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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 29.01.2025*+ **BAIL APPLN. 4266/2024**

SULEMAN SAMAD

..... Petitioner

Through: Mr. Shikhar Khare, Mr. Shahzeb Ahmed, Mr. Shashi Kumar, Mr. Adeel Ahmad Khan, Mr. Wasil Khan & Mr. Utkarsh Advocates.

versus

STATE OF N.C.T. OF DELHI

..... Respondent

Through: Mr. Raj Kumar, APP for the State along with ASI Ompal.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J**

1. The present bail application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [hereafter 'BNSS'] has been filed on behalf of the applicant, seeking grant of regular bail in case arising out of FIR No. 0103/2023, registered at Police Station Vasant Vihar, Delhi for offences punishable under Sections 354/354A of the Indian Penal Code, 1860 [hereafter 'IPC'] and Section 8 of the Prevention of Children from Sexual Offences Act, 2012 [hereafter 'POCSO Act'].

2. Briefly stated, the facts of the case as per prosecution are that on 26.03.2023, the accused/applicant herein had visited the house of



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the victim when her parents were away for work, at 06:00 pm, and on finding the victim alone in the house, he had put his hand inside her T-shirt and had inappropriately pressed her chest. It is also alleged that thereafter, the accused had inserted his hand inside the pants of the victim, touched her genitals and made certain inappropriate comments. The victim had revealed the incident to her neighbour, who had made a call to the mother of the victim and asked her to rush back home. On the basis of a complaint lodged by the mother of the victim, the present FIR was registered. During investigation, counselling of the victim was conducted by CIC Counsellor, and her medical examination was conducted at Safdarjung Hospital, Delhi. The statement of the victim was also recorded under Section 164 of the Code of Criminal Procedure, 1973 (hereafter '*Cr.P.C.*'). The present accused/applicant was arrested on 27.03.2023 and since then, he has been in judicial custody. After the conclusion of investigation, chargesheet and supplementary chargesheet were filed on 24.05.2023 and 21.09.2023 respectively, and charges were framed against the present applicant. The first and second bail applications filed by the applicant before the learned Trial Court were dismissed *vide* orders dated 09.05.2024 and 20.10.2024 respectively.

3. The learned counsel appearing for the accused/applicant argued that the applicant has been falsely implicated in the present case, and the entire allegations against him are concocted and fabricated. It was argued that the applicant is a 60 year old man, suffering from several health ailments, and he has been in judicial



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custody for more than 1½ years.

4. During the course of arguments, the learned counsel for the applicant submitted that while the present bail application was filed before this Court in November, 2024, the jail authorities themselves had forwarded a letter to the learned Trial Court in December 2024 regarding completion of one-third of the maximum sentence which may be awarded to the applicant if he is convicted in the present case. Alongwith the said letter, an application for grant of bail was also sent by the Jail authorities to the learned Trial Court. The learned counsel however contended that the learned Trial Court has failed to adjudicate the said bail application for the last two months and the benefit of Section 479 of BNSS was being denied to the present applicant.

5. On the other hand, the learned APP for the State opposed the present bail application. He contended that the allegations against the applicant are serious in nature and no case was made out for grant of regular bail as material witnesses are yet to be examined.

6. The arguments addressed on behalf of both the parties were **heard**. The material placed on record has also been pursued by this Court.

7. In the present case, this Court notes that the mother of the victim had appeared before the learned Trial Court on 09.05.2024 and not opposed the bail application of the applicant, however, the said application was dismissed *inter alia* on the ground that it appeared that the accused may have threatened the victim and her mother.



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However, the mother of the victim had appeared before this Court also, on 20.12.2024, and given a statement that she did not wish to contest the present case. The Predecessor Bench also noted the submission of the learned counsel for the applicant that trial was not proceeding since the victim was not appearing for her examination before the learned Trial Court.

8. Thus, it is an admitted fact that the victim in this case has not been examined yet, and the mother of the victim is not willing to appear before the learned Trial Court, as she does not wish to pursue the present case/FIR.

9. In this background, the learned counsel for the applicant had drawn the attention of this Court to Section 479 of BNSS, which *inter alia* provides that in case of a first-time offender being incarcerated (not for an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under law), he shall be released if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence. Relevant portion of Section 479 of BNSS is set out below:

(1) Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail:

Provided that where such person is a first-time offender



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(who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:

Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail bond instead of his bond:

Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of...”

10. The learned counsel for the applicant had further drawn this Court’s attention to the order-sheets of the learned Trial Court, to show as to how the matter was being adjourned for the last few dates. The said order sheets are extracted below:

“09.09.2024

Matter is at the stage of PE.

No PW present.

Re-notify for PE on 05.12.2024, in terms of previous order.

05.12.2024

No PW present

A letter has been received regarding completion of 1/3rd of the maximum sentence of accused Suleman Samad.

List for further proceedings/consideration on 21.01.2025.

At this stage, an application for grant of bail has been received from the concerned Jail.

Let report be called from the SHO regarding previous involvement of the accused as to whether accused is first time offender or not for 11.12.2024.

11.12.2024



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Report regarding previous involvement of accused.

As per directions of Ld. Presiding Officer, re-notify for considering/further proceeding on 13.12.2024.

13.12.2024

As per directions of Ld. Presiding Officer, re-notify for consideration on 20.12.2024.

20.12.2024

As per directions of Ld. Presiding Officer, re-notify for consideration on 23.12.2024.

23.12.2024

Reply qua previous involvement of accused have not been received from concerned Jail Superintendent.

Re-notify for consideration on 08.01.2025.

08.01.2025

Reply qua previous involvement/conviction of accused has been received from concerned Jail Superintendent, in terms of previous order.

As per directions of Ld. Presiding Officer, re-notify for consideration on 27.01.2025.”

11. This Court notes that on 05.12.2024 itself, a letter – sent by the Jail authorities in terms of Section 479 of BNSS – had been received by the learned Trial Court, informing the Court that the present applicant had already undergone one-third of the maximum sentence that can be awarded to him upon conviction. In the order dated 05.12.2024, the learned Trial Court also noted that a bail application in this regard had been received from the concerned Jail. The learned Trial Court proceeded to call for a report regarding the previous involvements of the accused.

12. Having perused the ordersheets of the learned Trial Court, it is



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discouraging to note that despite the mandate of Section 479 of BNSS, as noted above, and a report in this regard having already been sent by the Jail authorities and a bail application having also been moved, the learned Trial Court had adjourned the matter on several occasions in a mechanical manner, and even after recording on 08.01.2025 that the report *qua* the previous involvement of the accused had been received, a date of almost 20 days was given in the present case. Till date, the plea of the accused remains un-adjudicated before the learned Trial Court.

13. Needless to state, it is expected of the learned Trial Court to have, in such cases, promptly passed an order on such bail applications, in view of Section 479 of BNSS, and in case the Court was on leave i.e. on 11.12.2024, 13.12.2024, 20.12.2024 (half day) and 08.01.2025 – as evident from the order sheets of learned Trial Court – such matter should have been taken up on next day itself or a shorter date could have been given, in order to dispose of the bail application of the accused and grant him the relief, if found entitled to the same as per law, as the accused has been in judicial custody now for about 1 year and 10 months, and the victim and her mother are not appearing before the learned Trial Court for their evidence. This Court is also of the opinion that in case a judge proceeds on leave, it will be beneficial if there are instructions with the concerned staff, to bring it to the notice of the Link Judge, that such cases are to be taken up on priority, either on the next date or at the shortest possible date.



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14. In view of the aforesaid, considering the overall facts and circumstances of the case and in the interest of justice, this Court directs the learned Trial Court to decide the bail application of the applicant (in terms of Section 479 of BNSS), pending before it, within seven days from the receipt of this order.

15. The Registry is also directed to ensure that this order is communicated to the learned Trial Court, latest by tomorrow, including through electronic means.

16. With these directions, the present bail application stands disposed of.

17. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 29, 2024/A