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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3617/2025 & CRL.M.A. 28293/2025,
CRL.M.A. 28294/2025

MOHD MUSTAQUEEM @ NANUApplicant

Through: Mr. Ali Muzaffar, Ms.
Bahisht-E-Jahan, Mr.
Monish Ali Khan and Mr.
Sahim Khan, Advocates.

versus

STATE OF NCT OF DELHIRespondent

Through: Mr. Raj Kumar, APP for
the State with SI Sharanya
S, PS Jamia Nagar.
Ms. Gayatri Nandwani,
Advocate for victim
(through VC).
Parents of victim in
person.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

21.11.2025

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1. The present bail application is filed by the applicant seeking regular bail in FIR No. 94/2023 dated 12.02.2023, registered at Police Station Jamia Nagar for offences under Sections 363/376/506 of the Indian Penal Code, 1860 ('IPC') and Sections 5(g)/5(l)/5(o)/6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO').

2. The brief facts are that on 10.02.2023, the mother of the prosecutrix received a phone call from the class teacher of the prosecutrix asking her to visit the school immediately. After reaching, the class teacher informed the mother of the prosecutrix

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that the prosecutrix did not attend school on 09.02.2023. The class teacher of the prosecutrix further informed that she had observed that the prosecutrix was unhappy and upset since the past few days.

3. The mother of the prosecutrix thereafter enquired from the prosecutrix regarding the reason for missing school, whereafter, she alleged that on 09.02.2023 co-accused Kishan had taken her to school, however, had not dropped her there and had taken her to some driving license office. It is alleged that while going towards the driving license office the applicant also sat in the cab with the prosecutrix and co-accused Kishan.

4. It is alleged that after reaching the driving license office the applicant dropped co-accused Kishan and the prosecutrix down and took the cab inside the driving license office. It is alleged that thereafter, co-accused Kishan had taken the prosecutrix to a mall nearby where they roamed around for some time.

5. It is alleged that thereafter the prosecutrix along with co-accused Kishan went to the driving license office on an electric rickshaw, where the applicant was waiting with a cab. It is alleged that after sitting in the cab, co-accused Kishan hugged the prosecutrix and the applicant captured photographs and videos of the said incident, whereafter, they dropped the prosecutrix at a distance from her school.

6. The prosecutrix further stated that co-accused Kishan allegedly used to visit the prosecutrix while she was alone at home. It is alleged that on 12.01.2023, co-accused Kishan had come to the house of the prosecutrix and had sexually assaulted her. It is alleged that co-accused Kishan had committed the



alleged offence again on 28.01.2023.

7. It is alleged that on 10.02.2023 the mother of the prosecutrix called co-accused Kishan to talk, however, co-accused Kishan threatened the mother of the prosecutrix of dire consequences of making the alleged photos and videos of the prosecutrix viral. Pursuant to a complaint made by the mother of the prosecutrix the police registered the present FIR. The prosecutrix was stated to be twelve years of age at the time of the incident.

8. The learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case.

9. He submits that there is no allegation of sexual assault against the present applicant and he was not even present at the time of the commission of the alleged offence.

10. He submits that the prosecutrix during her examination has turned hostile and she admitted of not seeing any video or photo that was allegedly captured by the applicant.

11. *Per contra*, the learned Additional Public Prosecutor along with the learned counsel for the prosecutrix vehemently oppose the grant of any relief to the present applicant and consequently pray that the present application be dismissed.

12. I have heard the learned counsel for the parties and perused the record.

13. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of



the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

14. Undisputedly, in the present case the prosecutrix has turned hostile and has not supported the case of the prosecution. Even as per the initial complaint which led to registration of FIR, the only allegation against the applicant is that he had captured photos and made a video while the co-accused Kishan was hugging the prosecutrix.

15. During her deposition, the prosecutrix had categorically stated that she had never seen any such video or photo that was allegedly captured by the applicant. She had further deposed that she had given her statement under Section 164 of the Code of Criminal Procedure, 1973 on being tutored by her father.

16. While the probative value of the evidence and veracity of the evidence would be considered at the time of final arguments, it is settled law that in the event of there being even some doubt as to the genuineness of the prosecution, in the normal course of events the accused is entitled to bail. [Ref: ***Ram Govind Upadhyay v. Sudarshan Singh : (2002) 2 SCC 598***]

17. The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive nor penetrative and the deprivation of liberty has been considered as a punishment. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading trial.

18. Considering the aforesaid discussion, this Court is of the
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opinion that the applicant has established a prima facie case for the grant of bail.

19. In view of the above, the present bail application is allowed and the applicant is directed be released on bail on furnishing a personal bond of ₹25,000/- with two sureties of like amount to the satisfaction of the learned Trial Court and on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall not reside within 5 kms radius of the locality where the prosecutrix resides;
- e. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- f. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- g. The applicant shall mark his presence before the concerned IO once every two weeks.

20. In the event of there being any FIR/DD entry/complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.



21. 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.

22. The bail application is allowed in the aforementioned terms. Pending applications also stand disposed of.

AMIT MAHAJAN, J

NOVEMBER 21, 2025

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