



2025:DHC:344



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

% *Judgment delivered on: 17.01.2025*

+ **CRL.M.C. 4015/2022 & CRL.M.A. 16630/2022**

ARJUN PRASAD YADAV .....Petitioner

Through: Mr. Kriti Ranjan, Mr. Kumar  
Gaurav and Mr. Tanishq Sharma,  
Advocates

versus

STATE OF NCT OF DELHI & ANR. ....Respondents

Through: Mr. Raj Kumar, APP for the State  
Mr. L.S. Chaudhary, Mr. Ajay  
Chaudhary, Mr. Bharat  
Chaudhary, Mr. Vikram Singh,  
Mr. Anirudh Sharma and Ms.  
Ayushi Gupta, Advocates for  
respondent no. 2.

**CORAM:**

**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

**JUDGMENT**

**SWARANA KANTA SHARMA, J.**

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereafter '*Cr.P.C.*') has been filed on behalf of the petitioner seeking quashing of order dated 18.08.2022 passed by the learned Additional Sessions Judge-06 (West), Tis Hazari Court, Delhi in case arising out of FIR No. 28/2022, registered at Police Station



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Mundka, Delhi for offence punishable under Sections 363/366/323/344/376/506/ 120B/34 of the Indian Penal Code, 1860 (hereafter 'IPC') and Section 6/17/21 of the Protection of Children from Sexual Offences Act, 2012 (hereafter 'POCSO Act').

2. By way of the impugned order, the learned Sessions Court had rejected the application filed by the petitioner seeking recall of the order issuing process under Section 82 of Cr.P.C., and (ii) the bail application filed by the petitioner. The impugned order dated 18.08.2022 is set out below:

"File taken up today upon two applications both moved on behalf of the accused/applicant, one seeking surrender of the accused Arjun Prasad Yadav as well as for recalling the proceedings u/s 82 Cr.PC and another for grant of bail.

It is matter of record that during the investigation, accused did not join the investigation despite issuance of NBWs. In the meantime, anticipatory bail application of the accused was declined by this Court vide order dated 27.05.2022. It is stated that thereafter accused/applicant approached Hon'ble High court of Delhi by moving Bail Appln No. 219712022, seeking anticipatory bail. Same was disposed of by order dated 04.08.2022 by passing the following observations:-

*"Ld. Counsel for the petitioner submits that he is ready to argue himself out of the proceedings is 82 Cr.P.C. provided that he may be protected in the meantime.*

*The petitioner may move on application before the concerned Court to purge himself out of the proceedings under Section 82 Cr.PC within three weeks from today and the teamed trial Court, after hearing the petitioner as well as the State may pass an appropriate order and in the meantime, no coercive steps be taken against the petitioner and in case the order under Section 82 Cr.P.C is passed against the present*



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*petitioner, no further action will be taken against him till the expiry of one week from the date of the said order."*

Ld. Counsel for the accused submits that since the accused/appellant is a public servant and his name as an accused did not surface in complaint or statement u/s 164 Cr. P.C.

Ld. Addl. PP for the State has opposed the bail application.

Having considered the submissions since it has been noted that accused intentionally did not join the investigation even despite issuance of NBWs and process u/s 82 Cr. P.C. It is also matter of record that by now when the process U/s Cr. P.C. was executed, upon an application moved by the IO, this Court vide order dated 20.07.2022 had already declared the accused/applicant to be "proclaimed person". This fact as not brought to the notice of Hon'ble High Court of Delhi when the above mentioned observations were given in order dated 04.08.2022, therefore no case is made out for grant of bail at this stage. Even otherwise in cases involving sexual assault and offences under POCSO Act, question of bail can be considered only after hearing all the stakeholders including of complainant/victim.

Accordingly, application for dropping the proceedings u/s 82 Cr. P.C. stands declined. Since there is specific directions from the Hon'ble High Court of Delhi for not taking any coercive action for one week's time after the declining of the process u/s 82 Cr.P.C. therefore, accused though otherwise has moved the application for surrender in the Court is not being taken into custody on account of the specific directions from the Hon'ble High Court of Delhi.

During arguments, Ld. Counsel for the accused/applicant has submitted that in the meantime after passing of order dated 04.08.2022. accused had joined the police proceedings. It is surprising and therefore needs to be probed that on one hand, the accused has already been declared proclaimed person vide order dated 20.07.2022 and on the other hand accused has joined the police investigation and was not kept in judicial custody, let IO/SHO of PS Mundka be called upon to explain in this regard by issuing the notice for 22.08.2022.



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3. The case set out by the petitioner is that the learned Sessions Court has rejected the bail application of the petitioner solely on the basis that the petitioner, who is the father of the main accused, has been declared a proclaimed person, and that the said fact was not brought to the notice of this Court while the petitioner had sought anticipatory bail. It is stated that the learned Sessions Court has clearly misread the order of this Court as the factum of the petitioner being a proclaimed offender has been clearly stands recorded by this Court in order dated 04.08.2022. It is stated that the petitioner, after getting interim protection from arrest from this Court, had immediately contacted the Investigation Officer (IO), who had recorded the statement of the petitioner. On this aspect, the learned Sessions Court had issued notice to the concerned IO/SHO, enquiring as to why the petitioner was allowed to join investigation and was not taken into judicial custody, since he is a proclaimed offender. It is stated that the Sessions Court, by ordering so, has demonstrated ignorance of the orders of this Court. It is submitted that the learned Sessions Court completely overlooked that fact that it was the petitioner, the father of the main accused, who had brought the victim back to Delhi and handed over to the police, and the main accused is already in custody. Moreover, admittedly, the petitioner lives more than 1200 kms away from Delhi and there is no material on record to suggest that any notice/summon was ever validly served upon him.

4. It is further argued that the learned Sessions Court has clearly disregarded the fact that the petitioner, after the order dated 04.08.2022



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of this Court, in order to purge himself out of the proceedings under Section 82 of Cr.P.C., had immediately joined the investigation, and filed an application for regular bail, and therefore it would serve no purpose to send the petitioner in custody. Therefore, it is prayed that the present petition be allowed.

5. The learned APP for the State, assisted by the learned counsel for the complainant, vehemently opposes the present petition and argues that the applicant had remain absconded for a considerable period of time, and in view of the allegations against him, the present petition be dismissed.

6. This Court has **heard** arguments addressed on behalf of both the parties and has gone through the material available on record.

7. In the present case, when the applicant had approached this Court seeking anticipatory bail, this Court *vide* order dated 04.08.2022 had observed that the since the applicant had been declared proclaimed offender, he may first move an appropriate application before the learned Sessions Court seeking recalling of the said proceedings. However, this Court, in the meantime had ordered that till the learned Sessions Court passes an order on the said application, no action shall be taken against him. The said order reads as under:

“4. Learned counsel for the petitioner has submitted that the petitioner is the father of the main accused and he is the one who had brought back the main accused as well as the victim to Delhi and as a consequence thereby, the main accused was arrested and the victim was restored to her family.



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4.1 He has prayed for anticipatory bail.

5. Learned APP submits that the present petitioner has already been declared a Proclaimed Offender (PO), so he is not entitled to anticipatory bail.

6. Learned counsel for the petitioner submits that he is a Government servant and he is the one who had cooperated with the police in tracing the main accused and the victim and brought them back to Delhi.

6.1 Learned counsel for the petitioner submits that he is ready to purge himself out of the proceedings under Section 82 Cr.P.C. provided that he may be protected in the meantime.

7. The petitioner may move an application before the concerned Court to purge himself out of the proceedings under Section 82 Cr.P.C. within three weeks from today and the learned Trial Court, after hearing the petitioner as well as the State may pass an appropriate order and in the meantime, no coercive steps be taken against the petitioner and in case the order under Section 82 Cr.P.C. is passed against the present petitioner, no further action will be taken against him till the expiry of one week from the date of the said order.”

8. In this Court’s view, the learned Sessions Court has proceeded on an erroneous premise. In the impugned order, it is apparent that the learned Sessions Court has overlooked the fact that order dated 04.08.2022 of this Court specifically records that the applicant herein had been declared a proclaimed offender. Thus, the observations of the learned Sessions Court, to the contrary, i.e. the fact of applicant being declared proclaimed offender was not brought to this Court’s attention, cannot be sustained. Moreover, the learned Sessions Court also expressed that the applicant had joined investigation pursuant to order dated 04.08.2022 of this Court and it was shocking as to why the



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applicant was not detained by the police. It again appears that the learned Sessions Court did not take note of the observations of this Court in paragraph 7 of order dated 04.08.2022 wherein it was categorically ordered that no coercive steps shall be taken against the applicant.

9. The incident in question pertains to the year 2022. The chargesheet in this case has been filed without arrest of the present accused, since he was absconding earlier. However, the main accused in this case has already been granted bail by this Court *vide* order dated 12.09.2024 in *BAIL APPLN. 3137/2024*. Today, by way of order passed in *BAIL APPLN. 4682/2024*, this Court has also granted bail to the present applicant.

10. Accordingly, in view of the aforesaid, this Court is inclined to set aside the impugned order dated 18.08.2022.

11. The petition alongwith pending application stands disposed of.

12. The judgment be uploaded on the website forthwith.

**SWARANA KANTA SHARMA, J**

**JANUARY 17, 2025/ns**