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

\# **CNR No. DLHC010448852026**

\+ BAIL APPLN. 3961/2026 CRL.M.A. 29347/2026

ABHISHEK KHAN .....Petitioner

Through: Mr. Vipin Singh Bansal, Ms. Bhawna Khanna, Mr. Vikas Malik and Mr. Vikas Nagar, Advs.

versus

STATE NCT OF DELHI .....Respondent

Through: Ms. Richa Dhawan, APP for the State
SI Isha, PS Prem Nagar

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% 04.11.2026

CRL.M.A. 29347/2026 (for exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

BAIL APPLN. 3961/2026

3. The present application has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [‘BNSS’], seeking grant of regular bail to the applicant in FIR No. 337/2019 dated 04.07.2019, registered at Police Station Prem Nagar, Delhi [‘subject FIR’], initially for the offence under Section 363 of the Indian Penal Code, 1860 [‘IPC’], and

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subsequently for offences under Sections 363 and 376 IPC read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 ['POCSO'].

4. The prosecution has filed a status report dated 06.10.2026.

5. The prosecution case, as emerging from the status report and the material placed on record, is as follows:

5.1 The subject FIR was registered on the complaint of the father of the prosecutrix, who reported that his daughter had been missing from her house since 03.07.2019. The FIR was initially registered under Section 363 IPC.

5.2 It is stated that on 04.03.2021, the prosecutrix came to the Police Station along with one Kishwar Khan, whereupon her father was informed. During the course of investigation, the prosecutrix stated that she had left her parental home and accompanied a person who had introduced himself to her as Abhishek. She stated that they initially stayed in Delhi, thereafter, went to Mumbai and subsequently shifted to Gujarat, where they resided together for approximately one and a half years.

5.3 It is stated that the prosecutrix further alleged that the applicant had concealed his actual identity (including religious identity) and that the prosecutrix subsequently came to know that his name was Junaid Khan. The prosecutrix also alleged that the applicant had concealed the fact of his previous marriage, he used to quarrel with her and beat her after consuming alcohol, and did not permit her to communicate freely with her family members.

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5.4 She further alleged that the applicant eventually left her in Gujarat on the assurance that he would return but did not do so and subsequently refused to marry her.

5.5 The statement of the prosecutrix under Section 164 of the Code of Criminal Procedure, 1973 ['Cr.P.C.'] was recorded, wherein she stated that she had left her parental home of her own will and accompanied the applicant. She also narrated the circumstances in which they travelled to different places with the applicant and resided together, and alleged that the applicant had subsequently refused to marry her and live with her.

5.6 As regards the age of the prosecutrix, the status report states that the Investigating Officer ['IO'] obtained documents from the concerned school, wherein her date of birth is recorded as 26.12.2002.

5.7 The applicant was arrested on 25.03.2021. Investigation has been completed and the charge-sheet has been filed. The charges have been framed, and the matter is presently also at the stage of prosecution evidence with many witnesses remaining.

6. Learned counsel for the applicant submits that the applicant has been in judicial custody since 25.03.2021 and has, therefore, undergone more than 5½ [five and a half years] of incarceration as an undertrial. He contends that the investigation stands completed, the charge-sheet has been filed and the applicant is no longer required for any custodial interrogation.

6.1 He submits that the present application is the second regular bail application preferred before this Court. The earlier application was

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dismissed by this Court vide order dated 05.08.2024 in BAIL APPLN. 2381/2023. It is contended that there has been a material change in circumstances since the passing of the said order, particularly on account of the substantial period of incarceration undergone by the applicant and the slow progress of the trial.

6.2 He submits that out of the 16 witnesses cited by the prosecution, six witnesses have been examined, including the prosecutrix, who was examined as PW-2, and her father, who was examined as PW-6. The father of the prosecutrix was examined and cross-examined on 02.07.2026, during which he is alleged to have admitted that the prosecutrix was not a minor on the date of registration of the FIR. He, therefore, contends that the issue concerning the age of the prosecutrix requires adjudication on the basis of the evidence led before the learned Trial Court.

6.3 He further submits that the prosecutrix and her father, who are material prosecution witnesses, have already been examined, consequently, the apprehension of the applicant influencing or intimidating these witnesses stands substantially reduced. He also submits that the applicant has no criminal antecedents and that his conduct in custody has remained satisfactory.

6.4 He submits that the applicant is willing to reside in Delhi upon his release and shall furnish his local residential address and mobile number to the concerned IO. He undertakes that the applicant shall not contact the prosecutrix or any prosecution witness, shall not tamper with the evidence and shall abide by any condition imposed by this Court.

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6.5 He also submits that during the hearing of the applicant's previous bail application before the learned Trial Court on 13.08.2026, the brother of the prosecutrix had stated that she is married and residing with her husband. He submits that the said submission was not reflected in the order passed on that date.

7. Learned APP for the State opposes the grant of bail, contending that the allegations against the applicant are serious and heinous in nature. It is submitted that the applicant had allegedly induced the prosecutrix, who was a minor at the time, to accompany him by concealing his identity and marital status and thereafter subjected her to sexual exploitation over a prolonged period of approximately 1½ [one and a half years].

7.1 She submits that the age of the prosecutrix is supported by the school record obtained during investigation, as well as the Aadhar Card of the prosecutrix, which records her date of birth as 26.12.2002. It is, therefore, contended that the provisions of the POCSO are attracted. She further submits that the earlier bail applications of the applicant have been rejected by the learned Trial Court as well as this Court and that no ground for grant of bail is made out.

7.2 She states that 12 witnesses remain to be examined and certain documents have to be verified, as directed by the trial Court.

7.3 She confirms that the prosecutrix is remarried and is residing in her marital home, which is in a different State.

8. This Court has considered the submissions of the parties and perused

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the material placed on record.

9. It is relevant to note that, while rejecting the applicant's previous bail application vide order dated 05.08.2024, this Court had taken into consideration the nature and gravity of the allegations, the fact that the prosecutrix was stated to be a minor, the allegations relating to concealment of identity and marital status, and the statutory presumption under Section 29 of the POCSO Act. The said order was also passed at a stage when the applicant had undergone approximately three years and four months of incarceration. The statement of prosecutrix had already been examined and the trial was underway.

10. The present application, however, is required to be considered in the light of the subsequent developments and the further period of custody undergone by the applicant. Two more years have gone by. The trial still remains at the stage of prosecution evidence. Out of the 16 witnesses cited by the prosecution, six have been examined, including the prosecutrix and her father. The next date fixed before the learned Trial Court is 23.11.2026. Having regard to the number of witnesses yet to be examined and the stage at which the trial presently stands, the conclusion of the trial is likely to take further time. There is no allegation that the trial has been delayed due to any acts of the applicant herein. All material witnesses have already been examined and therefore no apprehension of threat to any witness has been expressed by the learned APP.

11. It can be reasonably presumed that the coordinate bench while dismissing the bail on 05.08.2024 reasonably presumed that the trial would

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be concluded in near time since evidence had commenced, however, this has not happened.

12. As per the nominal roll dated 12.10.2026 received from the concerned jail authorities, the applicant has remained in judicial custody since 25.03.2021 and had undergone incarceration of five years, six months and eighteen days as on the date of preparation of the said nominal roll. The nominal roll further records that the applicant has no other criminal involvement, has not been convicted in any other case and has maintained satisfactory jail conduct during the last one year as well as overall. The applicant's age is mentioned as 30 years approximately. Thus, he has been in jail since the age of 24 approximately.

13. The constitutional significance of prolonged incarceration and the right to a speedy trial have been considered by the Supreme Court in **Union of India v. K.A. Najeeb**[1]. In the said decision, while dealing with an accused who had undergone prolonged incarceration without the trial being concluded, the Supreme Court observed as follows:

> "16. 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 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, Courts are tasked with deciding whether an individual ought to be released pending trial or not.

[1] (2021) 3 SCC 713

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> Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail."
>
> [Emphasis Supplied]

14. The aforesaid decision reiterates that the right to personal liberty and a speedy trial cannot be disregarded merely because the allegations are serious. The period of incarceration already undergone and the likelihood of the trial being concluded within a reasonable time are relevant considerations while deciding whether further detention of an undertrial is warranted.

15. This Court may also refer to the recent decision of the Supreme Court in **Kanha alias Kanhaiya Singh v. State of Madhya Pradesh and Another**[2], wherein the appellant was facing prosecution, inter alia, for offences under the POCSO Act. While setting aside the order declining bail, the Supreme Court observed in paragraphs 13 and 14 as follows:

> "13. We are of the view that Courts should refrain from imposing the personal views or value judgment of the Presiding Judge on morality or otherwise while adjudicating a matter relating to bail, or even a criminal trial of an accused.
>
> 14. **Insofar the present case is concerned, we find that appellant has already undergone more than one year of incarceration. It would take some more time for the trial to conclude. In such circumstances, we are of the view that a case for bail is made out**."
>
> [Emphasis Supplied]

16. The aforesaid decision reiterates that the question of grant of bail is required to be examined on the basis of legally relevant considerations, including the period of incarceration and the likely time required for

[2] 2026 SCC OnLine SC 2011

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conclusion of the trial. Section 35(2) of the POCSO Act also envisages that the Special Court shall endeavour to complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence. However, this has not happened in this case.

17. Applying the aforesaid principles to the facts of the present case, this Court is conscious of the serious nature of the allegations levelled against the applicant. The Court however takes note of the fact that the prosecutrix and her father have already been examined before the learned Trial Court. There is no remaining public witness to be examined. The applicant has remained in custody since 25.03.2021 and has, by now, undergone more than five years and seven months of incarceration. The investigation stands concluded, the charge-sheet has been filed and the trial is still at the stage of prosecution evidence, with several witnesses yet to be examined.

18. It is further relevant that the nominal roll records no other criminal involvement or conviction against the applicant and reports his conduct in custody to be satisfactory.

19. Having regard to the facts and circumstances, this Court is of the view that further detention of the applicant is not warranted, subject to stringent conditions to ensure his presence during the trial and to safeguard the prosecution evidence.

20. Accordingly, the applicant is directed to be released on regular bail in connection with the subject FIR No. 337/2019 dated 04.07.2019, registered at Police Station Prem Nagar, Delhi, upon furnishing a personal bond in the

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sum of Rs. 50,000/- with two sureties in the sum of Rs. 25,000/-, to the satisfaction of the learned Trial Court, and subject to the following conditions:

a. The applicant shall appear before the learned Trial Court on each and every date of hearing and not seek any adjournment.

b. The applicant shall not reside within 05 km radius of the residence of the victim's father in Delhi. The applicant shall furnish his permanent residential address at Bhind, M.P., as well as the complete local address at which he proposes to reside in Delhi after his release, to the concerned IO. In the event of any change in his residential address at Delhi or permanent address at Bhind, M.P., he shall intimate the same to the concerned IO and file an Affidavit before the Trial Court regarding the same.

a. The applicant shall furnish his mobile number to the concerned IO and shall keep the said number operational at all times. The mobile number shall not be switched off or changed without prior intimation to the IO during the pendency of the trial.

b. The applicant shall not directly or indirectly contact, threaten, induce or influence the prosecutrix, her family members or any other person or witness acquainted with the facts of the case. He shall also not tamper with the evidence in any manner whatsoever.

c. The applicant shall not visit the residence of the prosecutrix in Delhi or any other State for the purpose of contacting or influencing her, in

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any manner, and shall maintain an appropriate distance from her.

d. The applicant shall report to the jurisdictional Police Station in Delhi on every Tuesday at 11:00 A.M. until 31.05.2027. He shall be released by the IO within one hour. Thereafter, with effect from 01.06.2027, subject to the applicant's conduct remaining compliant with the conditions, the IO will be at liberty to permit the applicant to mark his attendance once in two weeks on Tuesday at 11:00 AM. The IO will maintain a record of the attendance.

e. The applicant shall not indulge in any criminal activity during the period of his release on bail.

f. In the event of any breach of the aforesaid conditions or any attempt by the applicant to influence witnesses or tamper with the evidence, it shall be open to the State to seek cancellation of the bail granted to him.

21. The present bail application is allowed and disposed of in the aforesaid terms. Pending application also stand disposed of.

22. It is clarified that the observations made hereinabove are solely for the purpose of deciding the present bail application and shall not be construed as an expression of opinion on the merits of the case. The learned Trial Court shall proceed with the trial uninfluenced by any observations made in the present order.

23. Copy of this order be communicated to the concerned Jail

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Superintendent electronically for information and necessary compliance.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 4, 2026/AM

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