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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ TR.P.(CRL.) 85/2025, CRL.M.A. 31486/2025 & CRL.M.A.
31487/2025

VICTIM S THROUGH HER MOTHERPetitioner

Through: Mr. Mohd. Shakeib Naru, Mr. Arani
Chaudhary, Ms. Sneha Rajput,
Advocates

versus

STATE OF NCT OF DELHI AND ORS.Respondents
Through: Mr. Mukesh Kumar, APP for the
State with WSI Sanju Kumari, PS
Palam Village

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
27.10.2025

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1. The present petition under Section 447 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ seeks transfer of the case bearing S.C. No. 167/2025, arising out of proceedings in FIR No. 11/2025 registered under Sections 376/354(A)/506 of the Indian Penal Code, 1860² and Sections 6/10 of the Protection of Children from Sexual Offences Act, 2012³, presently pending before the Court of the ASJ (FTSC) (POCSO)-02, South-West District, Dwarka, to any other competent Court within the Dwarka Courts complex. The Petitioner approached the Principal District & Sessions Judge,

¹ "BNSS"

² "IPC"

³ "POCSO"



Dwarka, seeking transfer of the proceedings, which was rejected *vide* order dated 3rd September, 2025.

2. The Petitioner's primary grievance is that the concerned Trial Court granted bail to the accused persons (Respondent Nos. 2 and 3) without proper application of judicial mind. It is emphasised that in order dated 10th February 2025, while granting bail to Respondent No. 2, the Trial Court erred by: (i) making certain observations on legal issues that were never argued before it; and (ii) including remarks implying that the case may be false, which are not supported by the record.

3. All the grounds urged in the present petition are essentially directed against the merits of the judicial orders passed by the Trial Court, which are already under challenge before this Court in separate bail cancellation proceedings.

4. Nonetheless, the short question is whether any alleged erroneous judicial order passed by a subordinate court can, by itself, justify an inference of bias or partiality so as to warrant the exercise of this Court's jurisdiction under Section 447 of BNSS for transfer of proceedings. In this regard, the view taken by the Principal District and Sessions Judge, rejecting the Petitioner's application for transfer reads:

"Ld. counsel appearing for applicant requests to transfer the matter pending in the court of Ld. ASJ(FTSC) (POCSO)-02, South-West, Dwarka, Delhi to any other competent court to the ground that the victim has lost faith in the impartiality of the Ld. Trial Court as while dealing with the anticipatory bail application, Ld. Trial Court had made some unwarranted observations in para no. 13.1, 13.2, 14(3) of the order. In support of his contention, Ld. counsel for applicant has relied upon the judgment as mentioned in para no. 5, 6 and 7 of the application.

Per contra, Ld. Addl. PP for the State opposes the said contentions.

I have heard Ld. counsel for the parties, perused the record



carefully and give my thoughtful consideration to their contentions.

Perusal of the anticipatory bail order dated 10.02.2025, copy of which is annexed by the applicant along with the application, reveals that the anticipatory bail was granted to the accused persons with certain conditions. On being asked, Ld. counsel for the applicant submits that the victim has already challenged the impugned order before the Hon'ble High Court of Delhi.

The relevant portion, which leads moving the present application, are re-produced as under:-

13.1 Another factor is with regard to date of birth of the victim. In this regard, Ld. Defence Counsel has filed the photocopy of date of birth of the victim issued by District Mahila Chikitsalaya, Ghaziabad showing the date of birth as 08.02.2005 and the same was got verified by the IO and it was found correct. Whereas, as per the police, the date of birth of the victim is shown as 31.03.2006 as per MCD record. This means that there are doubts regarding the date of birth. However, this fact is a matter of trial.

13.2 Another factor is with regard to the concealment of 3 pending cases against the accused. Nothing had been disclosed by the complainant in the FIR regarding the pendency of 3 cases i.e. one u/s 12 DV Act bearing CC No. 2007/1/15 which was filed on 18.09.2015, second maintenance case was filed u/s 125 Cr.P.C. against the accused by the mother of the victim and that case was decided on 02.09.2022 and third case was filed vide FIR no. 97/2020 u/s 498A/406/34 IPC against the applicant/accused. However, even the IO had not disclosed the factum of pendency of these cases in her reply. Hence, false implication of the accused cannot be ruled out in view of the matrimonial disputes as stated above.

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3. As per the IO, the CDR with tower location of mobile phone of the accused was at Ghaziabad, Raj Nagar, Loni, UP from 10:26 to 23:45. However, the tower location of the victim's mobile was at Sadh Nagar, Palam village on



28.09.2024 from 17:09pm to 22:25pm. This means that there is doubt regarding the presence of accused at the place of incident on that day. However, this fact is a matter of trial.

It is also pertinent to point out that in para 16, Ld. Trial Court has specifically mentioned, "This order shall not tantamount to expressing any opinion of the merits of this case." This clearly shows that the above observations as pointed out by Ld. counsel appearing for the applicant shall have no bearing on the merit of the case.

In case, **Amarinder Singh Vs. Prakash Singh Badal (2009) 6 SCC 260**, upon which heavy reliance is placed, it was observed by the Hon'ble Apex Court as under:-

"18. For a transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. It is one of the principles of administration of justice that justice should not only be done but it should be seen to be done. On the other hand, mere allegations that there is apprehension that justice will not be done in a given case does not suffice. In other words, the court has further to see whether the apprehension alleged is reasonable or not. The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension.

19. Assurance of a fair trial is the first imperative of the dispensation of justice. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that the public confidence in the fairness of a trial would be seriously undermined, the aggrieved party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 CrPC.

20. However, the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary. Free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. The apprehension must appear to the court to be a reasonable one."

Applying the above preposition of law in the matrix of the case at hand, I am of the view that the reasons disclosed by the applicant for the apprehension as expressed by the Ld. counsel for the applicant



are not sufficient and reasonable to transfer the matter from the court of Ld. Trial Court. Moreover, the applicant has already availed the judicial remedy qua the impugned order.

In view of the above, I do not find any merit in the application, accordingly, same is dismissed.

Copy of this order be sent to Ld. Trial Court.

File be consigned to Record Room after due compliance.

Announced in the open court on 3rd Day of September, 2025.”

5. This Court finds no infirmity in the opinion formed by the Principal District and Sessions Judge. The reasoning is sound and in consonance with the well-settled principles governing transfer of criminal cases. The observations of the Trial Court, are expressly qualified as being limited to the bail stage and “*not tantamount to expressing any opinion on the merits of the case.*” Such remarks cannot, by themselves, form the basis for a reasonable apprehension of bias warranting transfer. Mere allegations that there is apprehension that justice will not be done is insufficient for the Court to exercise its power to transfer a criminal case.

6. In view of the above, the present petition is disposed of.

7. The Court has not commented on the merits of the order granting bail and all rights and contentions of the parties which are presently under adjudication are therefore left open.

SANJEEV NARULA, J

OCTOBER 27, 2025/ab