

(2025) 12 DEL CK 1734

In the Delhi High Court

Case No : Bail Application No. 3522 Of 2025

Amaan Khan

APPELLANT

Vs

State (Govt. Of Nct Of Delhi)

RESPONDENT

Date of Decision : 05-12-2025

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 179, 183, 482
Bharatiya Nyaya Sanhita, 2023 — Section 61, 64(1), 74, 79, 351(2)
Protection of Children from Sexual Offences Act, 2012 — Section 6

Citation : (2025) 12 DEL CK 1734

Hon'ble Judges : Ravinder Dudeja, J

Bench : Single Bench

Advocate : Tanveer Ahmed Mir, Md. Imran Ahmad, Yashodhara Singh, M. Hasibuddin, Aman Usman, Ganshyam Mishra, Sanjay Kumar Sharma, Parigul Begum

Final Decision : Dismissed

Judgement

Ravinder Dudeja, J.

1. This is an application under Section 482 BNSS, 2023 for grant of anticipatory bail in case FIR No. 553/2025, under Sections 64(1)/74/61/79/351(2) BNS and Section 6 POCSO, registered at Police Station Fatehpur Beri.

2. As per the FIR dated 24.08.2025, a complaint was lodged in Delhi against the applicant alleging that he repeatedly assaulted and blackmailed the complainant, a minor, between the year(s) 2023-2025. The victim stated that the applicant took advantage of their neighborhood relationship, initially luring her under the pretext of helping with studies and later forcing physical relations by threatening to release objectionable videos recorded secretly. His friend Abid, was also accused of assisting in the conspiracy, arranging meetings, and facilitating the assaults at various locations, including hotels. The complainant's father discovered one of the videos in August 2025, after which the family verified the incidents and approached the police. Based on the complaint, the aforesaid FIR

was lodged.

3. Learned senior counsel for the applicant submits that the alleged period of occurrence has been depicted as 01.04.2023 to 30.06.2025, whereas the FIR came to be lodged only on 24.08.2025, after an unexplained delay. It is submitted that the written complaint appears to have been drafted by a person well-versed in preparing such documents and not by a young victim as projected. Attention is invited to the incident dated 28.06.2023 mentioned in the FIR, and submitted that on that day both the applicant and the prosecutrix were minors, the applicant being of 17 years of age (his DOB being 04.10.2005) and the prosecutrix of 16 years. It is further submitted that though the prosecution claims that the prosecutrix was born in 2008, RTI records were procured from her first attended school which indicates that her year of birth as 2007.

4. It is further urged that the FIR refers to the events of June 2025, alleging that the prosecutrix travelled in a car with the applicant and later checked into a hotel, but is conspicuously silent on the age particulars. According to the applicant, as per the RTI documents relied upon, he was 19 years and the prosecutrix 18 years on the date of the alleged hotel stay. The anticipatory bail application was earlier rejected on 11.09.2025 by the trial court, inter alia, on the basis of a video recording purportedly depicting the applicant and the prosecutrix together in a car. It is submitted that the said video is not obscene, but merely reflects adolescent romantic relationship, and was recorded by co-accused Abid who circulated it amongst friends, eventually leading to familial discord and the subsequent registration of the FIR.

5. Reliance is placed on the judgment in *Ajay Kumar v. State* (NCT of Delhi) 2022 SCC OnLine Del 3705, to submit that the legislative intent of the POCSO Act is not to criminalise mutually consensual adolescent romantic conduct between similarly aged minors. It is submitted that the present case does not disclose any element of exploitation or coercion and that the relevant provisions of POCSO have been invoked in a mechanical and misplaced manner. Learned senior counsel submits that the ground of custodial interrogation for recovery of electronic devices is untenable, as the hotel already stands identified and the applicant had voluntarily offered his mobile phone, which the Investigating Officer declined to accept without court directions. It is lastly urged that allegations of blackmail or threats are unsupported by material, no incriminating telephonic conversations exist, and the car as well as the hotel room were arranged by co-accused Abid, thereby entitling the applicant to the grant of anticipatory bail.

6. Learned APP for the State has vehemently opposed the bail application and submits that the defence is attempting to conduct a mini-trial at the stage of bail, which is impermissible. It is submitted that the victim's birth year is 2008, and the municipal records reflect that her year of birth was 2009, and even if the relationship was consensual, the POCSO Act applies strictly where the victim is a minor. The CDR records indicate communication, and the parties were using the

“Snapchat” application, which has a disappearing-message feature that leaves no digital footprint. According to the prosecution’s case, the applicant deliberately used this platform to threaten and blackmail the victim and it was a calculated motive that the car video could later be projected as evidence of a consensual relationship to evade criminal liability. It is urged that the presumption under the statute operates against the applicant, and that repeated threats have been noted even in the earlier order rejecting bail. In sum, the allegations are serious, the victim is a minor, the element of threat persists, and therefore anticipatory bail is not warranted.

7. Having considered the submissions of learned counsel for the parties and the material placed on record, this Court is not persuaded to exercise the extraordinary jurisdiction under Section 482 BNSS, 2023 for granting anticipatory bail to the applicant. The allegations in the FIR disclose a sustained course of conduct involving repeated sexual assault, coercion, and blackmail of a minor over an extended period. At this stage of the proceedings, the Court is required to be guided by the prima facie nature and gravity of the allegations rather than the disputed defence raised by the applicant, which can only be adjudicated at trial.

8. The foremost circumstance weighing against the applicant is the admitted position in law that consent of a minor is no consent. The POCSO Act operates on the foundational premise that children are incapable of giving lawful consent for sexual acts, and therefore any form of sexual contact with a minor, regardless of the purported willingness or familiarity between the parties, stands criminalised. The legislative intent is to create a protective statutory shield for minors, and the courts have consistently held that arguments based on “consensual adolescent behaviour” cannot dilute the rigour of the Act at the stage of bail.

9. The prosecution material, at this stage, prima facie indicates that the victim was below eighteen years during the offence period. The applicant’s attempt to draw inferences from alternative school records to contradict the age of the prosecutrix or to portray the relationship as consensual or romantic cannot be examined in detail at this stage, as such an inquiry would amount to conducting a mini-trial. The contention of the applicant that the complaint was drafted by a person who is well versed in drafting is a contention that is to be taken up during the trial. Even assuming, for the sake of argument, that both parties were of comparable age during certain periods, the fact remains that any sexual act with a minor attracts the stringent mandate of the POCSO Act, and the statutory protections accorded to the prosecutrix cannot be diluted by speculative assertions regarding her date of birth or the nature of their acquaintance.

10. In *Varun Kumar @ Sonu v. State of Himachal Pradesh* CrI. Appeal No. 1295/2018, the Supreme Court reiterated that the issue of consent is irrelevant where the prosecutrix is a minor. The Court held that even if the victim had voluntarily participated in the sexual act, such willingness has no legal consequence under the POCSO framework. It emphasized that the victim in that

case was about 15 years old on the date of the incident, making her incapable of giving lawful consent. The judgment thus affirms the settled principle that a minor's consent is no consent in the eyes of law.

11. Similarly, this Court in *Javed v. State*, BAIL APPLN. 4129/2021, held that a minor's consent is no consent, and reaffirmed that the statutory scheme under the POCSO Act renders any notion of willingness by a child legally irrelevant.

12. Further, in *Prince Kumar Sharma and ors v. State* CRL. M.C 7145/2025 reiterated that when the victim is a minor under POCSO, the concept of consent has no legal relevance, and once age and the occurrence of the act are established, alleged consent cannot be used as a defence. The relevant paragraph reads as under;

"12. The Supreme Court, while examining allied questions under the IPC and POCSO, has consistently recognised that consent of a person below the statutory age has no legal efficacy in the context of sexual offences. The philosophy that underlines POCSO is that of heightened protection, not neutrality, in respect of adolescent sexuality. Courts may, therefore, be slow to use the language of 'consensual sex' where one party is a child in terms of the statute. The proper inquiry in such cases is not whether the minor consented, but whether the prosecution has established the child's age and the occurrence of the proscribed act; once those elements stand proved, the supposed consent of the minor cannot be invoked as a defence to criminal liability."

13. The allegations further disclose serious assertions of blackmail, coercion, and the use of disappearing-message platforms such as Snapchat, purportedly with the intent to threaten the minor and prevent disclosure. These allegations require thorough forensic examination of devices, recovery of digital material, and verification of the chain of transmission of the alleged video. The investigating agency has specifically indicated that custodial interrogation is essential for recovery of electronic devices, extraction of metadata, and tracing digital footprints that may not otherwise be accessible.

14. The Court also cannot ignore that the investigation is at a nascent and sensitive stage, particularly in matters involving digital evidence, sexual assault, and intimidation of a minor. Premature grant of anticipatory bail may impede the investigative process, affect recovery of crucial material, and expose the prosecutrix, who is a vulnerable witness to undue influence as the prosecutrix's family and applicant's family live nearby. The apprehension of tampering with evidence or threatening the victim cannot be ruled out, especially when allegations of repeated threats already form part of the earlier order of the Trial Court rejecting bail. Perusal of the Trial Court order dated 11.09.2025 (Annexure P-1), reveals that the applicant was served with several notices under section 179 BNSS but has failed to join even once and has been absconding.

15. It is well-settled through precedents of the Supreme Court as well as of this

court's co-ordinate benches, that in cases involving sexual offences against minors, the Courts must adopt a cautious and protective approach. The seriousness of the allegations, coupled with the statutory presumption under POCSO and the recognised principle that a minor's consent is legally irrelevant, places a heightened responsibility on the Court to ensure that the protective purpose of the Act is not undermined. The stringent conditions embodied in the statute are intended to safeguard children from exploitation, and the facts of the present case prima facie attract those rigours. Perusal of the order dated 11.09.2025 (Annexure P-1) indicates that the prosecutrix has given her statement under section 183 BNSS and in such statement she has supported the prosecution's version.

16. This Court in *Ram Kumar v. State* BAIL APPLN. 3234/2025, held that courts must remain extremely sensitive while dealing with allegations of sexual offences against minors. It was emphasised that the principle that "bail is the rule and jail is the exception" does not apply with equal force to anticipatory bail. The Court further observed that granting anticipatory bail in such cases would send an unacceptable and harmful signal to society that an accused can evade custodial scrutiny even after committing an offence against a girl child.

17. In *Saiful Khan v. State* 2024 SCC OnLine Del 8505, this Court reiterated that anticipatory bail under Section 482 BNSS is an extraordinary remedy to be used sparingly, and relying on *State of A.P. v. Bimal Krishna Kundu* (1997) 8 SCC 104 and *State v. Anil Sharma* (1997) 7 SCC 187, emphasised that its considerations differ materially from regular bail because custodial interrogation is significantly more effective, especially in cases involving electronic evidence, and that while anticipatory bail guards against misuse of arrest powers, the right to liberty must be balanced with the gravity of the offence, societal impact, and the need for an unhindered investigation. The relevant paragraph read as under;

"14. It is trite law that the power to grant a pre-arrest bail under Section 482 of the BNSS is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of *State of A.P. v. Bimal Krishna Kundu*, (1997) 8 SCC 104, held as under:

"8. A three-Judge Bench of this Court has stated in *Pokar Ram v. State of Rajasthan* [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

"5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal."

9. Similar observations have been made by us in a recent judgment in *State v. Anil Sharma* [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

"The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest."

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on "the career of millions of students", learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order."

15. It is settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 482 of the BharatiyaNagarikSurakshaSanhita (BNSS') [State v. Anil Sharma, (1997) 7 SCC 187]. Granting anticipatory bail to the applicant would undoubtedly impede further investigation. An order of bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

21. Considering that the present case involves electronic gadgets and electronic evidence, the task of the Investigating Agency seems arduous and they need to be given a fair play in the joints to investigate the matter in the manner they deem appropriate. The matter requires thorough investigation which ought not to be curtailed by passing an order granting pre-arrest bail.

22. The relief of pre-arrest bail is a legal safeguard intended to protect individuals from potential misuse of power of arrest. It plays a crucial tool in preventing harassment and unjust detention of innocent persons. However, the court must carefully balance the individual's right to liberty with the interests of justice. While the presumption of innocence and the right to liberty are fundamental principles of law, they must be considered in conjunction with the gravity of the offence, its societal impact, and the need for a comprehensive and unobstructed investigation."

18. In view of the totality of facts and circumstances, particularly the fact that the prosecutrix was a minor at the time of the commission of offence, the

seriousness of the allegations, the need for custodial interrogation for effective investigation, the statutory mandate under the POCSO Act, and the settled proposition that the consent of a minor has no legal effect, as well as the fact that the investigation is at a nascent stage, this Court finds no ground to grant anticipatory bail.

19. Accordingly, the application is dismissed.