



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 06th October, 2025

Pronounced on: 10th October, 2025

+ **BAIL APPLN. 1481/2025**

HARISH

.....Petitioner

Through: Mr. Lokesh Kumar Mishra,
Mr. Vinay Kumar, Mr. Sahibe Alam
and Ms. Shreya Thakur, Advocates.

versus

STATE (GNCT OF DELHI) AND ANR

.....Respondents

Through: Ms. Kamna Vohra, Ms. Bindita
Chaturvedi and Mr. Amar Lal,
Advocates for Complainant.
Mr. Hemant Mehla, APP for State
with SI Kirandeep, PS-Kotla
Mubarakpur.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

1. The present application under Sections 483 read with 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (corresponding to Sections 439 read with 482 of the Code of Criminal Procedure, 1973²) seeks regular bail in the proceedings arising from FIR No. 168/2024 dated 2nd May, 2024, registered under Section 376AB of the Indian Penal Code, 1860³ and Sections 6 and 21 of the Protection of Children from Sexual Offences Act, 2012⁴ at P.S. Kotla Mubarak Pur, Delhi.

Factual Matrix

2. The case of the prosecution, in brief, is as follows:

¹ "BNSS"

² "CrPC"

³ "IPC"



2.1. On 1st May, 2024, information was received at P.S Kotla Mubarakpur regarding an alleged sexual assault on a minor girl, which was recorded *vide* GD No. 38A. The matter was assigned to SI Kirandeep, who contacted the caller, identified as the victim's father, present at the station with his daughter 'N', aged 4 years, and his sister 'R'. The victim was thereafter sent to AIIMS hospital, where she was admitted for medical examination.

2.2. On 2nd May 2024, the victim underwent a medical examination. During this examination, the victim's father and maternal aunt (*bua*) provided a history stating that the victim had complained of pain in the genital area after returning from school on 29th April, 2024. In response to these complaints, the victim's mother examined the child's genital area and observed redness. Upon further enquiry, the child stated that an uncle at her school had attempted to digitally penetrate her, following which she started experiencing pain. After medical examination, the attending doctor preserved the biological exhibits and samples, which were subsequently taken into police custody and deposited in the *malkhana*.

2.3. Thereafter, on the same day, the victim's father submitted a handwritten complaint alleging that on 29th April, 2024, the victim returned from school complaining of pain in her genital area. When the victim's mother examined the area, she observed redness and swelling, which she dismissed initially as a minor irritation. However, when the victim again complained of pain on 30th April, 2024, upon being counselled, she revealed that a 'bearded man/ "*dadiwala uncle*" had committed digital penetration on her on both 29th and 30th April, 2024. The victim further stated that her class teacher, Priyanka, caught the bearded man, slapped him, and threatened the

⁴ "POCSO Act"



victim not to disclose the incident. Accordingly, a case under Sections 376AB of IPC and 6/21 of POCSO Act was registered at P.S. Kotla Mubarakpur, and investigation commenced.

2.4. A notice under Section 91 CrPC was served on the school Principal seeking CCTV footage capturing the victim's entry and exit from the school premises on 29th and 30th April 2024, including footage from the Nursery-B classroom, playground, and washroom entry areas. The CCTV recording of 30th April, 2024 clearly showed the victim's presence from the time of her arrival at the school until her departure with her mother, without any suspicious or untoward activity being noticed. However, the footage dated 29th April 2024 appeared overlapped and corrupted, rendering it inconclusive. The DVR hard disk was, therefore, seized and forwarded to FSL for technical examination and recovery of the missing footage.

2.5. The available CCTV footage was shown to the minor victim, who identified one individual as the person who had, in her words, "done wrong things" to her.⁵ The individual was identified as the Applicant, Harish, employed as a peon at the school. He was subsequently located within the school premises and taken into custody.

2.6. During the investigation, the co-accused, Priyanka, was questioned regarding her presence and role on the relevant dates, however, she was not arrested.

2.7 In her statement under Section 164 CrPC, the minor stated that Priyanka had threatened her not to disclose the incident, leading to the invocation of Section 506 of IPC.

2.8. The medical samples of the victim were sent to the Regional FSL on

⁵ Translation of "yeh wahi dadhiwala uncle hai jisne mere saath galat kaam kiya tha"



22nd May, 2024. The report does not disclose any DNA match between the Applicant and the victim. Upon completion of investigation, a chargesheet has been filed under 376AB of IPC and Section 6 of POCSO Act against the Applicant.

Contentions in Support of Grant of Bail

3. Counsel for the Applicant makes the following submissions in support of enlarging the Applicant on bail:

3.1. The Applicant has been falsely implicated in the present case and has no role in the alleged incident. He has no prior criminal record, his antecedents are clear, and he is a young man of 29 years who is the sole breadwinner for his family.

3.2. The CCTV footage installed throughout the school premises, including classrooms, playground, and other areas, clearly shows that the Applicant never entered the school. Despite this, statements of the school principal and other officials, which could corroborate the Applicant's innocence, were not recorded by the investigating agency. The FSL report which finds no DNA linkage between the Applicant and the victim, further fortifies his defence.

3.3. The investigation suffers from material procedural lapses, which cast serious doubt on its fairness and reliability. No Test Identification Parade was conducted; the FIR itself is not based on the victim's statement, but on information from her family members. Subsequent statements of the victim under Sections 161 and 164 CrPC are plainly afterthoughts or tutored versions, and do not implicate the Applicant in any credible manner. The victim has never particularly identified the Applicant, and her testimony recorded before the Trial Court further raises sufficient doubts in the case of

the prosecution.

3.4. Lastly, the investigation stands completed and chargesheet has been filed, leaving no purpose in keeping the Applicant in custody. In view of these facts, coupled with the principle that bail is the rule and jail is the exception, the Applicant deserves to be enlarged on regular bail.

Contentions Opposing the Grant of Bail

4. The prosecution, through Mr. Hemant Mehla, APP for the State, and Ms. Kamna Vohra, counsel for the complainant, oppose the application. It is submitted that the offences alleged are of the gravest kind, involving the sexual assault of a child barely four years old, an offence that shocks the collective conscience of society. The Applicant, employed as a peon in the school where the incident allegedly occurred, is said to have taken advantage of his position of proximity and trust to commit the act. It is contended that the material collected during investigation, including the victim's statement under Section 164 of CrPC, her identification of the Applicant as the perpetrator, and the surrounding circumstances, point unerringly to his involvement. The child, though tender in age, gave a spontaneous and consistent account, which is corroborated by the medical and circumstantial evidence on record. Given the nature of the allegations, the Applicant's release at this stage would pose a real and tangible risk to the safety of witnesses, particularly the child victim and her family. It is apprehended that he may attempt to influence, intimidate, or otherwise interfere with the prosecution witnesses, thereby jeopardising the course of justice. The likelihood of his absconding or tampering with evidence has also been highlighted, especially in light of the gravity of the punishment prescribed for the offences charged.



Analysis

5. The offence alleged against the Applicant is, on its face, grave and heinous, involving sexual assault upon a child of tender age. Nevertheless, the determination of bail cannot rest solely on the gravity of the accusation, for at this stage, the inquiry is not into guilt but into the necessity of continued detention. At this stage, the Court must consider various factors such as whether there exist *prima facie* reasonable grounds to believe that the accused has committed the offence, the nature and gravity of the accusation, the severity of the potential punishment, the likelihood of the accused absconding or fleeing from justice if released, and the possibility of the offence being repeated.⁶ In grave and heinous offences, the law mandates a more nuanced and careful evaluation; however, the tests noted above are not displaced.

6. The trial is presently in progress, and the depositions of the victim and her parents have already been recorded. Both sides have placed considerable reliance on the testimony of these witnesses and on issues of identification. It is trite that, at the stage of considering bail, the Court is not expected to undertake a detailed or exhaustive appraisal of the evidence, as such an exercise would verge upon a mini-trial. Nevertheless, since the question of identification lies at the heart of the prosecution's case, the Court deems it appropriate to make limited observations strictly confined to the assessment required for determining the issue of bail.

7. The prosecution's case, at this stage, rests primarily on the testimony of the child and the classroom CCTV footage. It is not in dispute that the

⁶ *Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr.* (2010) 14 SCC 496.



available classroom CCTV neither shows the Applicant entering the room nor captures any incident inside. The medical material presently relied upon is inconclusive *qua* the Applicant. The FSL report discloses no DNA linkage between the Applicant and the victim. For present, therefore, the case turns primarily on the child's statement. Indeed, the law recognises that the testimony of a child, if found wholly credible and trustworthy, may by itself sustain a conviction; however, that appraisal is reserved for trial. At the bail stage, the limited enquiry is whether the material currently on record furnishes reasonable grounds to connect the Applicant with the offence, without trenching upon the merits.

8. Thus, the identification strand assumes significance. The child initially described the assailant as a “*dadiwala*” (bearded) man and did not name the Applicant. The prosecution asserts that the Applicant was identified by the child from CCTV footage shown at the hospital. However, the said footage pertains only to the school entrance, capturing individuals entering and exiting the premises, and does not cover the classroom where the alleged assault is stated to have occurred. Furthermore, the CCTV footage referred to in the child's statement under Section 161 CrPC finds no mention either in her subsequent statement recorded under Section 164 CrPC or in her deposition before the Court.

9. More crucially and significantly, during her deposition on 30th August 2025, the Trial Court recorded that the witness failed to identify the accused even when he was placed with other bearded individuals and even when he was specifically pointed out to her. The Court's contemporaneous note further reflects that the child did not identify the Applicant either in person or from his photograph on the custody warrant. The Court is mindful that the



child is of tender age and that in-court testimony can be affected by the environment and the passage of time; any final view on credibility must await trial. For present purposes, the identification position remains unsettled. When viewed alongside the neutral CCTV and the negative DNA, this lack of identification weighs against the inference that there are strong *prima facie* grounds of involvement for the limited question of bail.

10. The mother of the victim stated under Section 161 CrPC that a “video” had been shown to the child. However, in cross-examination before the Trial Court on 4th October 2025, she clarified that it was not a video but a still photograph displayed on a screen, and she could not recall whether multiple photographs were shown or only a single image, nor when this was shown to the victim.

11. A statement under Section 161 CrPC is not substantive evidence and can, at best, be used for contradiction. In light of that limitation, and the uncertainty introduced by the mother’s clarification, reliance on the asserted “video” becomes a weak foundation. For present purposes, the probative value of this strand, as corroboration for identification, stands materially diminished.

12. Thus, it emerges that the child has not identified the Applicant during deposition, the CCTV does not place him in the classroom, and the FSL report discloses no DNA linkage. Without pre-judging credibility or the merits reserved for trial, these features at least create a *prima facie* doubt as to the Applicant’s involvement. A case for release on bail is therefore made out, subject to stringent conditions to safeguard the child and the integrity of the proceedings.

13. The nominal roll dated 24th June 2025 records that the Applicant has



remained in custody for 1 year, 1 month and 23 days, and his jail conduct is noted to be satisfactory. The principal witnesses, including the child and her parents, have already been examined. The Applicant has no criminal antecedents and is a young man who supports his family. In these circumstances, with investigation concluded, charge sheet filed, and the key witnesses examined, continued incarceration risks straying into pre-trial punishment rather than serving the purposes of securing the proceedings. Liberty, once constrained, must be justified, not presumed.

14. In light of the foregoing discussion, the Applicant is directed to be released on bail on furnishing a personal bond for a sum of INR 25,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:

- a. The Applicant shall not enter the school premises in question or its immediate vicinity, and shall maintain a minimum distance of 1 Km from the child's residence and school. The Applicant shall also not move in the vicinity of the victim in any manner.
- b. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;
- c. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- d. The Applicant shall not contact the victim or any of her family members;
- e. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;



- f. The Applicant shall appear before the Trial Court as and when directed;
 - g. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
 - h. The Applicant shall share an active mobile number and residential address with the Investigating Officer within 48 hours of release and shall keep the number operational at all times, informing the Investigating Officer of any change within 24 hours.
 - i. The Applicant shall report to the concerned PS on first, second and fourth Friday of every month; However, he shall not be kept waiting for more than an hour.
15. In the event of there being any FIR / DD entry / complaint lodged against the Applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.
16. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.
17. The bail application is allowed in the afore-mentioned terms.
18. Disposed of along with pending application(s), if any.

SANJEEV NARULA, J

OCTOBER 10, 2025/nk