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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4268/2025 & CRL.M.As. 33053-33054/2025**
VICKYPetitioner

Through: Mr. Deepak Joshi, Mr. Ravi Joshi and
Ms. Seema Sharma, Advocates.

versus

STATE NCT OF DELHIRespondent
Through: Mr. Hemant Mehla, APP.
SI Anuj Mor, P.S. Khyala.
Prosecutrix (in-Person).

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

10.11.2025

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1. The present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in the proceedings arising from FIR No. 806/2023, registered at P.S. Khyala for the offence under Section 363 of the Indian Penal Code, 1860.³

2. The case of the prosecution is as follows:

2.1. The subject FIR was registered on the statement of the victim's father, who reported that on 3rd November, 2023, at about 07:00 AM, his daughter left home to purchase milk and did not return. On this information, the FIR was registered and investigation commenced.

¹ "BNSS"

² "CrPC"

³ "IPC"



2.2. The photograph of the missing child was uploaded on ZipNet; wireless messages were issued; and hue-and-cry notices were circulated. The victim was traced and taken for medical examination at Guru Gobind Singh Hospital, where she was found to be pregnant with an estimated gestational age of approximately two-and-a-half months. She subsequently underwent medical termination of pregnancy. Pursuant to directions of the Child Welfare Committee, the foetal remains were forwarded for forensic analysis.

2.3. The statement of the victim was recorded under Section 183 of the BNSS. Her age was verified from her school records, which reflect that she was 16 years old at the relevant time.

2.4. The Applicant was arrested on 20th March, 2024; his medical examination was conducted and his blood samples were sealed and seized. The Forensic Science Laboratory, upon analysis, reported that the DNA profile generated from the foetal tissue and placenta matches the Applicant's DNA profile, indicating that he is the biological father.

2.5. Upon conclusion of investigation, chargesheet was filed on 18th May, 2024, and charges were framed for the offences under Sections 363/376(2)(n) of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012.⁴

2.6. The trial is at an advanced stage. The victim and her father have been examined; only the victim's mother remains from the family, apart from formal witnesses.

3. Counsel for the Applicant seeks bail on the following grounds:

3.1. The victim's relationship with the Applicant was consensual and



romantic, a fact acknowledged by the victim in her statements under Sections 161 and 164 CrPC as well as in her testimony before the Trial Court. In her statement under Section 164 CrPC, she specifically stated that she had married the Applicant of her own free will, and alleged that her parents were pressurising her to make a false statement against the Applicant. She also stated that at the police station, she was advised to return with her parents, failing which she could face consequences. She further alleged that her parents had threatened her and had also accepted INR 3,00,000 from the Applicant's parents, while still insisting she marry elsewhere. She stated that the Applicant's parents treat her well and that she does not wish to reside with her own parents.

3.2. The victim has, in all her statements, consistently maintained that her relationship with the Applicant was consensual. This Court, in comparable cases, has recognised the necessity of adopting a pragmatic approach, particularly where the relationship is romantic and consensual in nature, so as not to derail the future of the accused.

3.3. The victim's father and other family members were well aware of the relationship between the victim and the Applicant. This is substantiated by the inordinate and unexplained delay of 21 days in lodging the FIR after the victim went missing. It is contended that the victim's family was aware of her whereabouts and knew that she had eloped with the Applicant.

3.4. The victim and her father have already been examined, thereby eliminating any apprehension of influencing the prime witnesses. The victim's mother, who is yet to be examined, has been avoiding appearing before the Trial Court on the last two dates. It is alleged that the family's

⁴ "POCSO"



conduct indicates an intention to prolong proceedings and extort money from the Applicant.

3.5. The Applicant has been in custody since 20th March, 2024. The investigation stands concluded and the chargesheet has already been filed. In these circumstances, continued incarceration of the Applicant is unwarranted.

4. Mr. Hemant Mehla, APP for the State, on the other hand, opposes the bail application. He submits that the Applicant stands accused of a grave and heinous offence of penetrative sexual assault upon a minor, an offence of the gravest kind carrying a severe sentence under POCSO Act. The assault resulted in the victim's pregnancy, a fact corroborated by cogent scientific and forensic evidence. It is further submitted that the victim was a minor as established from official records, thereby rendering any plea of consent irrelevant under the framework of the POCSO Act. It is further urged that the Applicant's release at this stage poses a risk of intimidation of the victim and other witnesses, and may impede the trial.

5. The Court has considered the rival submissions. At this stage, it is neither necessary nor appropriate to embark upon a mini-trial or to return findings that may prejudice either side. Since both parties have placed substantial reliance on the evidentiary record, a limited, *prima facie* appraisal is undertaken solely for deciding this application, mindful of the gravity of the charge, the presumption of innocence, and the statutory framework of the POCSO Act.

6. *Prima facie*, the victim's statement under Section 164 CrPC indicates that, at that point in time, she did not wish to pursue legal action and had stated that she had accompanied the Applicant of her own free will.



Likewise, in her deposition before the Trial Court, she stated that she had established physical relations with the Applicant consensually. However, the victim, who is present in Court today, has opposed the bail application. While this Court refrains from commenting on the reasons behind the change in her stand, the critical *prima facie* considerations emerging from the record are twofold: First, the victim was admittedly a minor on the date of the incident; her date of birth stands established on the basis of the school records. Second, at the time of her medical examination, the victim was found to be approximately two and a half months pregnant, and subsequently underwent MTP. The scientific and forensic material on record *prima facie* confirms that the DNA profile generated from the foetal tissue matches the DNA profile of the Applicant, thereby indicating that the Applicant is the biological father. This evidence, *prima facie*, points towards sexual intercourse having taken place with a minor.

7. In view of the foregoing circumstances, the plea of a consensual, voluntary relationship does not assist the Applicant. The victim was a child at the material time; under the POCSO framework, any purported “consent” of a minor is legally ineffectual. On the basis of the record, the foundational facts stand *prima facie* established: age by school records; occurrence by pregnancy; and identity by the FSL report linking the foetal DNA to the applicant. Once such foundational facts are shown, the statutory presumptions under Sections 29 and 30 operate at trial, and, even at the bail stage, they reflect the strength of the prosecution case on *prima facie* basis.⁵

8. Accordingly, having regard to the foregoing scientific evidence

⁵ Dharmander Singh @ Saheb v. State (Govt. of NCT, Delhi), BAIL APPLN. 1559/2020.



linking the Applicant to the alleged offence, the fact that the victim was a minor, and the statutory scheme under the POCSO Act, this Court is of the view that the Applicant's pleas regarding a consensual romantic relationship and prolonged incarceration do not tilt the balance in favour of granting bail to the Applicant.

9. The bail application is, therefore, dismissed along with pending applications.

10. 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.

11. Disposed of.

SANJEEV NARULA, J

NOVEMBER 10, 2025

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