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

% *Date of Decision : 15.01.2025*

+ **BAIL APPLN. 4422/2024**

SUBHAN ALI

.....Petitioner

Through: Mr. Rizwan Durrani, Mr.
Malik Abdurrahman, Mr.
Himanshu Gupta, Mr. Shivam
& Mr. Ali Muzaffar,
Advocates.

versus

THE STATE NCT OF DELHI AND ANRRespondents

Through: Mr. Raj Kumar, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J (ORAL)

1. The present bail application has been under Section 483 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereafter 'BNSS') on behalf of the applicant, seeking grant of regular bail in case arising out of FIR No. 232/2024, dated 23.07.2024, registered at Police Station Sonia Vihar, Delhi, for offences punishable under Sections 75/76 of the Bharatiya Nyaya Sanhita, 2023 (hereafter 'BNS') and Sections 10/12 of the Prevention of Children from Sexual Offences Act, 2012 (hereafter 'POCSO Act').



2. Briefly stated, the present FIR was registered on the complaint of victim 'S' in which she had stated that on 15.07.2024, her friend Sakina, who is the daughter of the accused, had taken her to her house, and at her house, the accused/applicant had called her at the terrace for helping him. When she had reached at the terrace, the accused had asked her to remove her clothes and when she had refused to do so, the accused had removed her *pajami* and also touched on her chest. Thereafter, she had pushed him and run back towards her home, but she did not inform anyone about the incident. It is also stated in the complaint that she had disclosed the said incident to her teacher in her school, and thereafter, the mother of the victim was called at the school and she was informed about the whole incident. The statement of the victim was recorded under Section 183 of the BNSS on 24.07.2024 in which she reiterated her allegations made in the complaint and further stated that on the date of the incident, the accused had also removed his pants and tried to enter his fingers into her private part and had also tried to insert his private part into her back side. The present applicant was arrested in connected with the present case on 23.07.2024.

3. The learned counsel appearing for the applicant submits that the applicant has been falsely implicated in the present case. It is submitted that there are clear contradictions in the statement of the victim wherein she had stated that at the time of the incident, the victim was alone in the house, however, in her statement under Section 183 of the BNSS, the victim had stated that her friend's



younger brother and sister were also present in the house. It is contended that the accused is in judicial custody since 23.07.2024 and charge-sheet stands filed against him; therefore, he be granted regular bail.

4. The learned APP for the State vehemently opposes the present bail application. He states that the accused has committed sexual assault upon the victim, who was only 13 years of age at the time of the incident and was studying in school. It is contended that she could not disclose the incident to her parents due to fear and she had disclosed to her teacher in the school and the mother of the victim was informed about the incident by the school authorities, after which the present case was registered against the accused. It is also submitted that the accused is residing in the same vicinity as the victim and, therefore, there is every possibility of tampering with the evidence.

5. This Court has **heard** arguments addressed by the learned counsel for both the parties and has gone through the case file.

6. The contention of the learned counsel for the applicant that there is no incriminating evidence against the applicant herein and that there are improvements in the statement of the victim recorded under Section 183 of the BNSS, is unmerited. The statement recorded under Section 183 of BNSS clearly mentions as to how the victim, who is only 13 years of age, has been sexually assaulted by her neighbourer, whom she addresses as '*chacha*'. The learned counsel for the applicant argued that it was not possible that the incident in



question could have taken place since the family of the accused was also staying with him. However, the statement recorded under Section 183 of BNSS clearly reveals that the victim has stated that the wife of the accused was not at home and the accused had sent his daughter outside home to fetch something. Thereafter, when his daughters were not at home, he had called the victim to the roof, had forcibly removed her lower clothes and had touched her breasts. In her statement, the victim has also mentioned the specific date and time of the incident and has stated that he had tried to put his finger in her private parts, and even touched her breast, but she had started crying as it was hurting her. Thereafter, she had pushed him, wore her pants and tried to go down the staircase. Since there was no electricity, the accused had again caught hold of her and had again removed her pants and had inappropriately touched her with his private part on the backside of her private part. She had again pushed him. Since she was scared, she did not inform her parents. Later on, she had disclosed this incident to her teacher, who had informed the Principal of the school, who had informed her parents.

7. In this Court's opinion, in a case of a victim, who is 13 years of age, who has been sexually assaulted by a person known to her, whom she address as '*chacha*' and who lives in adjoining house where she had gone to play with his daughter, who was her friend, when the accused had sexually assaulted her, it is understandable that she could not have gathered courage to inform about the incident to her parents. The victim is of a tender age and the incident would have



scared her considerably. Therefore, the contention of the learned counsel for the applicant that the delay in lodging of the FIR creates a doubt regarding the veracity of the victim is unmerited. As far as the contention of the learned counsel for the applicant that the incident had not taken place is concerned, the discussion made in the preceding paragraph will reveal that the victim had gathered courage to inform her teacher about the incident that had taken place with her, who in turn had informed the Principal of the School, who in turn had informed the mother of the victim, who told her husband about it and therefore, the complaint was lodged. The statement of the victim, which has been recorded before the learned Trial Court, also reveals that she has fully supported the prosecution case and the sequence of events, which are natural in the case of a girl, who is 13 years of age, who found it more comfortable to confide it to her school teacher and Principal than to her parents in the first instance.

8. The contention of the learned counsel appearing for the applicant that the cross-examination will reveal that the victim has made improvements in her statement or that there were other family members of the accused at home, at the cost of repetition, will have no significance as the victim in her cross-examination as well as in her statement recorded before the learned Trial Court has narrated the facts as to how the victim was taken to the house while the wife and daughter of the accused were not at home.

9. This case reflects the profound trauma suffered by the victim, a minor, at the hands of a person she trusted – her neighbor, in whose



house she had gone to play, and whom she addressed as *chacha*. It is a stark reminder of an unfortunate reality frequently observed by courts, where acts of sexual assault against children are often committed by individuals who occupy positions of trust or confidence in the child's life. Such relationships of familiarity and trust not only provide perpetrators access to the child but also magnify the betrayal and lasting impact of the crime. The victim in this case, despite her young age, demonstrated commendable courage by confiding in her school teacher, as she was unable to bear the trauma caused by the violation of her body and dignity. The Principal and teacher, instead of silencing or ignoring the child's plight, acted responsibly and informed the parents, which led to the registration of the present FIR. Their actions serve as a commendable example of the importance of supporting victims in such situations.

10. It is the duty of the Courts to recognize the broader implications of such heinous acts. One must always remember that crimes of sexual assault against minors are not just violations of their physical integrity but also attacks on their innocence and sense of safety, and often leave permanent psychological scars. When such offences are committed by individuals the victim trusts, the impact is even more severe, both for the victim and society at large. Therefore, in cases like the present, the Courts must send a strong and clear message, through its orders and judgments, that such acts will not be condoned and that the justice system will act decisively to protect the most vulnerable members of society.



11. Having observed so, this Court is of the view that other public witnesses in this case are yet to be examined before the learned Trial Court. The allegations against the applicant are serious and grave in nature. Thus, considering the overall facts and circumstances of the case, no case for grant of regular bail is made out at this stage.

12. The application is accordingly dismissed.

13. Nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.

14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 15, 2025/A