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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 21.02.2025*

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BAIL APPLN. 4360/2024 & CRL.M.A. 5776/2025**AKASH**

.....Petitioner

Through: Mr. Rajiv Takbi, Mr. Prerit Shukla
and Mr. Harsh Vardhan, Advocates

versus

STATE GOVT. OF NCT DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP for State
along with SI Muskan, PS: Jahangir
Puri

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CORAM:**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****ORDER****MANMEET PRITAM SINGH ARORA, J (ORAL):**

1. The present application has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') seeking grant of Regular Bail to the accused/Applicant in the FIR No. 205/2019 dated 12.04.2019 registered at P.S. Jahangir Puri under sections 363/376/506 of the Indian Penal Code, 1860 (IPC) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO).
2. The brief facts leading to the registration of the FIR set out in the charge-sheet are as follows: A woman Sub-Inspector (SI) from P.S. Bhalswa Dairy arrived at P.S. Jahangir Puri on 12.04.2019 and submitted a Tehrir (written complaint) along with the victim's statement, MLC No. 170467/19 from BJRM Hospital, and MLC No. 1464/19 from BSA Hospital. She informed that a missing girl aged 07 years, found as per DD No. 53B, had

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Signed By: RASHMI DABAS

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been abducted from her home and sexually assaulted in an area under the jurisdiction of P.S. Jahangir Puri.

3. It is stated that in the victim's statement, recorded under Section 161 of the Code of Criminal Procedure, 1973 (CrPC), she reported that on 11.04.2019, on the day of the incident, she was playing outside her house when an unknown boy approached her around 4:30 PM. The boy informed the victim that her mother had asked him to bring her home. On this pretext, the boy took the victim to a deep forest near the Bhalswa lake to an isolated location, where he forcibly removed her clothes and raped her. After the assault, the perpetrator abandoned the victim near Bhalswa Lake, where she was found by a PCR vehicle. The victim was then taken to P.S. Bhalswa Dairy, where her parents were also called, and later, she was taken to a hospital for medical examination.

4. It is stated that based on the victim's statement and MLC records, P.S. Jahangir Puri registered the subject FIR. During the investigation, CCTV footage was reviewed, and in one of the videos, the victim was seen walking with a boy who was later identified as the Applicant/Akash. Upon interrogation, the Applicant confessed to the crime. Subsequently, Applicant was arrested on 13.04.2019 and sent for medical examination at BJRM Hospital.

5. It is stated that on 20.04.2019, the victim was produced before the Trial Court, where her statement under Section 164 CrPC was recorded. Her statement remained consistent with her earlier statement under Section 161 CrPC. The testimony of the victim was also recorded before the Trial Court on 04.09.2019 during prosecution evidence. In her testimony the victim stated that she can recognize the accused and thereafter she identified



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accused Akash on the video screen; at that time accused Akash was present in the Court in a room which had a one-way viewing glass in between.

Arguments of the Applicant

6. Learned counsel for the Applicant submits that the proceedings before the Trial Court have been prolonged, and the Applicant has been in custody as an undertrial since 13.04.2019. It is further stated that the trial is currently at the stage of defence evidence, and keeping the Applicant in custody at this stage serves no meaningful purpose. Therefore, the continued detention of the Applicant as an undertrial violates his fundamental right to liberty, as guaranteed under Article 21 of the Constitution.

7. He states that the observations made by the Trial Court with respect to the matching of DNA of the Applicant with the DNA collected from the cervical and vaginal swabs of the victim, in the order dated 14.12.2022 while rejecting the bail of the Applicant, is erroneous as no such conclusion has been made in the FSL report 26.08.2019. He states that infact the FSL report records that the Applicant's DNA was not found on the exhibits sent to the FSL.

8. He states that during the cross-examination of the Investigating Officer (IO), the IO stated that the Applicant 'resembles' the person shown in the CCTV footage. He states that this statement indicates uncertainty regarding the Applicant's identity, thereby raising doubt about his involvement in the alleged offence. He states that consequently, the Applicant has successfully rebutted the presumption against him raised under Section 29 of the POCSO Act, and the benefit of doubt should be



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extended in his favor. In support of this contention, he relies on the judgment of a coordinate bench of this Court in **Dharmander Singh v. State**¹.

Arguments of the Respondent-state

9. In reply, learned APP has opposed the bail application and submits that the allegations against the Applicant are very serious and the Applicant committed the alleged offence of rape and aggravated penetrative sexual assault upon the victim girl aged only 07 years. He states that the victim remained hospitalized for 04 continuous days due to the commission of alleged offence with her by the Applicant and the MLC records the complete tear in the hymen which was fresh and bleeding, tear in fourchette and light abrasion near the labia majora and vulva with the clinical opinion of 'consistent with recent sexual intercourse/assault'.

10. He states that the victim correctly identified the Applicant during the recording of her testimony before the Trial Court 04.09.2019, and her statement remained consistent with her earlier statement recorded under Section 164 CrPC.

11. He states that the Applicant's contention regarding uncertainty in the victim's identification, based on the cross-examination of the Investigating Officer (IO), is without any merit. He states that the CCTV footage retrieved during the investigation clearly shows the Applicant/Akash, and the victim as well has unequivocally identified him during her testimony. Furthermore, it is a settled principle of law that a conviction can be based on the sole testimony of the child victim and in support of this argument, he relies on the judgment of the Supreme Court in **Ganesan v. State**².

¹ 2020 DHC 2838.

² CrI. A. 680/2020



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12. He states that with respect to the argument of the Applicant that the FSL report indicated that the DNA of the victim and DNA of the accused collected during the medical examination does not match and, therefore, there is no evidence to corroborate the fact that offence alleged has been committed by the Applicant is of no avail, as it is well settled law that the injured witnesses/eyewitness have to be relied upon and even in case there is some conflict between the ocular evidence and medical evidence, the ocular evidence has to be preferred. He relies upon the judgement of Supreme Court in the case of **Abdul Sayeed v. State Of Madhya Pradesh**³.

13. He states that the argument of Article 21 of the Constitution is also not available to the Applicant. He states that the prosecution has concluded its evidence on 11.09.2023 and Section 313 Cr.P.C. statement of the Applicant/Accused stands recorded on 14.12.2023. He states thereafter, the Applicant elected to lead defence evidence with effect from 06.12.2023 and thereafter the matter has been listed before the Trial Court atleast 07 times for defence evidence. He states that thus in these facts it is evident that the delay in trial is attributable to the Applicant/Accused.

14. He has handed over a brief note dated 22.02.2025, which is taken on record.

Analysis and Findings

15. This Court has heard the learned counsel for the parties and perused the record.

16. The Applicant has contended that as he has been in custody since 13.04.2019; he is entitled to bail due to the prolonged trial process. The record of the trial proceedings as noted in paragraph 13 above shows that

³ (2010) 10 SCC 259.



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prosecution has concluded its evidence on 06.12.2023 and thereafter the matter has continued at the behest of the Applicant/Accused who is leading defence evidence; and infact the matter was listed before the Trial Court atleast 7 times for defence evidence. The Supreme Court, in **X v. State of Rajasthan**⁴, has held that in cases involving heinous crimes, the Court should be cautious in granting bail merely on the ground of delay unless it is demonstrated that such delay is not attributable to the accused. The relevant extract of the said Judgement reads as under:-

“14. Ordinarily in serious offences like **rape**, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.

15. Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.

16. **We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused.** The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.”

(Emphasis Supplied)

17. In the facts of this case, this Court is not satisfied that prosecution has delayed the trial and this Court finds merit in the submission of the learned

⁴ 2024 INSC 909



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APP that the trial since 07.12.2023 has been delayed at the instance of the Applicant/accused.

18. This Court notes that the offence for which the Applicant has been charged in the present case is of an extremely serious nature. The victim in the present case was a 7 years old child at the time of the incident and 8 years old at the time of recording of her testimony. The victim has positively identified the Applicant as the perpetrator in her testimony recorded on 04.09.2019 when she saw him on video screen. The testimony of a child victim, especially one of such a tender age, cannot be lightly disregarded, as there exists no plausible reason for her to falsely implicate and/or identify the Accused, who is otherwise a stranger to her. The Supreme Court has repeatedly held in **State of Rajasthan v. Om Prakash**⁵ that if the testimony of a rape victim inspires confidence and remains unshaken, it is sufficient to record a conviction. This principle has been reaffirmed by a Co-ordinate Bench of this Court in **Ravinder v. State**⁶, in the case of a child victim of sexual assault, wherein it was held that the statement of the child victim, if credible and reliable, can form the sole basis of conviction. Thus, the testimony of the victim dated 04.09.2019 identifying the Applicant cannot be disregarded by this Court while deciding this bail application as in her testimony, the child victim has positively identified the Applicant/accused.

19. In the considered opinion of this Court the defence's argument that the Investigating Officer (IO) used the term "resembles the Applicant" instead of a categorical identification of the Applicant is not sufficient to rebut the testimony of the victim and the evidence of CCTV footage relied upon by

⁵ (2002) 5 SCC 745

⁶ CRL.A. 552/2020



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the prosecution. The minor linguistic variation in the IO's statement cannot override the evidentiary value of the CCTV footage and the victim's testimony.

20. The Applicant has also sought to rely on the Forensic Science Laboratory (FSL) report, arguing that the absence of DNA evidence linking him to the victim's exhibits negates his involvement. The FSL reports record that Applicant's DNA has not been detected on the exhibits of the victim; however, the FSL report has not found presence of any other male DNA either. However, in the present case, the victim's medical examination corroborates the occurrence of sexual assault on 11.04.2019, and her categorical statement identifying the Applicant is a matter of record. The reason for absence of male DNA would be examined by the Trial Court after considering the totality of the evidence led by the prosecution. It is a well-settled principle of law, as reiterated in **Abdul Sayeed** (Supra) that the testimony of an injured witness or an eyewitness must be given greater evidentiary weight than medical or forensic evidence. Where the eyewitness testimony is credible and trustworthy, minor inconsistencies or the absence of corroborative medical evidence do not weaken the prosecution's case. The relevant extract of the said Judgement reads as under:-

“35. Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities cannot be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility.

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39. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular



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testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.”

(Emphasis Supplied)

21. The Supreme Court has consistently maintained that in cases involving sexual offences against minors, the presumption under Section 29 of POCSO Act operates against the accused, placing the burden on him to establish his innocence. In the facts of the present case, the Applicant has failed to rebut this presumption through any cogent evidence.

22. Considering the totality of circumstances, including the severity of the offence, the consistent testimony of the child victim, the corroborative medical evidence, the presence of CCTV footage, and the Applicant’s role in delaying the trial, this Court finds no grounds to grant bail to the Applicant. The bail application is accordingly dismissed.

23. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

24. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA
(JUDGE)

FEBRUARY 21, 2025/rhc

Signature Not Verified

Signed By: RASHMI DABAS

Signing Date: 26.02.2025
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