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

+ **BAIL APPLN. 84/2025**

RAKESH KUMAR

.....Petitioner

Through: Mr. Deepak Kr. and Mr. Amit Kr.,
Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP.
SI Aarti Yadav, PS: Kapashera.
Ms. Inderjeet Sidhu, Advocate for the
Complainant.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

26.03.2025

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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 proceedings arising from FIR No. 364/2023 registered under Section 363 of the Indian Penal Code, 1860³ at P.S. Kapashera.

2. Briefly, the case of the prosecution is as follows:

2.1. On 7th August, 2023, the Complainant, Mr. 'BM', reported that his daughter, Ms. 'B', left home for Government Boys Senior Secondary School, Samalkha, Delhi, at approximately 7:00 AM but did not return. Based on his statement, the present FIR was registered.

2.2. During the investigation, a WT Message was circulated, and the

¹ "BNSS"

² "Cr.P.C."



victim's photograph along with her details were uploaded on Zipnet portal. On 14th August, 2023, acting on technical surveillance, the Anti-Human Trafficking Unit,⁴ South West District, traced and recovered the victim from Noida, Uttar Pradesh. The Applicant, Mr. Rakesh Kumar, was taken into custody by the AHTU team at the same location and was brought to the police station. The victim underwent counselling and a medical examination at Dada Dev Matri AVM Shishu Hospital, *vide* MLC No. 479/23 was conducted. Relevant forensic exhibits were seized thereafter.

2.3. Subsequent investigation was handed over to W/ASI Laxmi. The victim in her statement recorded under Section 161 Cr.P.C., the victim alleged that the Applicant had forcibly taken her away, intoxicated her with a red coloured handkerchief, and when she woke up, she was in a room with the Applicant present. When she refused to eat the food offered by the Applicant, the Applicant hit her and she was again intoxicated. She further stated that upon waking, she felt pain in her stomach and was covered with a white-coloured sticky substance on her body.

2.4. On 15th August, 2023, the victim was produced before the Court of Ms. Samiksha Gupta, Dwarka Court, Delhi where her statement under Section 164 Cr.P.C. was recorded wherein the victim reiterated her earlier allegations. In view of the disclosures made, the investigating agency added Sections 328, 342, 376 and 323 of IPC, along with Section 6 of the Protection of Children from Sexual Offences Act, 2012.⁵ The Applicant was formally arrested on the same day and remanded to one day's police

³ "IPC"

⁴ "AHTU"

⁵ "POCSO"



custody.

2.5. During the police custody remand, the Applicant led the police to the alleged place of occurrence situated at Room No. 104, First Floor, Gali No. 4, Naya Gaon, Sector 87, Noida, Uttar Pradesh. A site plan was prepared at the instance of the victim. The forensic/crime team collected samples and exhibits from the scene, which were duly seized. The victim's clothing from the time of the incident was also taken into custody. Statements of relevant witnesses were recorded during this period.

2.6. On 16th August, 2023, the Applicant was remanded to judicial custody. On the same day, the victim was produced before the Child Welfare Committee⁶ and was subsequently restored to her father in compliance with CWC's directions.

2.7. During the investigation, the victim's mother produced her school leaving certificate from SDMC Primary School, Kapashera No. 1/1, Kapashera, Delhi, for Class 5, which recorded her date of birth as 14th August, 2008. The same was seized through a seizure memo. The school records confirmed that the victim's date of birth was 14th August, 2008, establishing her age as 14 years, 11 months and 24 days at the time of the alleged incident.

2.8. The forensic exhibits collected during the investigation were sent to FSL, Rohini, Delhi, for examination and analysis. Upon completion of the investigation, a chargesheet was filed and the FSL report was submitted later through a supplementary chargesheet.

3. Counsel for the Applicant states that the Applicant has been falsely



implicated and urges the following grounds in support of his request for bail:

3.1. The Applicant has been in custody since 15th August, 2023. The investigation is complete, chargesheet has been filed and the matter is currently at the stage of recording prosecution evidence. Prolonged incarceration at this stage would serve no purpose, particularly when the trial has already commenced.

3.2. All key witnesses, including the Prosecutrix, have been examined. In this backdrop, there is no likelihood of the Applicant influencing any witness or tampering with the evidence.

3.3. The Prosecutrix, during her testimony in Court, introduced significant improvements over her earlier statements. These inconsistencies, it is contended, undermine the reliability of her account. Reliance is placed on her Section 164 Cr.P.C. statement, which makes no reference to penetrative sexual assault. These variations, taken together, raise substantial doubt over the prosecution's case.

3.4. The MLC and the testimony of the doctor indicate that the victim had no injuries on her hands or face. There was no complaint of pain or discomfort in her private parts.

3.5. The age of the Prosecutrix is itself shrouded in uncertainty. The parents of the Prosecutrix, in their respective statements, have allegedly provided divergent accounts of her date of birth. In the absence of definitive proof of minority, the rigours of the POCSO Act ought not to apply. Moreover, the Prosecutrix had voluntarily accompanied the Applicant, with whom she was romantically involved. She even applied vermilion on her

⁶ "CWC"



forehead upon joining the Applicant at the premises where they were later discovered. This circumstance, it is argued, has been corroborated by the testimony of PW-4.

4. On the other hand, Mr. Amit Ahlawat, appearing for the State, and Ms. Inderjeet Sidhu, representing the Prosecutrix, strongly oppose the present application. They submit that the allegations against the Applicant are grave and of a serious nature. It is pointed out that the trial is now at an advanced stage, with only the Investigating Officer remaining to be examined. Given the severity of the offence and the punishment it attracts, potentially exceeding 20 years, there exists a significant risk of the Applicant absconding, if enlarged on bail. Attention is also drawn to the fact that the Applicant's earlier request for bail was declined by the Trial Court by order dated 7th November, 2024. On merits, they contend that as per the testimony of the victim, it clearly emerges that the victim has been physically assaulted by Applicant, which has been the consistent stand of the Prosecutrix. She has further alleged that she was confined in a room by the Applicant, repeatedly intoxicated, and subjected to sexual assault.

5. The Court has carefully considered the afore-noted facts and contentions advanced by both sides and examined the material placed on record.

6. Determining whether a case warrants bail involves a nuanced evaluation of various factors. Key considerations include the nature of the offence, the severity of the punishment and a *prima facie* appraisal of the involvement of the accused. At this stage, the Court is not required to engage in a detailed examination of the evidence to conclusively establish



guilt. The focus lies in assessing whether there are *prima facie* or reasonable grounds to believe the accused committed the crime, while weighing whether their continued custody aligns with the objectives of the criminal justice system.⁷

7. A fundamental legal principle applicable to this case is the presumption under Section 29 of the POCSO Act which places a reverse burden of proof on the accused in cases involving sexual offences against minors. Since the Applicant has been charged under Section 6 of the POCSO Act, the law mandates that the Court must presume the accused to be guilty unless proven otherwise. This significantly raises the threshold for granting bail, as the Applicant must demonstrate a clear lack of *prima facie* evidence.

8. In the present case, the victim's statement under Section 164 of Cr.P.C., recorded soon after her recovery, clearly sets out the allegations of unlawful confinement and administration of intoxicants. Her testimony during trial, does not *prima facie* exhibit such material contradictions or improvements that would, at this stage, undermine her credibility. Courts have consistently held that minor discrepancies, especially in the deposition of child victims of sexual offences, do not, by themselves, vitiate the core of the prosecution's case.⁸ The standard to be applied is not one of mathematical precision, but whether the overall account is cogent, coherent, and inspires confidence.

⁷ See also: *Brijmani Devi v. Pappu Kumar & Anr.*, (2022) 4 SCC 497 and *Mahipal v. Rajesh Kumar @ Polia*, 2020 (2) SCC 118

⁸ See also: *Dayanand v. State NCT of Delhi*, 2024:DHC:6612



9. In *Dharmander Singh v. State (Govt. NCT of Delhi)*,⁹ this Court had outlined various factors were outlined to assess the severity of allegations under the POCSO Act. A key factor in this case is the age of the victim and the Applicant. At the time of the incident, the victim was approximately 15 years old, while the Applicant was around 23 years old. The substantial age difference of nearly eight years is a critical aspect, as it highlights an increased element of perversion in the alleged offence. The victim, being a minor, was legally incapable of providing consent under the POCSO Act, thereby rendering any alleged sexual activity unlawful, irrespective of circumstances.

10. Another crucial factor is the presence of coercion and restraint. The victim has alleged that she was confined in a room, repeatedly intoxicated, and subjected to sexual assault. The factor of threat, intimidation, and violence, as outlined in *Dharmander Singh*, is *prima facie* evident in the case, as the victim was deprived of her ability to resist or even comprehend the offence due to intoxication. This pattern of conduct suggests a calculated and exploitative approach, further justifying a stricter approach in granting bail.

11. Pertinently, as pointed out by the prosecution, the FSL report indicates that the DNA profile extracted from swabs collected from the victim's clothing and body matches that of the Applicant. Such forensic corroboration of the victim's allegations lends significant probative value to the prosecution's case at the bail stage. In cases involving minors under the POCSO Act, Courts have reiterated the need to give due weight to scientific

⁹ 2020:DHC:2838



evidence, which is often the most objective form of corroboration.

12. It is equally important to note that under the POCSO Act, the legislative intent is to adopt a victim-centric approach, recognising the vulnerabilities of children and the trauma they undergo during such proceedings. In the present case, the victim was barely 15 years of age at the time of the incident and the allegations levelled are grave in nature.

13. In view of the seriousness of the allegations, the presence of corroborative forensic evidence *prima facie* consistency of the victim's deposition, the Court is not persuaded that this is a fit case for grant of bail. The presumption of innocence, while sacrosanct, does not confer an absolute right to bail in every case, especially where there exists compelling material to proceed to trial and the statute under which the offence is alleged, such as the POCSO Act, reflects a heightened concern for the protection of children from sexual offences.

14. In light of the foregoing, particularly considering that the trial is at an advanced stage, with only the Investigating Officer's testimony remaining, the Court is not inclined to grant bail to the Applicant.

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. For the foregoing reasons, the present application is dismissed.

SANJEEV NARULA, J

MARCH 26, 2025/d.negi