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

+ **BAIL APPLN. 4905/2025, CRL.M.A. 37839/2025**

SUDEEP UPADHYAY

.....Petitioner

Through: Mr. Samrat Nigam, Senior Advocate
with Mr. Manish Choudhary and
Mr. Riju Mani Talukdar, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Hemant Mehla, APP for State.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

18.12.2025

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1. This application under Section 482 of Bhartiya Nagarik Suraksha Sanhita, 2023¹ (corresponding to Section 438 of Code of Criminal Procedure, 1973²) seeks grant of pre-arrest bail in FIR No. 391/2025 dated 25th November, 2025, registered at Baba Haridas Nagar, Delhi, under Section 376 of Indian Penal Code, 1860³.

2. The allegations of the victim, in substance, are that the Applicant, Sudeep Upadhyay, a close relative of the victim (first cousin), behaved in an inappropriate manner with her during his visits to Delhi in 2016 and 2018 when she was still young. It is further alleged that in 2023, after the victim disclosed to the Applicant the sexual assault allegedly committed upon her by the Applicant's younger brother, Sandeep Upadhyay, the Applicant told her that no one would marry her after such incidents, and assured her that he

¹ "BNSS"

² "CrPC"

³ "IPC"



would do so. On that assurance, the Applicant is alleged to have established physical relations with her and, upon resistance, used threats of disclosure of the past incidents to secure compliance. The victim further alleges repeated sexual relations on the false promise of marriage, including meetings at hotels whose entries are stated to have been verified during investigation.

3. The prosecution also relies upon *prima facie* corroborative material, including medical records relating to pregnancy and its medical termination, bank transactions reflecting monetary transfers by the Applicant during the relevant period, and WhatsApp conversations reflecting discussions about marriage, which are stated to be under verification.

4. The FIR came to be registered on 25th November, 2025. During investigation, the victim was medically examined and her statement under Section 183 BNSS was recorded. Notices under Section 35(3) BNSS were issued to the Applicant. It is alleged that the Applicant has not yet joined investigation.

5. The Applicant's earlier request for pre-arrest bail was rejected by the Sessions Court on 9th December, 2025, with observations that the allegations were serious and that Section 482(4) BNSS excludes an application of pre-arrest bail where the accusation concerns offences under Section 65 and Section 70(2) of the Bharatiya Nyaya Sanhita, 20234.

6. Mr. Samrat Nigam, Senior Counsel for the Applicant, submits that the FIR is vitiated by an unexplained delay. It is argued that the narrative begins with alleged inappropriate behaviour in 2016 and 2018, yet the complaint was lodged only on 25th November, 2025. Even the principal allegation attributed to the Applicant is stated to have commenced in 2023, but the



victim did not approach the police for nearly two years thereafter. According to the Applicant, the explanation of “fear” or “trauma”, without any contemporaneous disclosure, complaint, or precipitating incident proximate to the lodging of the FIR, does not satisfactorily account for such prolonged silence, particularly when the victim admittedly continued to reside in Delhi within a secure familial environment and remained in contact with close relatives. The timing of the FIR, lodged shortly before the Applicant’s proposed marriage on 4th December, 2025, is urged as a circumstance which, at the very least, calls for caution at the stage of arrest. It is emphasised that the delay is not pressed to invite a detailed evaluation of credibility at this stage, but as a relevant factor while assessing the need for custodial interrogation and the prudence of denying interim protection.

7. Mr. Nigam further argues that the Sessions Court proceeded on a legally rigid and factually incorrect premise. It is submitted that there is a conscious attempt by the prosecution to pitch the matter as one involving a minor so as to attract more stringent consequences and to defeat the remedy of pre-arrest bail. Reliance is placed on the first-attendant school records which, according to the Applicant, reflects the date of birth as 8th May, 2002. On that basis, it is urged that the victim was not a minor when the alleged physical relationship with the Applicant is stated to have begun in 2023, and therefore the statutory exclusion adverted to by the Sessions Court was invoked on a flawed factual footing. On merits, it is submitted that the allegations against the Applicant are vague, general and omnibus, lacking specific particulars that would justify arrest or custodial interrogation. The Applicant emphasises that the relationship between the parties is that of first

⁴ “BNS”



cousins, that there were family interactions over the years, and the case is essentially a consensual relationship sought to be given a criminal colour by introducing a “*promise to marry*” narrative. It is urged that the victim, being an adult at the relevant time, continued contact and meetings by choice, and the material relied upon by the victim is not yet verified.

8. It is further argued that the investigation is predominantly documentary in nature, resting on medical records, bank statements, hotel entries and electronic communications, all of which can be verified without arrest. The Applicant has clean antecedents, is related to the victim as her cousin brother, and there is no material to suggest that he would abscond, influence witnesses or tamper with evidence. It is, therefore, urged that arrest would serve no useful purpose and that the impugned order warrants interference.

9. Mr. Hemant Mehla, APP for the State, opposes the application and submits that the allegations against the Applicant disclose grave and serious offences involving repeated sexual exploitation of the victim on the false promise of marriage, coupled with threats and coercion. The delay in lodging the FIR stands adequately explained by the victim’s fear, psychological trauma and continued influence exercised by the Applicant, and that mere passage of time cannot dilute the seriousness of the accusations. Further, the material collected during investigation *prima facie* establishes that the victim was a minor at the relevant time. Reliance is placed on the victim’s birth certificate reflecting her date of birth as 13th June, 2003, on the basis of which it is urged that she was below the statutory age when the Applicant is alleged to have established inappropriate physical contact with her, thereby attracting stringent provisions.



10. Mr. Mehla further states that the initial investigation has revealed *prima facie* corroboration in the form of verified hotel records, medical documents relating to pregnancy and treatment, bank transactions reflecting monetary transfers by the Applicant, and electronic communications indicating discussions regarding marriage, some of which are still under verification. The Applicant has admittedly not joined investigation despite issuance of notices under Section 35(3) BNSS, and his custodial interrogation is necessary for effective investigation, including verification of electronic devices and confrontation with material witnesses.

11. At the outset, the Court notes that Section 482(4) BNSS contains a specific statutory exclusion, which operates where arrest is on an accusation of having committed an offence under Sections 65 and 70(2) BNS. The applicability of the said bar cannot be presumed in the abstract and must necessarily be examined in the factual context of each case. In the facts of the case, the Court has thus examined the grounds on merits.

12. The Court has considered the rival submissions and perused the material placed on record. Anticipatory bail is a discretionary relief. The Court does not conduct a mini-trial at this stage. The enquiry is confined to whether, on the nature of accusations, the material collected, and the requirements of investigation, pre-arrest protection is warranted.

13. The allegations made by the victim are not confined to a solitary episode from the distant past. The prosecutrix attributes a continuing course of conduct, with specific incidents alleged in 2024 and 2025 supported, at least *prima facie*, by hotel entries, medical documents relating to pregnancy and termination, and contemporaneous financial transfers. Where investigation has to test the authenticity of electronic communications,



reconstruct timelines, and examine devices, the insistence that the case is purely documentary is, at this stage, an over-simplification.

14. The argument on delay also cannot be examined in isolation. The victim's version, whether ultimately accepted or not, carries within it an explanation founded on fear and the familial relationship of the parties. More importantly, the prosecution relies on material suggesting continued interaction and meetings in 2024 and 2025. In that setting, the Court is not persuaded that the delay, by itself, dilutes the necessity of effective investigation, or justifies insulating the Applicant from custodial interrogation.

15. The investigation has yielded *prima facie* material indicating continued association between the Applicant and the victim. The prosecution asserts that records of Hotel Dwarka Inn, reveal that the Applicant and the victim checked in on 28th June, 2024. Moreover, the victim, in her 183 BNSS statement, has stated that she underwent a termination of pregnancy on 17th July, 2024 at Venkateshwar Hospital, and the bank statements placed reflect monetary transfers from the Applicant during the relevant period. The State has also relied on material relating to a hotel booking at Posh Suites Golf Course Road, from 7th to 9th June, 2025, which the victim has adverted to in her statement. These circumstances, at this stage, lend *prima facie* corroboration to the prosecution version, underline the recency of the allegations, and reinforce the need for further verification of medical records, financial trails and electronic communications in a manner that cannot be pre-empted by blanket pre-arrest protection.

16. The relationship between the parties, as admitted, is that of first



cousins. In the absence of any pleaded or shown custom permitting such marriage, a promise of marriage by a close blood relative may itself assume significance while assessing the victim's allegation of deception and grooming. This is not a final finding. It only underscores why the Court cannot accept, at the pre-arrest stage, the Applicant's attempt to re-cast the accusation as a mere fall-out of a consensual relationship.

17. Further, the Applicant's failure to join investigation, despite issuance of notice, weighs against grant of discretionary relief. Where serious allegations are supported by *prima facie* corroborative material and the investigation requires confrontation, verification, and device-based forensic steps, custodial interrogation cannot be ruled out as unnecessary merely because some documents have been collected.

18. For these reasons, and having regard to the nature of the allegations, this Court is not inclined to exercise discretion in favour of the Applicant.

19. Accordingly, the application is dismissed.

20. 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.

SANJEEV NARULA, J

DECEMBER 18, 2025/nk