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

+ **BAIL APPLN. 5012/2025**

DANISH

.....Petitioner

Through: Mr. Kshitij Gaur, Mr. Shahid Raza,
Mr. Devanand Kumar, Advocates.

versus

STATE NCT OF DELHI AND ANR

.....Respondents

Through: Mr. Hitesh Vali, APP.
SI Shweta, PS Subzi Mandi.
Prosecutrix in person.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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19.02.2026

1. By way of this application, the petitioner seeks anticipatory bail in connection with FIR No. 511/2025, dated 14.10.2025, registered at P.S. Subzi Mandi, under Section 376(2)(m) of the Indian Penal Code, 1860 [“IPC”], Section 64(2)(m) of the Bharatiya Nyaya Sanhita, 2023 [“BNS”], and Section 6 of Protection of Children from Sexual Offences Act, 2012 [“POCSO Act”].

2. I have heard Mr. Kshitij Gaur, learned counsel for the petitioner, and Mr. Hitesh Vali, learned Additional Public Prosecutor for the State. The prosecutrix is present in person, alongwith her mother, and is identified by the Investigating Officer. She has been offered the assistance of legal aid counsel, but has declined the same.

3. The facts of the case, as appearing from the status report dated



09.01.2026 filed by the prosecution, are as follows:

- A. The prosecutrix, who was then aged about 19 years old, came to the police station at about 11:00 PM on 13.10.2025, and reported that she had a friendship with the petitioner, who is residing in her neighbourhood since 2020. She alleged that she had been subjected to sexual assault by the petitioner in 2023, when she was about 17 years old, and thereafter in November 2024 and January 2025. The prosecutrix further alleged that a video of a sexual act between her and the petitioner was recorded by the petitioner in November 2024, and she suspected that that the video had later been forwarded to someone else.
- B. In the course of investigation, the statement of the prosecutrix under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [“BNSS”], was recorded before the Magistrate’s Court on 15.10.2025. She repeated that she and the petitioner were in a relationship and that they had a physical relationship for the first time in the year 2023. She also stated that the aforesaid video was recorded with her consent, and that another person had taken possession of the petitioner’s mobile phone, sent the video to her from another mobile number, and also demanded sexual favours from her on the threat of circulation of the video.
- C. The name of the person, who had circulated the video and threatened her, was later revealed to be one Ritik, who is also a co-accused in the present proceedings. The prosecutrix further stated that she had deleted the video and chats from her mobile phone out of fear of her parents. Her mobile phone was checked, but no such



video or chats were found thereupon. The mobile phone of the prosecutrix has been sent to FSL for examination.

D. The date of birth of the prosecutrix has been verified as 22.08.2006.

E. Pursuant to notice, co-accused Ritik joined the investigation. His mobile phone was seized, and a video depicting the prosecutrix engaged in sexual activity was found in his mobile phone. He, however, denied the allegation of demanding sexual favours from her. He also produced the mobile phone of the petitioner herein, which could not be examined due to password protection. Both mobile phones have been sent to FSL for examination.

F. The relief sought by the petitioner is opposed on account of seriousness of the allegations, possibility of threatening the prosecutrix and his evading the investigation. It is also stated that custodial interrogation of the petitioner is required for gaining access to his mobile phone, and to conduct a potency test.

4. Mr. Kshitij Gaur, learned counsel for the petitioner, submits that the above facts disclose that, even on the prosecution's case, the petitioner and the prosecutrix were in a friendly relationship. Although the allegation pertains to a period when the prosecutrix was a minor, Mr. Gaur submits that the petitioner was also only approximately 20 years of age at the time of the incident. He relies upon the prosecutrix's statement under Section 183 of BNSS to submit that it does not contain any allegation of forced sexual relationship, and she has specifically stated that she had consented to recording of the subject video, but not to its circulation, which is not attributed to the petitioner. He submits that his



mobile phone was, in fact, recovered from co-accused Ritik. Mr. Gaur lastly states that the FIR was registered more than two years after the first allegation, due to societal pressure arising from the fact that the petitioner and the prosecutrix belong to different religions.

5. Mr. Vali opposes the grant of anticipatory bail, referring to the seriousness of the offence, which includes an allegation under the POCSO Act. He submits that the statement under Section 183 of BNSS also reiterates that the petitioner and the prosecutrix had a physical relationship in the year 2023, when she was still a minor. He contends that the petitioner has evaded investigation, and that his custodial interrogation is required for the reasons stated in the status report. Mr. Vali further submits that there is likelihood of the prosecutrix being influenced if the petitioner is granted anticipatory bail.

6. I am informed that a chargesheet has already been filed against Ritik, without arrest, under Sections 317(2)75 of BNS, and 67A of the Information Technology Act, 2000.

7. The prosecutrix is present in person, accompanied by her mother and as stated above, has denied the assistance of counsel, including a legal aid counsel. She is now 19 years of age. She categorically states that she has no objection to the petitioner's application for anticipatory bail, and that the video recorded by the petitioner was with her consent, and has not been circulated by him.

8. It may be noted that the petitioner had earlier filed an application for anticipatory bail before the Sessions Court, which was dismissed by order dated 09.12.2025. Even in that order, the Sessions Court noted the submission of the prosecutrix and her mother that they have no objection



to bail being granted to the accused.

9. While considering an application for anticipatory bail, the Court is required to balance the interest in an effective and efficient investigation of the criminal proceedings with the personal liberty of the accused. While I am cognisant of the seriousness of the allegation under Section 376 of IPC and Section 6 of the POCSO Act, that does not lead in every case, to deprivation of liberty of an accused. This Court, in *Dharmander Singh v. State*¹, taking note of the presumption under Section 29 of the POCSO Act, has nonetheless laid down illustrative factors which guide the exercise of the Court's discretion in an application for bail, by an accused under the said Act. These factors include the following:

- a. **the age of the minor victim** : the younger the victim, the more heinous the offence alleged;
- b. **the age of the accused** : the older the accused, the more heinous the offence alleged;
- c. **the comparative age of the victim and the accused** : the more their age difference, the more the element of perversion in the offence alleged;
- d. **the familial relationship**, if any, between the victim and the accused : the closer such relationship, the more odious the offence alleged;
- e. whether the offence alleged involved threat, intimidation, violence and/or brutality;
- f. the conduct of the accused after the offence, as alleged;
- g. whether the offence was repeated against the victim; or whether the accused is a repeat offender under the POCSO Act or otherwise;
- h. whether the victim and the accused are so placed that the accused would have easy access to the victim, if enlarged on bail : the more the access, greater the reservation in granting bail;
- i. the comparative social standing of the victim and the accused: this would give insight into whether the accused is in a dominating position to subvert the trial;

¹ 2020 SCC OnLine Del 1267 [hereinafter, "*Dharmander Singh*"].



- j. whether the offence alleged was perpetrated when the victim and the accused were at an age of innocence : an innocent, though unholy, physical alliance may be looked at with less severity;
- k. whether it appears there was tacit approval-in-fact, though not consent-in-law, for the offence alleged;
- l. whether the offence alleged was committed alone or along with other persons, acting in a group or otherwise;
- m. other similar real-life considerations.²

10. As the prosecutrix's statement under Section 183 BNSS, which was recorded on 14.10.2025, after she had attained majority, is of some importance in assessing the present case, a translation thereof is set out hereinbelow³:

"Danish and I were in relationship. In 2023 we got physical for the first time. In November 2024 Danish recorded video of us being physical. The day before yesterday (12.10.2025) at night someone shared the video with me by WhatsApp through an unknown phone number. I called that number, then that man told me that he logged in on Instagram on the phone when my ID opened, in which he found our video. He said that if you can do it with Danish, then do it with me also. He also said that if you meet me, then I will delete the video.

I don't know the name of that man, but he works with Danish in Blinkit. On 12.10.2025, I was speaking to Danish on phone, when he took Danish's phone and ran away. Danish also made a complaint about his phone being snatched.

That man had called me on phone later and also said to tell him the phone's lock, and that the phone opened once, but is not opening again.

I don't know that man, but Danish did not circulate the video. His phone was stolen. Even today, Danish has not found his phone.

When the video was made, it was with my consent.

But without my consent, the video has gone to someone else."

11. Although the prosecutrix's initial complaint before the police suggests that she was coerced/persuaded into establishing a physical

² Emphasis supplied.

³ The prosecution had annexed a copy of the statement under Section 183 BNSS with the status report, which is originally in Hindi. I have translated the document myself.



relationship in the year 2023, it is evident from the above that this specific allegation is missing from her statement under Section 183 of BNSS, which does not refer to any forced physical relationship. To the extent that the physical relationship is of the period when the prosecutrix was a minor, her consent is not legally determinative. However, certain judgments of the Supreme Court and the High Courts suggest that the Courts must be cognisant of the consensual nature of relationships between young people, even in the context of allegations under the POCSO Act. The Supreme Court, in its recent judgment in *State of Uttar Pradesh v. Anurudh and Anr.*⁴, has referred to judgments of several High Courts, and expressed concern with regard to the application of the POCSO Act on consenting adolescents. Four factors identified by the Allahabad High Court in *Satish alias Chand v. State of Uttar Pradesh*⁵ have been reproduced therein, which are as follows:

“A. Assess the Context: Each case should be evaluated on its individual facts and circumstances. The nature of the relationship and the interventions of both parties should be carefully examined.

B. Consider Victim's Statement: The statement of the alleged victim should be given due consideration. If the relationship is consensual and based on mutual affection, this should be factored into decisions regarding bail and prosecution.

C. Avoid Perversity of Justice: Ignoring the consensual nature of a relationship can lead to unjust outcomes, such as wrongful imprisonment. The judicial system should aim to balance the protection of minors with the recognition of their autonomy in certain contexts. Here the age comes out to be an important factor.

D. Judicial Discretion: Courts should use their discretion wisely, ensuring that the application of POCSO does not inadvertently harm the very individuals it is meant to protect.”

⁴ 2026 SCC OnLine SC 40.

⁵ Crl.Misc.Bail Appln. No. 18596/2024.



In fact, the Supreme Court has directed the Government of India to consider introduction of a “*Romeo-Juliet clause*”, with the following remark:

“19. ...the introduction of a Romeo - Juliet clause exempting genuine adolescent relationships from the stronghold of this law; enacting a mechanism enabling the prosecution of those persons who, by the use of these laws seeks to settle scores etc.”

12. In *Ajay Kumar v. State & Anr.*⁶, a coordinate Bench of this Court, relying upon a judgment of the Madras High Court in *Vijayalakshmi v. State*⁷ and *Dharmander Singh*, has observed that the POCSO Act was not intended to criminalise consensual romantic relationships between young adults, and this should be a consideration while granting bail. It has been further observed that ignoring the statement of the prosecutrix and letting the accused suffer in jail would otherwise amount to perversity of justice.

13. A similar distinction has been made by coordinate Benches of this Court in *Varun Kumar Singh v. State*⁸, and *State v Hitesh*⁹,

14. In the present case, the allegation in the FIR relates to a physical relationship having been established between the petitioner and prosecutrix in the year 2023, when she was 16 years old, and two to three incidents thereafter. The prosecutrix has specifically referred to two incidents having taken place in November 2024 and January 2025, after she had attained the age of 18 years. The age of the petitioner in the year 2023 was 20 years. The difference in their age was thus not very great. The complaint *prima facie* relates to a period when the victim was at the

⁶ 2022 SCC OnLine Del 3705.

⁷ 2021 SCC OnLine Mad 317.

⁸ BAIL.APPLN. 3015/2025, decided on 03.02.2026.

⁹ 2025 SCC OnLine Del 962.



age of innocence and that there was tacit approval-in-fact. Although the “consent” of a minor is not relevant under the POCSO Act, the judgments referred to above, have drawn this distinction, and this Court in *Dharmander Singh* has identified this as one of the real life factors which may be considered in a bail adjudication¹⁰. It *prima facie* appears on the basis of the prosecutrix’s Section 183 statement that, the video was also recorded with her consent after she had attained majority, and has been circulated by the co-accused Ritik, who had taken the petitioner’s mobile phone. In fact, both the petitioner’s mobile phone and Ritik’s mobile phone were recovered from Ritik, lending *prima facie* credibility to his version, that the phone had been taken from his possession. The forensic analysis of the petitioner’s mobile phone remains awaited, but the video has been found on Ritik’s mobile phone. The petitioner has no prior criminal involvement and has clean antecedents. A chargesheet has already been filed against co-accused Ritik without arrest.

15. For the aforesaid reasons, I am of the view that it is appropriate to grant anticipatory bail to the petitioner herein. It is directed that, in the event of arrest in connection with FIR No. 511/2025, dated 14.10.2025, registered at P.S. Subzi Mandi, the petitioner will be released on bail upon furnishing a personal bond in the sum of Rs. 25,000/-, and one surety in the like amount, to the satisfaction of the Investigating Officer/Duty Magistrate, and subject to the following conditions:

- a. He will report to the Investigating Officer [“IO”] on 23.02.2026 at 03:00PM, and thereafter on each and every occasion, as required by the IO, and will cooperate in the investigation.

¹⁰ *Dharmander Singh*, paragraph 77(k).



- b. The petitioner shall not directly/indirectly try to get in touch with the prosecutrix and her family or tamper with the evidence.
 - c. The petitioner will furnish his mobile number to the IO, and shall keep the said mobile phone running and always switched on. The mobile number shall not be changed or switched off without prior intimation to the IO.
 - d. The petitioner will give his residential address to the IO, and will not change his residential address without prior intimation to the IO.
 - e. The petitioner shall not commit any offence during pendency of these proceedings.
16. The bail application is disposed of.
17. It is clarified that the observations made herein are solely for the purpose of adjudication of the present bail application and shall not be construed as an expression of opinion on the merits of the case, nor shall they prejudice the rights and contentions of the parties at any stage of the proceedings.

PRATEEK JALAN, J

FEBRUARY 19, 2026/ 'Bhupi/pv'/AD