



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

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*Reserved on: 4<sup>th</sup> July, 2025  
Pronounced on: 10<sup>th</sup> July, 2025*

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**BAIL APPLN. 1986/2025, CRL.M.(BAIL) 1157/2025**

**BABITA KUMARI**

W/o Raj Kumar Mukhiya,

R/o Village-Alinagar, Darbhanga, Bihar-847405.

Present address at-R/o-452,

Chirag Delhi, New Delhi-11001

.....Petitioner

Through: Mr. Bharat Chugh, Ms. Rajul Jain and  
Mr. Manish Chaudhry, Advocates.

versus

**STATE (GOVT. OF NCT OF DELHI)**

Through S.H.O., P.S.- Malviya Nagar

New Delhi-17

.....Respondent

Through: Mr. Shoaib Haider, APP for the State  
with SI Pinki Rana, PS: Malviya  
Nagar.  
Mr. Rahul Kumar Singh and Mr.  
Gyanendra Kumar, Advocates for  
Accused.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. *First Bail Application* under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'B.N.S.S.'*) has been filed



for grant of regular bail to the *applicant Babita Kumari* in FIR No.341/2024 under Sections 376, 328, 506, 34 IPC 1860 & 6 of POCSO Act, 2012 and under Section 376, 328,380, 506, 109, 34 of the IPC 1860 and Section 17 of the POCSO Act, 2012, *dated 09.07.2024 P.S. Malviya Nagar.*

2. It is submitted that the Applicant Babita Kumari is 21 years old young woman who worked as domestic help in different houses to earn her livelihood, before her arrest. She has no criminal antecedents. She is currently in judicial custody since 26.12.2024. She was residing on rent in the house of the victim at the time of the alleged offence and continued to live there for three months after the registration of FIR. However, one month before the arrest, she had shifted to a different rented accommodation in the vicinity bearing house no.452, Chirag Delhi, Police Station Malviya Nagar from where she was arrested.

3. Notice under Section 35(3) was served on her on the same day at 10.30 am and arrest was made at 2.30 pm. She was made to vacate the premises by the parents of the victim.

4. The Charge Sheet has been filed on 09.01.2025 under Sections 376, 328, 380, 506, 109, 34 of the IPC r/w Section 17 of the POCSO Act. Supplementary charge sheet has also been filed on 25.04.2025.

5. The earlier Bail Application was dismissed by the Ld. ASJ on 30.04.2025 by observing that the alleged contradictions in the statement of prosecution witnesses, cannot be considered without granting opportunity to the prosecution to explain the evidence. It was further noted that the allegations levelled against the Applicant were of abetting the commission



of rape of the victim of tender age, by co-accused Rahul. The victim had been threatened and the theft was committed from the house of the Complainant. The trial was at the nascent stage as charges were yet to be framed and public witnesses were to be examined. Consequently, the bail was dismissed.

6. It is submitted that the Applicant is innocent and has been wrongly framed in the case. The central allegation against her is of abetment to Accused no.1 in assisting the victim in carrying out alleged abortion through pills and theft from the dwelling house of the victim. However, close examination of the Charge Sheet/Supplementary Charge Sheet would indicate that no *prima facie* case is made out against the Applicant.

7. It is further asserted that the Trial Court has failed to appreciate that the Accused no.1 and the victim were on talking terms even before the Applicant started residing on the first floor of the house of the victim, as a tenant.

8. It is not being appreciated by the Ld. ASJ that there are sharp contradictions in the statements of the Complainant and the other prosecution witnesses. The record shows that FIR was registered 18 days after the incident was reported on 21.06.2024. The FIR is an afterthought and cannot be relied upon.

9. It is further submitted that initially a Complaint of theft was reported on the allegation that the locker was found broken. Same day the Complainant came to know of the unfortunate incident of sexual abuse of the victim. However, the delay in registration of the FIR is unexplained. The



FIR should have been registered on 21.06.2025 itself, but there is no explanation for delay in registration of FIR. It vitiates the case of the prosecution and renders the FIR as inadmissible piece of evidence, being an afterthought.

10. Further, the case of the prosecution is hovering around the provisions of POCSO Act whereas the investigation is pertaining to the alleged theft in the house of the Complainant, and the investigations for the offences under POSCO Act, is conspicuously missing. The Birth Certificate of the victim appears to be forged and it is difficult to ascertain the correct date of birth of the victim.

11. It has also not been considered that the seizure of Tablets from the house of the Applicant vide 'Seizure Memo', took place six months after the registration of the FIR on 09.07.2025. The Seizure Memo has no date, which further vitiates the case of the prosecution. Even the address of the house from where the tables were seized, is not clear.

12. The statement of prosecution witness listed at serial no.9 Shri Anand Kumar under Section 180 of BNSS, indicates that the Police along with the Applicant, had visited the shop of the LW-9 on 24.06.2024 and took back Rs.5,000/- which were allegedly given by the Applicant for transfer to the Accused no.1. The FIR was registered on 09.07.2025, thereby indicating that the investigations commenced much prior to the registration of FIR, and its contents are not reliable.

13. The Applicant had duly cooperated and had joined the investigations as and when required.



14. Reference has been made to *Lalita Kumari Vs. Government of Uttar Pradesh* (2014) 2 SCC 1 wherein it was observed that the scope of a preliminary inquiry is limited to situations where the information received has no *prima facie* disclosure of cognizable offence which requires verification. In the present case, however, there was an allegation of theft and the Police had no discretion to conduct a preliminary inquiry before registration of FIR. *In Pradeep Nirankarnath Sharma Vs. State of Gujarat & Ors.* (2025) SCC Online SC 559, the aforesaid observations made in *Lalita Kumari (supra)*, was endorsed.

15. The Call Detail Records annexed in the Charge Sheet clearly indicate that the Applicant and the Accused no.1 & 2 were not on continuous talking terms and the assertion made of connivance between the Applicant and the other two accused persons, is not tenable.

16. Connivance and conspiracy is an essential ingredient under Section 16 of the POCSO Act and the absence of the Call Detail Records between Accused no.1 and the Applicant, negates the possibility of any conspiracy or connivance. There are only three calls between the two accused and calls were made just two days before the offence got reported.

17. Further, there is a gap of almost 9 months between the arrest of the Applicant and the day when she shifted her house out of the premises of the victim. In these 9 months, barely three calls were exchanged between the Accused no.1 and the Applicant. This fact negates the story of the prosecution that there was any connivance and conspiracy between the



Applicant and the Accused no.1 or that they were in constant touch with each other.

18. The Applicant worked as a domestic maid in several houses and there was no complaint of theft or poor behaviour from anywhere. None of the persons where the Applicant worked as domestic maid have been made as a witness in the present case to ascertain the general nature and character of the Applicant.

19. It is submitted that the Charge Sheet / Final Report has already been filed. Accordingly, pre-trial custody of the Applicant is no longer required and she may be enlarged on bail.

20. She is not a 'Flight Risk' and she had ample opportunity to abscond which she has not done, indicating her willingness to join the investigation. She has cooperated with the Investigating Agency since the day of her arrest even though there was no reason to arrest her.

21. The Accused no.1 was arrested on 29.11.2024 as he was absconding before then. The documentary evidence has already been collected by the prosecution and there are no chances of her tampering with the evidence. She is not in a position to influence the witnesses. Thus, the prayer is made that she may be granted bail.

22. **Status Report** has been filed on behalf of the State wherein while detailing the investigation carried out in this case, it has been explained that the Applicant had abetted commission of the offence on several occasions and also on the date of incident i.e. 07.06.2024. The allegations are that she used to give pills and injections to the prosecutrix whenever Rahul Gujjar



came. She even took money from the Complainant's residence and threatened the victim to do as she was told, else she knew a lot of goons who would shoot her family in case she failed to abide by their dictat.

23. The victim had been taken to AIIMS Hospital, New Delhi where she was examined vide MLC No.46245/24. Her statement under Section 183 BNSS was recorded, wherein she has fully supported her version. The documents of date of birth of the child were collected from the MCD and her date of birth was confirmed as 21.10.2012.

24. On 19.07.2024 the Complainant had produced four videos in a pen drive including of the incident dated 07.06.2024. In the first video at about 1.12 am, Rahul Gujjar was seen leaving the house of the victim. In the second video at about 12.47 am, he was seen entering the house. In the third video at 1.12 am, the child 'D' was seen coming out of the room. In the fourth video of about 12:43-46 am, the child was seen going in and out. These four videos were seized by the IO.

25. Notice was issued to the Applicant and she was interrogated and thereafter, further investigations were carried out. Two mobile phones were also handed over by the Applicant on analysis of which, it was found that the mobile number 9528302261 was used by the one Saurabh, son of Vinod @ Kishan, resident of Haridwar, Uttarakhand, who was the elder brother of the accused Rahul Gujjar @ Rahul. Verification of the ownership of the second mobile phone was also carried out which was found to be in the name of the Petitioner.



26. During the investigations, the Applicant denied that she was ever in contact with Rahul Gujjar but there were three conversations that were traced between them.

27. Further, tablets - Strips of Quitipin and Alprax were produced by her from her residence which were seized vide Seizure Memo. After due investigation, she was arrested in the present case.

28. Investigations were further carried out and the statement of the witnesses and significant evidence was collected. On completion of investigations, Charge sheet had been filed in the Court.

29. The Bail Application of Babita Kumari was dismissed by the Ld. ASJ on 30.04.2025. It is submitted that there is no merit in the present Bail Application, which is liable to be dismissed.

**Submissions heard and record perused.**

30. Here is a case where there are serious allegations of abetment to make the prosecutrix, a girl of tender age of 13 years a victim of sexual exploitation and assault by a co-accused Rahul Gujjar. The allegations are that the Applicant used to feed her with some medicines which made her drugged and thereby, facilitated the completion of offence of rape upon her by the co-Accused Rahul Gujjar. Not only this, the medicines were also allegedly recovered at the instance of the Applicant which lends some support to the case of the prosecution.

31. It is not a case where the child has been abused once, but on several occasions. The allegations made against the Applicant are indeed serious. Though the Charge sheet has been filed, but the charges are yet to be



framed, and the prosecution witnesses, are yet to be examined. There are also allegations of the prosecutrix having been threatened while being subjected to repeated rape by Rahul Gujjar, which was abetted and facilitated by the Petitioner.

32. In the aforesaid circumstances, considering the gravity of the offence, it cannot be said that the Petitioner would not be a flight risk or tamper with the evidence or that she would not intimidate the witnesses. There are no grounds for grant of bail at this stage. The Application is hereby dismissed.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**JULY 10, 2025/pp**