



2025:DHC:7250



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

% Decided on: August 20, 2025

+ BAIL APPLN. 1652/2025

HARSH KASHYAP

.....Petitioner

Through: Mr. Rajesh Kumar, Adv.

versus

THE STATE (GOVT. OF NCT OF DELHI) ...Respondent

Through: Mr. Yudhvir Singh Chauhan,
APP

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HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT(oral)

RAVINDER DUDEJA, J.

1. The present petition has been filed under Section 482 BNSS [Section 438 Cr.P.C.] read with Section 528 BNSS [Section 482 Cr.P.C.] seeking grant of anticipatory bail to the petitioner/applicant in FIR No. 0196/2025, registered at PS New Usmanpur for offences under Sections 78/351(2)/351(3) BNS [Sections 354D/506(2)/506(3) IPC] and Section 12 of the POCSO Act.



Factual Background

2. The present FIR was lodged on 16.03.2025 on the complaint of a minor girl aged about 14 years. As per the allegations in the FIR, on 06/07.03.2025, the applicant, who runs a photo studio in the same locality as that of the complainant, threw a mobile phone into her balcony which was then broken by the father of the complainant. The applicant used to follow her on the way to school, made unwelcome comments and threatened to kill her father and brother if she refused to talk to him.

2.1 On 24.03.2025, the mother of the applicant filed a complaint case before Ld. JMFC, North-East, Karkardooma Courts, Delhi alleging that the family members of the complainant forcibly entered the applicant's house, assaulted applicant's mother and also damaged the photo studio. On 26.03.2025, the Ld. ASJ-02, North-East, Karkardooma Courts, Delhi provided interim protection to the applicant and directed the IO not to arrest him till the next date of hearing.

2.2 The applicant moved an application seeking anticipatory bail which was dismissed by the Court of Ld. ASJ (SC-POCSO)-01, North-East, Karkardooma Courts, Delhi [trial court] vide order dated 25.04.2025. Being aggrieved, the applicant has filed the present application.



Submissions on behalf of the applicant

3. Learned counsel for the applicant submits that the allegations are false and have been fabricated at the behest of the complainant's family with whom the applicant's family has been on hostile terms since past 6 months. It is argued that the applicant and the complainant have known each other since childhood and were in contact through Instagram chats, where the complainant herself compelled the applicant to continue conversations, even going so far as to inflict injuries on her own hand and emotionally pressurising him. The mother of the applicant, upon learning of such interactions, had counselled the complainant to desist from such behaviour.

3.1 Ld. counsel further submits that on 15.03.2025, members of the complainant's family allegedly forcibly entered the applicant's house in his absence, assaulted his mother, damaged the family's photo studio and issued threats to kill the applicant, forcing the applicant's mother to dial 112 and lodge a complaint. No FIR, however, was registered on that complaint. According to learned counsel, the present FIR was deliberately lodged the next day as a counterblast to shield the complainant's family. It is emphasised that the present FIR suffers from delay, the allegations are improbable and the entire case is a misuse of the penal law to settle personal scores. It is further averred that during investigation, the statement of the bus driver Kanhaiya was recorded wherein he deposed that the complainant used to go to school



in his bus, thus contradicting the version of the complainant that the applicant used to stalk/follow her after school.

3.2 It is also contended that the maximum punishment for the alleged offences is three years and the applicant has no prior criminal antecedents. The applicant has already joined the investigation pursuant to notice under Section 35(3) BNSS and has also cooperated with the Investigating Officer by submitting his phone no. for CDR- as is corroborated by the Status report and also by willingly placing Instagram chats with complainant on record. Therefore, custodial interrogation is unnecessary. Reliance is placed on the judgments of the Hon'ble Supreme Court in *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273 and *Sushila Aggarwal v. State (NCT of Delhi)* (2020) 5 SCC 1 to argue that arrest should not be resorted to mechanically and anticipatory bail, once granted, can continue till conclusion of trial.

Submissions on behalf of the State

4. Opposing the bail application, learned APP for the State submits that the allegations made in the present FIR are grave and pertain to sexual harassment of a minor child, aged 14 years, whose consent is immaterial in terms of the POCSO Act. It is contended that the applicant's conduct of following, intimidating and threatening the victim reflects a pattern of harassment which cannot be ignored.

4.1 It is pointed out that the residence and shop of the applicant are in close proximity to the complainant's house, creating a genuine apprehension of threat and intimidation of the victim/complainant and



her family. It is further submitted that the applicant had not been fully cooperating with the investigation, and that custodial interrogation may be required to confront him with the allegations.

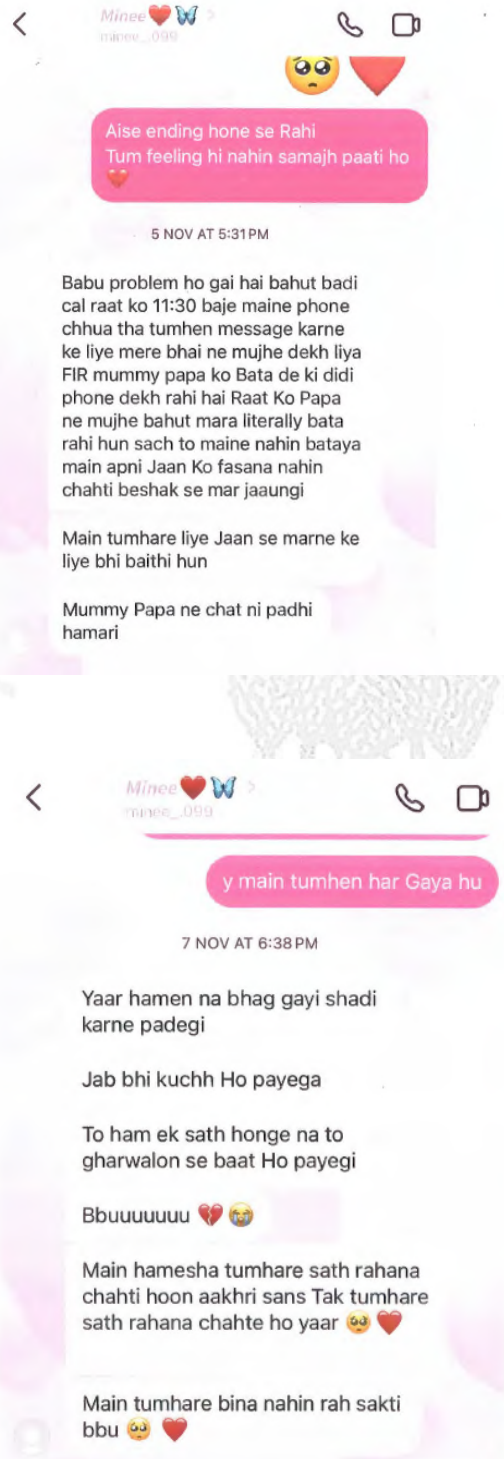
Analysis and Reasoning

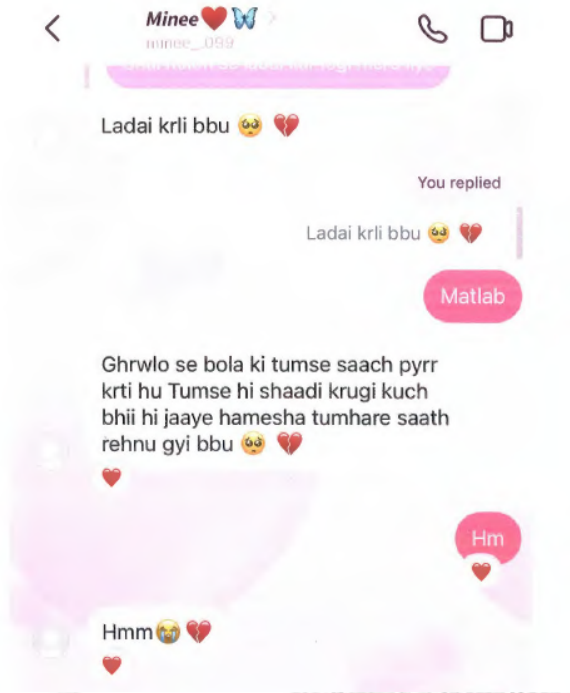
5. I have carefully considered the rival submissions and perused the material on record, including the FIR, status report and documents filed.

6. Anticipatory bail is an extraordinary remedy, but it cannot be denied mechanically where even custodial interrogation is not warranted. In the present case, the allegations in the FIR pertain to alleged harassment and threats by the applicant. However, the material placed on record by the defence, including Instagram chats, complaints to police, and CCTV evidence of trespass by the victim's family, *prima facie* indicate that the matter stems from neighbourhood hostility and strained relations. Perusal of the Instagram chats and Status report placed on record reveal that as per the CDR of the applicant's phone, the complainant called the applicant 27 times and also messaged him on Instagram multiple times. The present case *prima facie* seems to be that of a teenage love affair. The relevant extracts of the Instagrams chats between the applicant and the complainant are reproduced as under:



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7. The present case is at the initial stage and the investigation is still pending. Chargesheet is yet to be filed by the IO. As per the Status Report dated 24.04.2025, the applicant has already joined investigation and cooperated with the IO. It is also noted that the applicant himself has placed on record the Instagram chats with the complainant, thereby indicating his cooperation in the investigation. Although this Court is conscious that it should exercise restraint in the grant of pre-arrest bail in POCSO cases, in the peculiar facts of the present case, the alleged recovery is electronic in nature [Instagram chats], thereby diminishing the need for custodial interrogation. The purpose of custodial interrogation is to aid the investigation and is not punitive. In the opinion of this Court, the custodial interrogation of the applicant is not required.

8. The victim being a minor aged about 14 years and her protection under the POCSO Act are factors of utmost importance, yet such protection does not automatically warrant denial of anticipatory bail where the FIR itself is delayed, the allegations are disputed, and the applicant has no past criminal antecedents. Whether the applicant was involved in the commission of the offence or not, existence of consensual relationship and the age gap between the applicant and complainant would be a subject matter of trial and cannot be ascertained at this stage.

9. The principal argument against the applicant at this stage is that he misbehaved with the complainant and followed her. The father of



the complainant lodged complaint on 10.04.2025 i.e. after registration of the present FIR contending that 4-5 boys would sit outside the photo studio of the applicant and threaten the complainant's family. However, there is no direct allegation of any wrongdoing or threats advanced by the applicant. There is also no material which may indicate that the applicant is a flight risk. The apprehension of threat can be allayed by imposing strict conditions to ensure that the applicant shall not approach or influence the complainant or her family.

10. In *Arnesh Kumar* (supra), the Supreme Court cautioned against automatic arrests in cases where the maximum punishment is below seven years, directing police to exercise restraint. The offences alleged in the present case carry a maximum sentence of three years.

11. Considering the totality of circumstances, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of pre-arrest bail.

12. Accordingly, the present application is allowed subject to the following conditions:

- i. In the event of arrest of the applicant, he shall be released on bail on furnishing a personal bond in the sum of Rs.20,000/- with one surety of like amount to the satisfaction of the SHO/IO/Arresting Officer concerned.
- ii. The applicant shall join the investigation as and when directed by the IO and shall cooperate fully.



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- iii. He shall not contact, approach, or attempt to influence the victim or her family in any manner.
 - iv. He shall not tamper with evidence or intimidate witnesses.
 - v. He shall provide his mobile number to the IO, keep it operational at all times, and intimate any change of address.
 - vi. He shall not leave India without prior permission of the Court.
- 13.** It is clarified that nothing stated herein shall tantamount to an expression on the merits of the case.
- 14.** The present application is accordingly allowed and disposed of alongwith pending application(s), if any.

RAVINDER DUDEJA, J.

AUGUST 20, 2025/AK

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