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

+ **BAIL APPLN. 3896/2024**

SHARUKH @ BABU

.....Petitioner

Through: Mr. Suraj Prakash Sharma, Mr. Sahil,
Advocates

versus

THE STATE (N.C.T OF DELHI)

.....Respondent

Through: Mr. Hemant Mehla, APP for the State
with Insp. Dharmender Kumar, PS
Jahangir Puri
Mr. Archit Upadhayay, Advocate
(DHCLSC) for Prosecutrix along with
Parents of Prosecutrix in person

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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19.05.2025

1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 439 of the Code of Criminal Procedure, 1973) seeks regular bail in the proceedings arising from FIR No. 290/2023 registered under Sections 323/367/377/34 of the Indian Penal Code, 1860¹ and Section 6 of the Protection of Children from Sexual Offences Act, 2012² at P.S. Jahangir Puri.

2. Briefly stated, the facts of the case of the Prosecution are as follows:

2.1. On 27th February 2023, the present case was registered at Police Station Jahangir Puri, based on the statement of a 16-year-old victim, "D".

¹ "IPC"



The victim stated that on the night of 20th/21st February 2023, he was sitting in a park located in C-Block, Jahangir Puri, along with his friends Vansh and Piyush @ Mooli. During this period, co-accused Aftab approached them in an intoxicated state and attempted to forcibly snatch money from them. Subsequently, Aftab picked up a wooden stick from the vicinity and assaulted the victim. The victim and his friends managed to free themselves and fled the scene.

2.2. Two days later, on 24th February, 2023, while the victim was sitting in a park in D-Block, Jahangir Puri, with his friend Nikhil @ Mota, he was approached by Aftab's younger brother, Arshad @ Makhkhi, accompanied by his friends Sohail, Imran, and Hasibul. Shortly thereafter, four boys, namely, Tohid, Golu, Aryan, and Bhola, arrived at that location. Upon seeing them, Nikhil fled the scene. Tohid then showed an object resembling a knife, while Arshad @ Makhkhi threatened the victim with what appeared to be a pistol. The group then forcibly took the victim to a Jhuggi located in D-Block, Jahangir Puri.

2.3. On 27th February, 2023, the victim disclosed the entire sequence of events to his parents, who subsequently brought him to the police station. Based on the victim's statement, the FIR was registered under Sections 323, 367, 377, and 34 of the IPC, along with Section 6 of the POCSO Act, at P.S. Jahangir Puri, Delhi. Investigation was accordingly initiated.

2.4. In his supplementary statement recorded under Section 161 Cr.P.C., the victim disclosed that, after being taken to the Jhuggi, co-accused Aftab, Samad, and Aftab's elder brother, Golu also arrived at the location. Thereafter, Golu made certain gestures to the other boys, following which

² "POCSO"



all of them collectively assaulted the victim using belts and slippers. Tohid then took off his pants and inserted his private parts inside the victim's mouth, and committed unnatural sexual assault on him, while the co-accused persons watched the same. Arshad @ Makhkhi, Samad, and the Applicant recorded videos of the incident on their mobile phones. Thereafter, all of them left the scene, leaving the victim alone on the roof of the Jhuggi. While the victim managed to escape from there, he did not disclose the incident to anyone at that time, out of fear and emotional distress.

2.5. During the course of investigation, the victim was medically examined at BJRM Hospital, Jahangir Puri. However, he declined to undergo perianal and genital examination. Subsequently, his statement under Section 164 Cr.P.C. was recorded before the Metropolitan Magistrate at Rohini Courts, wherein he reiterated his previous statement.

2.6. The Applicant was arrested on 1st March, 2023. He was produced before the Court on 2nd March, 2023, and his one-day police custody remand was obtained to recover the alleged case property, *i.e.*, his mobile phone, as the victim had claimed that the Applicant had recorded the incident on his phone. The Applicant's mobile phone was recovered and seized from his residence. The Applicant was then remanded to judicial custody. Two other co-accused persons, namely, Aftab and Altaf @ Golu @ Shahzad, were also arrested and sent to judicial custody. The remaining co-accused, namely, Tohid, Arshad @ Makhkhi @ Farjaan, Sohail, Hasibul, Imran, Aryan, and Sheikh Rahmatulla @ Bhola, were found to be juveniles. They were apprehended and produced before the Juvenile Justice Board-I, Kingsway Camp, Delhi. At the instance of CCL Tohid, a knife was recovered from the Jhuggi. Additionally, three mobile phones were recovered from the



possession of the Applicant and CCLs Arshad @ Makhkhi @ Farjaan and Hasibul.

2.7. During the further course of investigation, the aunt of the victim produced a pen drive containing obscene videos related to the incident. The said pen drive was placed on record, and her mobile phone was seized and taken into police possession. A certified copy of the victim's school records was obtained, confirming his date of birth as 26th December, 2006.

2.8. After completion of investigation, chargesheet under Sections 323/367/377/34 IPC, Section 6 POCSO Act and Section 67(B) of the Information Technology Act, 2000 was filed against the Applicant and two other co-accused persons.

2.9. Co-accused Altaf @ Golu was granted bail *vide* order dated 10th May, 2024 by the Trial Court, Rohini Courts.

3. Counsel for the Applicant submits that the Applicant has been falsely implicated in the present case and asserts that the Prosecution has failed to produce any material evidence directly linking him to the alleged offence, other than the solitary testimony of the victim. It is argued that this testimony, unsupported by any corroborative material, is insufficient to sustain the Prosecution's case at this stage. It is further submitted that all material witnesses have already been examined and discharged during trial, thereby eliminating any apprehension of the Applicant tampering with or influencing the evidence. In addition, the Applicant claims entitlement to parity with co-accused Altaf @ Golu, who has already been enlarged on bail by the Trial Court *vide* order dated 10th May, 2024.

4. The application is opposed by Mr. Hemant Mehla, APP for the State, and Mr. Archit Upadhyay, counsel representing the victim. Both submit that



the allegations against the Applicant are of a grave and serious nature, involving offences under Section 377 of the IPC and Section 6 of the POCSO Act. Mr. Mehla submits that the case of the Applicant is not on the same footing as that of co-accused Altaf @ Golu, who was granted bail by the Trial Court. It is therefore, urged that the principle of parity cannot be invoked in the present circumstances. Additionally, it is contended that there exists a credible apprehension of witness tampering by the Applicant. In this regard, reference is made to an incident dated 11th January, 2024, wherein the victim and his parents were allegedly threatened by unidentified individuals outside the court premises. A formal complaint was lodged at P.S. Prashant Vihar, leading to the registration of FIR No. 24/2024, which is currently under investigation.

5. The Court has carefully considered the rival submissions and has perused the material on record with the seriousness it warrants. The allegations against the Applicant are undoubtedly grave, involving offences under Section 377 IPC and Section 6 of the POCSO Act. Accordingly, the Court has undertaken a close examination of the factual matrix and the evidentiary developments. It is not in dispute that co-accused Altaf @ Golu has been granted bail by the Trial Court vide order dated 10th May, 2024. When specifically queried by the Court as to the distinguishing features between the roles attributed to the present Applicant and the co-accused, the Prosecution submitted that the Applicant was allegedly responsible for recording a video of the incident forming the subject matter of the FIR. However, it is also a matter of record that the said video could not be retrieved from the mobile phone seized from the Applicant, as per the FSL report. This factual position was not disputed by Mr. Hemant Mehla, APP



for the State.

6. Further, this Court by order dated 17th April, 2025, directed the Prosecution to file a fresh status report outlining material implicating the Applicant's presence at the scene of the crime on the date of the alleged incident and whether the Prosecution had been able to trace the source of the video, which had been allegedly publicly circulated. In compliance, a fresh status report has now been filed. This report indicates that Babita, the aunt of the victim, who had previously submitted two pen drives containing the video purportedly showing the victim "D" being assaulted, was re-examined, to trace the source of the video. In this regard, her statement, recorded under Section 161 of the Cr.P.C., has been duly captured in the status report, the relevant portion of which reads as follows:

"4) That Babita (Bua of the Victim) during investigation handed over two pen drives which contained the video allegedly made by the applicant in which the victim D was seen being assaulted and sexually abused. At that time the statement U/S 161 CrPC was recorded in which she stated that while she was going from the street, 8-10 women were talking to each other in respect of some video and one of the woman informed Babita that it seems as if the victim in the said video seems to be your nephew D to which Babita shared her WhatsApp number and from the group of that 8-10 women shared the video through WhatsApp. Thereafter, Babita transferred the said video in a pen drive and deleted that said WhatsApp chat as she was under apprehension that her children might see or circulate the said video as the children used to use the mobile phone of Babita.

5) That in compliance of court order dated 17/04/2025 Babita was re-examined about the source of video she submitted during investigation ,to which she stated that after the commission of the offence, the family members have shifted from Jahangir Puri and she does not remember the name as well as any details pertaining to the lady from whom the video was transferred to her through WhatsApp."

7. The status report further confirms that the video in question has not



been traced to the Applicant. Mr. Hemant Mehla, APP for the State, on instructions, submits that the Applicant neither features in the video, nor is he identifiable therein. Moreover, no CDR or electronic evidence has been placed on record to establish the Applicant's presence at or near the scene of occurrence at the relevant time.

8. Thus, in light of the aforementioned facts, it emerges that the Applicant's implication is based on the sole testimony of the victim. It cannot be disputed that an accused can be convicted solely on the basis of the testimony of the complainant or victim, provided that such testimony is of 'sterling' quality and inspires the confidence of the Court.³ However, whether the testimony in question meets that threshold is a matter that must be adjudicated at the stage of trial, after the parties have led their respective evidence. At the stage of considering bail, the Court is not to delve into a meticulous examination of the probative value or sufficiency of the evidence. Rather, the scope of judicial scrutiny is confined to determining whether a *prima facie* case exists against the Applicant, without undertaking a mini-trial or prejudging the merits of the prosecution's case.

9. As per the Prosecution, the Applicant's involvement in the alleged offence stems from the allegation that he recorded the video of the incident in question. However, both the FSL report and the investigation carried out by the Prosecution reveal that the purported video has not been traced to the Applicant's mobile device. In fact, the Prosecution has not produced any forensic or electronic evidence directly linking the Applicant to the act of recording or circulating the said video. In these circumstances, the Court is of the view that the Applicant has made out a *prima facie* case for the grant

³ 2024 SCC OnLine SC 260.



of bail.

10. As regards the contention of parity, it is not disputed that co-accused Altaf @ Golu, who is alleged to have physically assaulted the victim, has already been granted bail by the Trial Court. The allegations against the present Applicant, which are confined to the alleged act of videography, are comparatively less grave, and have not been substantiated through forensic recovery. Therefore, having regard to the principle of parity and the more favourable circumstances surrounding the Applicant's case, this Court finds no reason to deny bail to him.

11. It is well established through catena of judgments by the Supreme Court that the object of granting bail is neither punitive nor preventative. The primary aim sought to be achieved by bail is to secure the attendance of the accused person at the trial.⁴ The Prosecution has confirmed that all material witnesses have been examined, thereby alleviating any concerns regarding the potential tampering of witnesses. In any case, the apprehension raised by Mr. Upadhayay about the Applicant threatening the victim can be effectively addressed by imposing stringent conditions as part of the bail.

12. In view of the totality of the aforesaid facts and circumstances, the Applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:

a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;

⁴ Sanjay Chandra v. CBI, (2012) 1 SCC 40; Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51.



- b. 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;
 - c. The Applicant shall not contact the victim or any of her family members;
 - d. The Applicant shall, under no circumstance, leave the country without the permission of the Trial Court;
 - e. The Applicant shall appear before the Trial Court as and when directed;
 - f. 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;
 - g. The Applicant shall not reside within 3 km radius of the residence of the victim and shall also furnish proof of his residence to the concerned IO. The Applicant shall also not move in the vicinity of the victim in any manner.
 - h. 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.
 - i. The Applicant shall report to the concerned PS on first Friday of every month;
13. 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.
14. 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.

15. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

MAY 19, 2025/ab