



\$~2

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

+ **BAIL APPLN. 4845/2024 (*disposed of case*)**

VIJAY@TOLA

.....Petitioner

Through: Mr. Praveen Nagar, Mr. Vijay Verma,
Mr. Om Pal, Advocates

versus

THE GOVT OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Mukesh Kumar, APP for the
State with SI Deepak Sahu, PS
Pralhadpur
Ms. Nidhi Mohan Parashar, Advocate
(Amicus Curaie) with Mr. Amar
Bajpaya, Advocate for Complainant

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

18.01.2025

%

1. The matter has been listed today pursuant to office noting pointing out an error in the name on the police station in order dated 15th January, 2025. The said order has been perused. Accordingly, the order dated 15th January, 2025 shall now read as under:

“1. The present application has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023, seeking grant of regular bail in FIR No. 202/2022 dated 02nd May, 2022, registered at P.S. Pul Prahaladpur, for the offence under Sections 363/354/356/379/34 of the Indian Penal Code, 1860 and Section 8 of the Protection of Children from Sexual Offences Act, 2012.



2. The case of the Prosecution is as follows:

2.1 On 2nd May, 2022, the Prosecutrix met the Applicant, her relative, whom she had earlier met in Rajasthan. The Prosecutrix had agreed to help the Applicant purchase clothes, during which the Applicant was accompanied by co-accused Golu. The Applicant then snatched her phone. Along with Golu, the Applicant began misbehaving with her, forcing her to travel to Rajasthan by bus. The Applicant grabbed the Prosecutrix's hand and forced her to board the bus. When she refused, the Applicant reportedly threw her phone, causing it to break.

2.2 Subsequently, a biker, later identified as co-accused Akbar, offered the Prosecutrix a ride around 5:00 PM. He continued to drive her around on his bike until approximately 9:00 PM. He molested the Prosecutrix by making inappropriate physical contact and climbing onto her, thereby violating her personal dignity and safety.

3. In light of the above, counsel for the Applicant contends that the Applicant is a young individual, aged 20 years, who was arrested on 27th November, 2011, and has spent over two years in custody. It is further emphasized that the Applicant has no prior criminal history. The counsel highlights that the primary allegations in this case are directed towards co-accused Akbar, who has already been granted bail by the Additional Sessions Judge through an order dated 13th December, 2022. Additionally, co-accused Golu has also been released on bail. In view of these circumstances, the counsel argues that the Applicant should be granted bail as well.



4. Ms. Nidhi Mohan Prashar was appointed as Amicus Curiae, as the prosecutrix was not appearing. She acknowledges that the Applicant has been in custody for a duration of over two years; she argues that while the Prosecutrix has not made direct allegations against the Applicant in her statement recorded under Section 164 of the Code of Criminal Procedure, nonetheless, there are specific charges against him, as detailed in the chargesheet.

5. The Court has carefully considered the submissions of the parties. At the outset, it is essential to clarify that the purpose of pre-trial detention is not punitive in nature. Undertrial prisoners should not be kept in custody for an indefinite period, and as a general principle, bail is the rule while jail is the exception. In this regard, the Supreme Court, in its judgment in *Sanjay Chandra v. CBI*,¹ made the following observations:

*“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. **The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.***

xxx

27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.

xxx

*43. There are seventeen accused persons. Statements of witnesses run to several hundred pages and the documents on which reliance is placed by the prosecution, are voluminous. **The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had***

¹ (2012) 1 SCC 40.



they been convicted. It is not in the interest of justice that the accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.

xxx

46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.”

[Emphasis Supplied]

6. Furthermore, the Supreme Court, in ***Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr.***,² delineated the following factors that Court must consider while deciding an application for bail:

- “i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- ii. nature and gravity of the accusation;*
- iii. severity of the punishment in the event of conviction;*
- iv. danger of the accused absconding or fleeing, if released on bail;*
- v. character, behaviour, means, position and standing of the accused in the society;*
- vi. likelihood of the offence being repeated;*
- vii. reasonable apprehension of the witnesses being influenced; and*
- viii. danger, of course, of justice being thwarted by the grant of bail.”*

7. The Applicant has been in custody for more than two years. It is important to note that, according to the statement of the Prosecutrix, the primary allegations are directed towards co-accused Akbar, who has already

² (2010) 14 SCC 496.



been granted bail by the Trial Court. The Applicant is a young individual, aged 20 years, with no prior criminal history. Subjecting a young person of this age, with no criminal antecedents, to prolonged pre-trial detention would likely cause more harm than benefit. Further, such detention, in circumstances where the role attributed to the Applicant appears less significant than that of co-accused, who has been granted bail, raises concerns regarding proportionality.

8. Furthermore, it must be emphasized that the Prosecutrix has already been examined by the Trial Court, and the trial is nearing its conclusion. Therefore, there is no reasonable apprehension that the Applicant, if granted bail, would threaten witnesses or interfere with any further investigation. Additionally, it is not alleged that the Applicant poses a flight risk. Any concerns raised by the Prosecution in this regard can be addressed by imposing appropriate conditions.

9. In view of the foregoing facts and circumstances, the present bail application is allowed. It is accordingly directed that the Applicant shall be released on regular bail on furnishing a personal bond in the sum of INR 50,000/- along with one surety of the like amount to the satisfaction of the concerned Trial Court, subject to the following conditions:

9.1 The Applicant shall not travel to Delhi, unless the same is required for the purpose of the trial or attending court proceedings and contacting his counsel. In any event, the Applicant shall not enter within a radius of at least 5 KM from the locality where the victim resides.

9.2 The Applicant will not leave the country without prior permission of the Trial Court.

9.3 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.

9.4 The Applicant shall appear before the Trial Court as and when the matter is taken up for hearing.

9.5 The Applicant shall not contact the victim and tamper with the evidence in any manner whatsoever.

10. Needless to state, any observations concerning the merits of the case are solely for the purpose of deciding the question of grant of bail and shall not be construed as an expression of opinion on the merits of the case.

11. A copy of the order be sent to the Jail Superintendent *via* email for information and necessary compliance.

12. With the foregoing directions, the present application is disposed of. Pending application(s), if any, are disposed of as infructuous.”

SANJEEV NARULA, J

JANUARY 18, 2025

nk