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

+ **BAIL APPLN. 4904/2025, CRL.M.A. 37838/2025**

SANDEEP UPADHYAY

.....Petitioner

Through: **Mr. Samrat Nigam, Senior Advocate
with Mr. Manish Choudhary and
Mr. Riju Mani Talukdar, Advocates.**

versus

STATE NCT OF DELHI

.....Respondent

Through: **Mr. Hemant Mehla, APP for State.**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

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**ORDER
18.12.2025**

1. This application under Section 482 of Bhartiya Nagarik Suraksha Sanhita, 2023¹ (corresponding to Section 438 of Code of Criminal Procedure, 1973²) seeks grant of pre-arrest bail in connection with FIR No. 391/2025 dated 25th November, 2025, registered at Baba Haridas Nagar, Delhi, under Section 376 of Indian Penal Code, 1860³.

2. The case of the prosecution is that in June 2019, the victim/complainant went to reside at her maternal aunt's house in Mumbai for pursuing her studies. It is alleged that, during her stay, the Applicant forcibly established physical relations with her, when other family members were not present. It is further alleged that the Applicant intimidated the

¹ "BNSS"

² "CrPC"

³ "IPC"



victim into silence by threats of consequences, including disclosure to family and disruption of her education, and that the victim was thereafter repeatedly subjected to sexual assault till 2020. A further allegation is that in 2022, when the Applicant came to Delhi, he again threatened the victim and forcibly established physical relations without her consent.

3. The FIR came to be registered on 25th November, 2025. During investigation, the victim was medically examined and her statement under Section 183 BNSS was recorded. Notices under Section 35(3) BNSS were issued to the Applicant. It is alleged that the Applicant has not yet joined investigation.

4. The Applicant's earlier request for pre-arrest bail was rejected by the Sessions Court on 9th December, 2025, with observations that the allegations were serious and that Section 482(4) BNSS excludes an application of pre-arrest bail where the accusation concerns offences under Section 65 and Section 70(2) of the Bharatiya Nyaya Sanhita, 2023⁴.

5. Mr. Samrat Nigam, Senior Counsel for the Applicant, argues that the Sessions Court proceeded on an incorrect factual premise and an unduly rigid view of law. The FIR, registered on 25th November, 2025, relates to allegations said to have commenced in June 2019 and to have resurfaced in 2022, and that the interregnum is left largely unexplained. It is urged that the victim admittedly returned to Delhi in 2022 and thereafter continued to remain within a secure familial setting, with access to close relatives, and there is nothing on record to indicate any contemporaneous complaint, disclosure, or precipitating event in relation to the Applicant proximate to the registration of the FIR. It is contended that this delay is not being cited



as a standalone ground to discredit the victim, but as a circumstance that bears upon the necessity of custodial interrogation at this stage, particularly when the material sought to be collected is documentary in nature.

6. On the other hand, Mr. Hemant Mehla, APP for the State, opposes the application and submits that the material collected during investigation establishes that the victim was a minor at the relevant time. It is contended that as per the birth certificate on record, her date of birth is 13th June, 2003, and consequently she was below 16 years of age when the Applicant is alleged to have first established physical relations with her. It is, thus, urged that the Sessions Court correctly appreciated the factual and legal position and rightly declined the relief of pre-arrest bail.

7. At the outset, the Court notes that Section 482(4) BNS contains a specific statutory exclusion. The bar operates where the arrest is on accusation of having committed an offence under Section 65 and Section 70(2) of BNS. Whether the present accusation falls within that exclusion cannot be decided on assumption. It turns, in the present case, on age verification and on the precise attribution of allegations to particular periods.

8. On the basis of material as it stands today, there is an evident inconsistency in the age documents being relied upon. One set of documents is stated to be the first attendant school records, indicating the date of birth as 8th May, 2002. Another document is stated to be the victim's birth certificate, indicating her date of birth as 13th June, 2003. On either version, the first allegation is stated to be in June 2019, continuing till 2020 and then an occurrence in 2022. At this stage, the Court is not recording any final view on age. The investigating agency will have to place a clear, verified

⁴ "BNS"



position on record.

9. The Court is also mindful that allegations under Section 376 IPC are grave. Delay in reporting, by itself, is not decisive in such matters. At the same time, for the limited purpose of interim protection, the Court cannot ignore that the FIR is registered in November 2025 for allegations spanning 2019 to 2022, and that the Applicant asserts a case of disputed age and disputed factual premises, which require verification. The Applicant's non-joining of investigation, despite notice under Section 35(3) BNSS, is a relevant factor. It can, however, be addressed by an interim direction that secures investigation, while preserving the Applicant's liberty, till the Court is assisted with a complete Status Report.

10. In these circumstances, and without expressing any opinion on merits, the Court considers it appropriate at this stage to extend interim protection to enable the Applicant to join investigation, subject to stringent safeguards.

11. Accordingly, the Applicant shall appear before the Investigating Officer on 20th December, 2025 at 4:00 PM and shall join and cooperate in investigation thereafter, as and when required.

12. Issue Notice. Mr. Mehla, APP for the State, accepts notice on behalf of the State.

13. Let detailed Status Report be filed before the next date of hearing.

14. Till the next date of hearing, the Applicant shall not be arrested in connection with the subject FIR, subject to the following conditions:

- (i) The Applicant shall not contact the victim, directly or indirectly, or attempt to influence her or any witness;
- (ii) The Applicant shall cooperate with the investigation and shall not withhold his mobile number or location details from the Investigating



Officer;

(iii) The Applicant shall not leave the boundaries of the country without informing the IO/SHO concerned;

15. It is clarified that in case the Applicant fails to join investigation on the date fixed, or is found to be non-cooperative thereafter, the State shall be at liberty to seek appropriate orders, including recall of interim protection, on the basis of a report.

16. List on 28th January, 2026.

SANJEEV NARULA, J

DECEMBER 18, 2025/nk