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

% ***Date of Decision: 03th November, 2026***

CNR No. DLHC010305852026

\+ BAIL APPLN. 2735/20267

SUDEEP ARUN UPADHYAY P7etitioner

Through: Ms. Bhawna Verma, Adv. (Through VC)

versus

THE STATE OF DELHI .....Respondent

Through: Mr. Sunil Kumar Gautam, APP
SI Sachin, PS BHD Nagar
Ms. Anushkaa Arora, Standing Counsel, DHCLSC with Mr. Shivansh Tyagi and Mr. Imran Khan, Advs. for Victim
M: 987199212
Email: legal@abalawoffice.in

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% 03.11.2026

1. The present application has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), on behalf of the petitioner, namely, Sudeep Arun Upadhyay, S/o Arun Upadhyay, seeking grant of regular bail in connection with the First Information Report ("FIR") being, *FIR No. 391/2025* dated 25th November, 2025, registered at Police Station ("PS") Baba Haridas Nagar, Dwarka District, Delhi, under Section

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376 of the Indian Penal Code, 1860 ("IPC") and Section 10 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act").

2. The relevant facts pertinent for the adjudication of the present application, culled out from the documents on record, are as follows:

2.1. The FIR in question came to be registered, pursuant to a complaint received through the Integrated Complaint Monitoring System ("ICMS") dated 20th November, 2025.

2.2. The complainant-victim, i.e., respondent no. 2, in her complaint alleges that persons, namely, Sudeep Upadhyay, i.e., the petitioner, and co-accused, Sandeep Upadhyay, who is the younger brother of the petitioner, had forcibly committed sexual intercourse with her and threatened her with dire consequences.

2.3. She further alleges that the petitioner continued to have forcible sexual intercourse on the pretext of false promise of marriage and, despite repeated assurances, avoided marrying her. Moreover, the petitioner refused to take responsibility for her pregnancy and threatened her and also demanded money from her.

2.4. During the course of investigation, petitioner-accused and co-accused preferred anticipatory bail applications. The anticipatory bail application of the petitioner was dismissed by the Additional Sessions Judge ("ASJ") Dwarka Court, Delhi, *vide* Order dated 09th December, 2025. However, interim protection was granted to co-accused, subject to joining the investigation.

2.5. Thereafter, the co-accused joined the investigation, and in the course of investigation, upon verification and interrogation of both the petitioner-accused and the co-accused, the petitioner was arrested on 15th January, 2026,

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with the permission of the Trial Court.

2.6. Upon completion of the investigation, a Final Report/Chargesheet dated 20th January, 2026, was filed by the Investigating Officer ("IO") before the ASJ, Dwarka Court, Delhi, against the petitioner, under Sections 376/506 of the IPC and Section 10 of the POCSO Act, and the co-accused was charge-sheeted under Sections 376/506 of the IPC in a separate FIR.

2.7. The petitioner was released on interim bail on medical grounds on 30th April, 2026. However, upon dismissal of his application seeking extension of interim bail, he was taken into judicial custody on 04th July, 2026.

2.8. The petitioner had also preferred a regular bail application before the court of ASJ, Fast Track Special Courts ("FTSC") (POCSO)-02, Dwarka Courts, New Delhi, which was dismissed *vide* order dated 06th February, 2026.

3. The role attributed to the petitioner in the Chargesheet, are as follows:

3.1. The accused Sudeep Upadhyay, elder brother of the co-accused Sandeep Upadhyay, allegedly subjected the complainant to continuous sexual exploitation, criminal intimidation and forcible sexual intercourse on the false promise of marriage during the period from 2016 onwards till 2025.

3.2. He allegedly took the complainant to hotels at Dwarka and Gurugram and established forced physical relations with her. As per the hotel records of Dwarka Inn Hotel, three entries reflected in the name of the accused Sudeep Upadhyay dated 28th November, 2023, 06th February, 2024, and 28th June, 2024.

3.3. During this period, complainant-victim got pregnant and her pregnancy was terminated at Venkateshwara Hospital on 19th July, 2024.

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3.4. The complainant's bank statements also revealed that an amount of Rs. 10,000/- (Rupees Ten Thousand only) was transferred to her account from the accused's account, purportedly towards the expense of the Medical Termination of Pregnancy ("MTP") procedure.

3.5. The accused also threatened the complainant-victim with dire consequences and demanded an amount of Rs. 5,00,000/- (Rupees Five Lac only).

3.6. The personal WhatsApp chats, bank statements, hotel records and medical records, substantiate the allegations against the accused.

4. The Sessions Case being *SC No. 44/2026*, instituted in respect of the present FIR, i.e., *FIR No. 391/2025*, is pending adjudication before the court of ASJ, Dwaraka Courts, Delhi, and is presently at the stage of prosecution evidence.

5. The case put forth by the petitioner in support of his application for regular bail, is as follows:

5.1. Learned counsel for the petitioner submits that the petitioner has been in judicial custody since 15th January, 2026, except for the period during which the petitioner was released on interim bail on the medical grounds from 30th April, 2026 to 04th July, 2026, pursuant to the orders passed by the Trial Court.

5.2. The petitioner never misused the liberty given during the interim bail and strictly complied with each and every condition imposed by the Trial Court and surrendered before the Trial Court, in accordance with the orders.

5.3. The investigation has already been completed and the chargesheet has been filed and charges have also been framed.

5.4. The entire prosecution case is founded upon documentary evidence and

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electronic evidence, including WhatsApp chats, call records, bank transactions, hotel records and medical documents, all of which already stand seized and form part of the chargesheet. Therefore, there is no possibility of the petitioner interfering with investigation and no further custodial interrogation is required.

5.5. Thus, the regular bail may be granted to the petitioner.

6. *Per Contra*, learned counsel appearing for the complainant-victim vehemently opposes the bail application and submits that the allegations against the petitioner are very serious in nature.

7. As per the submissions made by the learned counsel for the complainant-victim, this Court notes that, the role assigned to the petitioner is that of the elder brother of the co-accused who subjected the complainant-victim to continuous sexual exploitation, criminal intimidation and forcible sexual intercourse on the false promise of marriage.

8. This Court notes that the complainant-victim was 13 years of age at the time of the first alleged incident.

9. Thus, this Court notes that the allegations against the petitioner are grave in nature, carrying severe punishment under the POCSO Act.

10. This Court also takes note of the submission made by the learned Additional Public Prosecutor ("APP") for the State that the present matter pertains to the POCSO Act and that the examination of the complainant-victim is still going on.

11. In this regard, reference may be drawn to the judgment in the case of ***X Versus State of Rajasthan and Another, 2024 SCC OnLine SC 3539***, wherein, it was observed that ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its

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witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused. The relevant portion of the said judgment are as follows:

> *"xxx xxx xxx*
>
> *14.* ***Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.***
>
> *xxx xxx xxx*
>
> *16.* ***We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused.*** *The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.*
>
> *xxx xxx xxx"*
>
> (Emphasis Supplied)

12. Fruitful reference may also be drawn to the judgment of the Supreme Court in the Case of ***Neeru Yadav Versus State of U.P. and Another***, ***(2016) 15 SCC 422***, wherein, it has been held as follows:

> *"xxx xxx xxx*
>
> *13.* ***We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though committed against an individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the***

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society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. *He cannot be a terror to the society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus:-*

> *"Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters."*
>
> *xxx xxx xxx*

15. ***This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused****. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind.* ***The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.***

xxx xxx xxx"

(Emphasis Supplied)

13. Considering the submissions made before this Court and the fact that

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the evidence of the complainant-victim is still going on and next date before the Trial Court is 10th December, 2026, this Court is not inclined to grant the bail to the petitioner at this stage.

14. However, it is clarified that the observations made herein are only *prima facie* in nature in order to decide the present bail application. The same shall not be considered as an expression of any final opinion as regard to the guilt or innocence of the petitioner.

15. The present application is dismissed in the aforesaid terms.

MINI PUSHKARNA, J

NOVEMBER 3, 2026/KR

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