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

+ **BAIL APPLN. 4813/2024**

PAPPU YADAV

.....Petitioner

Through: Mr. Deepanshu Goswami, Ms. Kirti Chauhan, Mr. Rohit Sahrawat and Ms. Himanshi Goswami, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Mukesh Kumar, APP for State.
SI Kuldeep Singh, PS: Sunlight Colony.
Mr. Ajit Kumar and Ms. Nikita Sharma, Advocates for the victim.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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06.05.2025

1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in the proceedings arising from FIR No. 34/2017 registered for the offences under Section 376/363/366/506/34 of the Indian Penal Code, 1860³ at P.S. Sunlight Colony. Following the registration of the FIR, the chargesheet was filed in the present case, wherein the Applicant has been charge-sheeted under Sections 376, 366, and 342 of the IPC along with Section 4 of the Protection

¹ "BNSS"

² "CrPC"



of Children from Sexual Offences Act, 2012.⁴

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

2.1 On 02nd June, 2017, the Prosecutrix N came to P.S. Sunlight Colony, Delhi and gave her statement, wherein she stated that in October 2016, she had reached New Delhi railway station by train, where she met one boy, namely, Arman. She stated that Arman took her to a room in Sarai Kale Khan, Delhi, where she met Haseena, Arman's wife. The Prosecutrix alleged that Arman sexually assaulted her in the presence of his wife Haseena, and after two days, they sold her to accused Pappu Yadav (the Applicant), who took her to Sawai Madhopur and forcefully married her in a temple there.

2.2 The Prosecutrix further stated that after three days, the Applicant took her to Teegaon, Faridabad, Haryana, where she stayed for about one month. She alleged that the Applicant repeatedly exploited and committed rape upon her. On 28th January 2017, the Prosecutrix managed to escape and reached Hazrat Nizamuddin Railway Station. While she was on her way to the police station to report the matter, she was encountered by Haseena, who took her to a secluded area near the railway parking. There, Haseena intimidated the Prosecutrix and contacted co-accused Mohd Afroz, who arrived with a bottle of whisky and compelled the Prosecutrix to consume alcohol and other intoxicating substances. Thereafter, Haseena called another co-accused Mohd Zakir, who forcefully established physical relations with the Prosecutrix in an intoxicated state.

2.3 Pursuant to the aforesaid statement given by the Prosecutrix, the

³ "IPC"

⁴ "POCSO Act"



present FIR was registered. During investigation, the Applicant and co-accused Mohd Afroz were arrested on 3rd February, 2017. A potency test was conducted on both accused persons, and relevant exhibits were seized. The Prosecutrix's statement under Section 164 Cr.P.C. was recorded by the Magistrate, wherein she reaffirmed her previous statement. As a result, Section 6 of POCSO Act was also incorporated into the case.

3. Counsel for the Applicant urges the following grounds, seeking grant of bail:

3.1 The Applicant has been in custody for a period of 8 years and 3 months. Despite the lapse of eight years since the Applicant's arrest, 10 prosecution witnesses still remain to be examined by the Trial Court. The extended period of incarceration, coupled with the significant delay in the trial, has caused undue hardship to the Applicant. The delay itself constitutes a valid ground for granting bail in this case.

3.2 The Prosecution's case rests on the assumption that the Prosecutrix was 15 years old at the time of the alleged incident, based on her school records. However, the ossification bone report indicate that the Prosecutrix's bone age was between 17 and 18 years at the relevant time, which contradicts the Prosecution's claim regarding her age.

3.3 Furthermore, during the marriage between the Applicant and the Prosecutrix, her Aadhaar card was presented to both the Applicant and the pujari who performed the marriage ceremony. As per the said Aadhaar card, the Prosecutrix was born in 1997, and was an adult at the time of the marriage.

3.4 In this regard, reliance is also placed on the testimony of PW-3, Sh. Narender Guru, the pujari who performed the marriage ceremony. He stated



that he conducted the marriage between the Applicant and the Prosecutrix, and categorically testified that he had seen the Prosecutrix's Aadhaar card, which indicated that she was an adult at the time of the marriage.

3.5 The MLC of the Prosecutrix does not mention the name of the Applicant. Additionally, it explicitly notes that there was no sexual intercourse within one week prior to the alleged date of the assault.

3.6 The FSL report does not support the case of the Prosecution *qua* the present Applicant.

3.7 The co-accused against whom allegations of forceful sexual assault were made by the Prosecutrix, has been granted bail by this Court considering the long period of incarceration by order dated 13th December, 2024 [BAIL APPLN. 2240/2024] titled ***Mohd. Afroz v. State (NCT of Delhi)***.

3.8 The Prosecutrix herself, during cross-examination, admitted that her marriage to the Applicant was consensual. She also acknowledged that she did not file any complaint against the Applicant following the alleged incident of beating after marriage.

4. On the other hand, Mr. Mukesh Kumar, APP for the State, opposes the bail application. He contends that the allegations against the Applicant are serious in nature, and thus, the mere length of the Applicant's incarceration cannot be a sufficient ground for granting bail. He further argues that the Prosecutrix, in her testimony, has supported the Prosecution's case and has categorically identified the Applicant. Minor discrepancies in her statement are not substantial enough to justify granting bail. Additionally, he raises concerns that if the Applicant is released on bail, there is a reasonable apprehension that he may tamper with evidence and



5. The Court has considered the submissions made by both parties. The parameters for granting or refusing bail, particularly in cases involving serious offences, are well-established, as outlined in ***Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and Anr.***⁵ However, it has been consistently emphasized that prolonged detention during trial cannot be considered a punitive measure. The issue of granting bail due to extended incarceration has been addressed in several Supreme Court decisions. In ***Union of India v. K.A. Najeeb***,⁶ the Supreme Court held that where a timely trial is not feasible, courts are ordinarily obligated to release the undertrial on bail. The Court further clarified that statutory restrictions do not preclude constitutional courts from exercising their discretion to grant bail, particularly in cases where there is a violation of the Fundamental Rights enshrined under Part III of the Constitution. While the said judgement was passed in the context of UAPA, the said observations merit mention:-

“12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in *Paramjit Singh v. State* (NCT of Delhi), *Babba v. State of Maharashtra* and *Umarmia v. State of Gujarat* enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot

⁶ (2021) 3 SCC 713 dated 01st February, 2021.



indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

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17. *It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."*

6. This court in ***Ravi Rai v. State (Govt. of NCT of Delhi)*** vide order dated 08th April, 2024 granted bail to the accused noting that he cannot be kept in custody for an indefinite period while awaiting the outcome of the trial.

7. According to the latest nominal roll, as of 16th January, 2025, the Applicant has been in custody for 7 years, 11 months, and 13 days. Consequently, as on date, he has spent over 8 years and 3 months as an undertrial. The trial is far from its conclusion, with 10 prosecution witnesses yet to be examined. Therefore, the Applicant's argument regarding the delay in the trial and prolonged incarceration warrants serious consideration.

8. As regards the merits of the case, the Applicant has relied upon the



bone ossification report of the Prosecutrix, which is annexed with the petition. This report indicates that the age of the Prosecutrix at the time of the alleged incident was determined to be “*between 17 years to 18 years*”. In this regard, it is apposite to refer to the judgement of a division bench of this Court in ***Court on its Own Motion v. State (NCT of Delhi)***,⁷ wherein the Court observed that in cases of sexual assault, when the court is called upon to determine the age of the victim based on a bone age ossification report, the upper age in the reference range should be considered as the age of the victim. This principle is grounded in the approach of giving the benefit of doubt to the accused, a position consistently upheld by the Supreme Court.⁸ In the present case, if the age of the Prosecutrix is taken to be 18 years, as per the upper limit of the bone ossification report, it would alter the entire complexion of the case. However, at this stage, the Court is not to conduct a mini-trial, nor would it be appropriate to render findings that might prejudice either side. However, for the limited purpose of adjudicating the present bail application, the Applicant can indeed rely upon the bone ossification report to contend that the Prosecutrix was not a minor at the time of the alleged incident.

9. Furthermore, the Applicant has stated that the Prosecutrix showed her Aadhaar card to both him and the pujari conducting the marriage rites, as per which the Prosecutrix was born in 1997, and was an adult. The marriage between the Applicant and the Prosecutrix took place in October 2016, suggesting that she was over 19 years of age at the time of their marriage. This claim is further supported by the testimony of the pujari, who was

⁷ 2024 SCC OnLine Del 4484.

⁸ Jarnail Singh v. State of Haryana, (2013) 7 SCC 263; Rajak Mohammad v. State of H.P., (2018) 9 SCC 248.



examined as PW-3. He deposed before the Trial Court that he had seen the Prosecutrix's Aadhaar card and confirmed that she was an adult at the time of the marriage. Therefore, even if the Prosecutrix were a minor at the time of the alleged incident, it can be *prima facie* concluded that the Applicant was perhaps unaware of this fact, as he relied on the age disclosed by the Prosecutrix through her Aadhaar card.

10. As regards the Prosecution's contention that the Applicant forcibly married the Prosecutrix, the Applicant has referred to the cross-examination of the Prosecutrix before the Trial Court, wherein she stated, "*it is correct my marriage with Pappu Yadav was with my consent. I had not lodged any complaint against Pappu Yadav after he started beating me after the marriage.*" Through this statement, the Prosecutrix indicated that her marriage to the Applicant was consensual and not forced.

11. With regard to the allegation under Section 376 IPC, SI Kuldeep Singh, the Investigating Officer, has categorically stated that the FSL report does not support the Prosecution's case insofar as it concerns the present Applicant. Moreover, the MLC of the Prosecutrix, dated 2nd February 2017, indicates that she was examined with a history of an alleged sexual assault, purportedly committed on 31st January, 2017, by a person named Armaan and another unidentified person. Pertinently, the Applicant's name is not mentioned in the MLC. Furthermore, the MLC explicitly records that there was no sexual intercourse within one week prior to the alleged assault.

12. It is well-established 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.⁹ Considering the totality of the aforesaid circumstances, the Applicant's prolonged incarceration of over 8 years and 3 months; the age determination of the Prosecutrix as per the bone ossification report; the representation of the Prosecutrix's age through the Aadhaar Card shown to the Applicant and the pujari; her admission of a consensual marriage before the Trial Court; and the findings in the MLC, the Court is of the considered opinion that the Applicant has made out a case for grant of bail.

13. Accordingly, in light of the foregoing facts and circumstances, the Applicant is directed to be released on bail on furnishing a personal bond for a sum of INR 25,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:

- a. The Applicant will not leave the country without prior permission of the Court.
- b. The Applicant shall provide permanent address to the Trial Court. The Applicant shall intimate the Court by way of an affidavit and to the IO regarding any change in his residential address.
- c. The Applicant shall appear before the Court as and when the matter is taken up for hearing.
- d. The Applicant shall provide all mobile numbers to the concerned IO, which shall be kept in working condition at all times.
- e. The Applicant shall not switch off his phone or change his mobile number without prior intimation to the concerned IO.
- f. The Applicant will report to the concerned IO on the second and

⁹ Sanjay Chandra v. CBI, (2012) 1 SCC 40; Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51.



fourth Friday of every month, at 4:00 PM, and will not be kept waiting for more than an hour.

g. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.

14. 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.

15. 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.

16. The application is allowed in the aforementioned terms.

17. A copy of this order be sent to the concerned Jail Superintendent for necessary compliance.

SANJEEV NARULA, J

MAY 6, 2025

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