



2025:DHC:289



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Judgment delivered on: 17.01.2025*

+ **BAIL APPLN. 40/2025 & CRL.M.A. 244/2025 & CRL.M.A. 245/2025**

ANIL KUMAR BHARTI

.....Petitioner

Through: Mr. Kriti Ranjan , Mr. Kumar
Gaurav and Mr. Tanishq
Sharma, Advocates

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Rajkumar, APP for the
State
Mr. L.S. Chaudhary Mr. Ajay
Chaudhary, Mr. Bharat
Chaudhary, Mr. Vikram Singh,
Mr. Anirudh Sharma and Ms.
Ayushi Gupta, Advocates for
respondent no. 2.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The instant application under Section 439 of the Code of Criminal Procedure, 1973/Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed on behalf of the applicant, seeking grant of regular bail in case bearing FIR No. 28/2022, dated 05.01.2022, registered at Police Station Mundka, Delhi for offence punishable under Sections 63/366/368/323/344/376/ 506/120B/34 of Indian Penal Code, 1860 (hereafter 'IPC') and Section 6/17/21 of the



2025:DHC:289



Protection of Children from Sexual Offences Act, 2012 (hereafter '*POCSO Act*').

2. As per Status Report filed on record, the facts of the case are that on the complaint of Mr. 'N', resident of Mundka, Delhi, a case was registered under Section 363 of IPC at P.S. Mundka, Delhi wherein he stated that his daughter Ms. 'A', aged 17 years, was missing since 31.12.2021 and a boy named Shubham had taken away his daughter by luring her away. During the course of investigation, efforts were made to trace the victim and accused Shubham, son of Arjun Prasad Yadav, however, the accused was absconding. Non-Bailable Warrant against Shubham were obtained by the Investigation Officer on 17.02.2022. During the course of investigation, the relatives of the accused Shubham, i.e. his father Arjun Prasad Yadav, mother Babita Devi, uncle Arun Kumar Suman and Krishan Kumar Yadav, and Fufa Anil Kumar Bharti were contacted but they did not join and co-operate in the investigation. During investigation, age proof of the victim was also obtained from her school, as per which her date of birth was 25.10.2004. Thereafter, on 03.03.2022, the maternal uncle of accused Shubham had telephonically contacted the police, and had asked them to come at Peeragarhi Chowk, Delhi where the victim was handed over to the police, who was later brought to P.S. Mundka. Her counselling and medical examination was conducted at Sanjay Gandhi Hospital, Mangolpuri, Delhi and her statement was also recorded under Section 164 of Cr.P.C. before the learned Magistrate.



2025:DHC:289



3. The statements of relevant witnesses were also recorded under Section 161 of Cr.P.C. It is stated that thereafter, on 12.03.2022, the victim gave one additional complaint against accused Shubham and his relatives, where she had mentioned the sequence of incidents, and alleged the offence of sexual assault with her. Before the IO, the victim had disclosed that earlier on 03.03.2022, she could not disclose the true facts due to fear, and threat by the accused Shubham and his relatives. On 26.03.2022, another statement of the victim was recorded before the learned Magistrate, where new facts were disclosed by the victim. Thereafter, relevant Sections 366/376/323/344/506/120B/34 of IPC, and Sections 6/17/21 of POCSO Act were added in the present case. Thereafter, the victim produced three photographs of accused Shubham, his father Arjun Prasad Yadav, and his uncle Arun Kumar Suman and aunt Rekha Rani, and the same were seized, and taken into possession by the police.

4. Thereafter, search was made for the accused persons, including in the State of Bihar. On 14.04.2022, the uncle of accused Shubham namely Arun Kumar Suman was arrested. On 19.04.2022, the accused Shubham was arrested in the present case. It is stated that the accused persons namely Rekha Rani, Arjun Prasad Yadav, and Anil Kumar Bharti were absconding since the day of registration, and accordingly, NBWs were also obtained against them. Eventually, proceedings under Section 82 of Cr.P.C. were initiated against the said accused persons. The anticipatory bails preferred by them were dismissed by the learned Sessions Court on 27.05.2022.



2025:DHC:289



5. On 08.06.2022, after completion of investigation, the charge-sheet was filed against the accused persons, i.e. Shubham Kumar, Arun Kumar Suman, Rekha Rani, Arjun Prasad Yadav, and Anil Kumar Bharti. On 20.07.2022, Rekha Rani, Arjun Prasad Yadav and Anil Kumar Bharti, were declared Proclaimed Offenders by the learned Sessions Court, and Section 174A of IPC was added in the present case. Thereafter, Rekha Rani had filed an application for anticipatory bail before this Court, and interim protection was granted to her petitioner. On 28.07.2022, she had joined investigation of the case. Thereafter, Arjun Prasad Yadav, and Anil Kumar Bharti were also granted interim protection from arrest by this Court. The said accused persons joined investigation on 31.10.2022 and 17.11.2022 respectively. Supplementary charge-sheet in the case was filed on 28.01.2023.

6. The learned counsel appearing for the present accused/applicant argued that the victim in this case, though was about 17 years of age at the time of incident, had out of her own free will, eloped with the accused Shubham, and the applicant is the uncle (*fufa*) of Shubham. It is stated that there are no specific allegations against the present accused. It is submitted that co-accused Shubham has already been regular granted bail by the Co-ordinate Bench of this Court. It is also contended that the applicant is a peace loving government servant, and is a teacher in a school with clean antecedents and since charge-sheet already stands filed against him without arrest, there is no ground to



2025:DHC:289



now deny bail to him. Therefore, it is prayed that the applicant be granted bail.

7. The learned counsel for the victim, assisting the learned APP for the State, argues that the victim was only 17 years of age at the time of the incident, and therefore, since the present applicant was instrumental in the commission of offence in question, and also considering the conduct of the applicant, the present bail application ought to be dismissed.

8. This Court has **heard** arguments addressed on behalf of both the parties, and has perused the material placed on record.

9. Having gone through the case file, this Court is of the opinion that the main accused in this case is co-accused Shubham, who has already been granted regular bail by the Coordinate Bench of this Court *vide* order dated 12.09.2024 in *BAIL APPLN. 3137/2024*. The relevant observations of the Coordinate Bench are extracted hereunder:

“9. Material on record discloses that when the victim left the house, she was 17 years and 02 months which is about 10 months short of her attaining the age of majority. This Court is coming across a number of cases where girls who are more than about 17 years of age elope with boys of their choice and when they are caught, the parents of the victim force the victim to change the statement of the victim before the police. The police also records such statements at a later stage which is completely contrary to the earlier statements. Majority of the statements recorded under Section 164 Cr.P.C also do not conform with the victim’s earlier statements given by the victim under Section 161 Cr.P.C which is contradictory. **The present case is a classic example where the victim in the first instance had come out with a story that she had gone to her friend’s house after informing her mother where she had called the Petitioner for meeting and, thereafter, they went to Madhya Pradesh with the Petitioner and after that Bihar and when they**



2025:DHC:289



came to know that the father of the victim has filed a case, they came to Delhi. There is a material improvement in her second statement recorded under Section 164 Cr.P.C which was recorded after 23 days after her first statement stating that though she went to Madhya Pradesh with the Petitioner on her own accord but she was kept confined in Bihar and was forced to marry the Petitioner.”

(Emphasis added)

10. It is not in dispute that in the initial statement recorded under Section 164 of Cr.P.C, the victim had stated that she had developed friendship with the accused Shubham and she had gone to meet him at Metro Walk. In the evening, when her parents had started making calls to her, she, out of fear, had not responded to the same, and thereafter, the accused Shubham had taken her to Madhya Pradesh, where she had lived with the accused in a rented room for about 15 days, and thereafter, they had gone to Hajipur and Patna. Later, one uncle had informed the police about their whereabouts. However, it was in the later complaint made on 12.03.2022 and the second statement recorded under Section 164 of Cr.P.C. on 26.03.2022, that she levelled certain allegations against the relatives of the accused Shubham, including the present applicant, of restraining and confining her in a house, and getting her married to the accused Shubham on the basis of forged and fabricated documents.

11. Clearly, the victim in her first statement recorded under Section 164 of Cr.P.C. before the learned Magistrate on 03.03.2022, did not support the prosecution's case. However, after about 23 days of recording of her initial statement, the victim had changed her version in the second statement recorded under Section 164 of Cr.P.C. on



2025:DHC:289



26.03.2022, and had levelled some allegations against the accused, after improving upon her previous statement.

12. The chargesheet in this case stands filed against the present accused persons without arrest. The applicant herein has clean antecedents and no allegation of threat to the victim or otherwise has been reported or argued before this Court. This Court finds no ground to reject the prayer for grant of bail and therefore, inclined to grant regular bail to the applicant on his furnishing personal bond in the sum of Rs.10,000/- with surety of the like amount to the satisfaction of the Trial Court/Successor Court/Link Court/Duty Judge concerned on the following terms and conditions:

- i) The applicant shall not leave the country without prior permission of the concerned Trial Court.
 - ii) The applicant shall not directly or indirectly make an attempt to influence the witnesses or tamper with the evidence in any manner.
 - iii) In case of change of residential address/contact details, the applicant shall promptly inform the same to the concerned Court and the concerned I.O.
 - iv) The applicant shall attend the proceedings before the learned Trial Court regularly.
13. Accordingly, the present bail application stands disposed of.
14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 17, 2025/ns