of his arrest on 05.07.2024; that his jail conduct has been 'satisfactory'; and though he has another criminal involvement in a CBI case, he is on bail in that matter.
- 9.13. Most importantly, Mr. Chadha submits that despite the fact that chargesheet dated 29.08.2024 has been filed in the matter, charges are yet to be framed; and not even 01 of the 17 witnesses cited by the prosecution have deposed before the learned trial court so far. It is accordingly argued, that trial in the matter will take a substantially long time to conclude and the petitioner should not be left to languish in prison throughout the trial.
- 9.14. Mr. Chadha states, that it be also noted that if admitted to regular bail, the petitioner would not reside with the prosecutrix



or the complainant; but would stay in Faridabad with his daughter from an earlier marriage.

10. Arising from the above submissions, Mr. Chadha beseeches the court to admit the petitioner to regular bail pending trial.

11. On the other hand, Mr. Tarang Srivastva, learned APP appearing on behalf of the State has strenuously opposed the grant of bail to the petitioner, citing the following main grounds for such opposition :

It is submitted, that though the prosecutrix did not reveal anything about sexual assault to her attending doctors at the Nehru Homeopathic Medical College and Hospital on 03.07.2024, that narration came through in clear and explicit terms in the prosecutrix's statement recorded on 05.07.2024 by the learned Magistrate under section 183 of the BNSS.

11.1. Learned APP submits, that the prosecutrix's statement under section 183 BNSS narrates that the statement was recorded in the absence even of her mother (the complainant), which goes to show that what the prosecutrix narrated to the learned Magistrate was completely independent and untutored.

11.2. Mr. Srivastva submits, that in her statement under section 183 BNSS, the prosecutrix has given a detailed and graphic account of the sexual abuse she has suffered at the hands of the petitioner (her step-father), which include specifics such as dates and places, as well as attempts made by the petitioner's children from his previous marriage to suborn the prosecutrix.

11.3. Learned APP submits, that the prosecutrix has narrated the same instances to the examining doctor who conducted her



medical examination on 05.07.2024 at AIIMS, which have been duly recorded in her MLC; and which are consistent with what she had narrated to the learned Magistrate in her statement recorded under section 183 BNSS.

- 11.4. Furthermore, attention of the court is drawn to the fact that based on the petitioner's potency test, in the MLC conducted on 12.07.2024, the doctors have opined that there is nothing to suggest that the petitioner was incapable of performing sexual intercourse under ordinary circumstances, despite the fact that he was about 71 years of age at that time.
- 11.5. It is submitted, that as per the prosecutrix's school records, her date of birth is 09.03.2007, which means that at the time of registration of the subject FIR on 05.07.2024 she was about 17 years and 04 months old. It is further pointed-out that the prosecutrix has said that she had been suffering offences at the hands of the petitioner since she was about 09 years old.
- 11.6. Insofar as the WhatsApp chats cited on behalf of the petitioner, to show that the relationship between the prosecutrix and the petitioner was normal, the State submits that the contents and context of those chats require to be appreciated in the course of trial. It is also pointed-out that the screenshots of the WhatsApp chats filed along with the petition also leave it open to doubt as to who was the author of the WhatsApp chats; and who forwarded the messages, and to whom.



12. Learned APP has accordingly argued, that the petitioner has been chargesheeted for heinous offences and does not deserve to be enlarged on regular bail.
13. Ms. Nasreen, learned counsel appearing on behalf of the complainant has adopted the submissions made on behalf of the State, only to explain that the reason why the prosecutrix suffered offences at the hands of the petitioner, was because of her peculiar relationship with him, namely that the petitioner is her step-father. It is submitted that the prosecutrix's mother (the complainant) had married the petitioner after the demise of the prosecutrix's father; and the petitioner used to threaten the prosecutrix with dire consequences, not just to her but also to her mother, if she divulged what he was doing to her.
14. After hearing learned counsel appearing for the parties, it does not require articulation that the present case arises from very unseemly circumstances, where a step-father is accused of prolonged sexual abuse of his minor step-daughter, which the step-daughter alleges she had to endure by reason of the complicated relationship between her mother and the step-father.
15. Upon a careful consideration of the material available on record in the present proceedings, and after giving empathetic thought to the petitioner's position as an *undertrial of advanced age*, and on a balance of all considerations, the aspects that weigh with the court at this stage are the following :
 - 15.1. The prosecutrix's statement recorded under section 183 BNSS paints a graphic and indecorous picture of what she alleges was done to her by the petitioner. The statement has been recorded



by the learned Magistrate in the full privacy of the Magistrate's chambers, in the absence even of the prosecutrix's mother; and therefore that statement deserves credence, *at least at this stage*. The statement contains specifics of the acts allegedly done by the petitioner upon the prosecutrix, including some dates and locations, along with other particulars;

- 15.2. What the prosecutrix has narrated to the attending doctor, who conducted her medical examination on 05.07.2024 at AIIMS, New Delhi as recorded in her MLC, is consistent with what the prosecutrix has narrated in her statement recorded under section 183 BNSS;
- 15.3. Since the allegations are that the petitioner had been sexually abusing and assaulting the prosecutrix from the time she was about 09 years old and the last such act is alleged to have been committed on 24.04.2024, the mere fact that the prosecutrix declined internal medical examination on 05.07.2024 or that no evidence of sexual assault was found on her person, do not belie the allegations of sexual assault;
- 15.4. Insofar as the WhatsApp chats cited on behalf of the petitioner are concerned, this court would only observe that the contents as well as the context of those conversations must await a detailed consideration during trial;
- 15.5. What is most important, and what tips the balance against the petitioner at this stage, is the fact that the prosecutrix and her mother (the complainant) are evidently in a vulnerable position *vis-a-vis* the petitioner, since the prosecutrix is a young girl



with a widowed mother, who (latter) is now estranged from her second husband (*i.e.* the petitioner). Furthermore, the prosecutrix and her mother are presently residing in premises that belong to the petitioner. These factors make the prosecutrix and her mother susceptible to being coerced, influenced or even threatened into submission at the hands of the petitioner; which would vitiate a fair trial; and

- 15.6. Though it is true that charges are yet to be framed against the petitioner; and therefore technically the presumption under section 29 of the POCSO Act does not stand in the petitioner's way, in the opinion of this court that alone is not reason enough to overlook the other attending circumstances of the case.
16. As a sequitur to the above, this court is *not* persuaded to allow the present bail petition *at this stage*.
17. The present bail petition is accordingly dismissed.
18. However, the petitioner is *granted liberty* to file for regular bail afresh, once the deposition of the prosecutrix and the complainant (her mother) is concluded before the learned trial court.
19. Nothing in this order shall be construed as an expression of opinion on the merits of the pending trial.
20. The petition stands disposed-of.
21. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MARCH 11, 2025

HJ/ds/ak