$~4

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

% ***Date of Decision: 17th November, 2026***

\# **CNR No. DLHC010001082026**

\+ BAIL APPLN. 43/2026

MANOJ SINGH THAPA .....Petitioner

Through: Mr. Nishant Anand, Ms. Gunjan Bansal, Mr. Tarun Choudhary, Advocates

versus

STATE (NCT OF DELHI) & ANR. .....Respondents

Through: Mr. Manoj Pant, APP
M: 9971560508
SI Alisha Bhati, PS V.K. South

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J. *(Oral):*

1. The present 04th (Fourth) application has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), corresponding to Section 439 of the Code of Criminal Procedure, 1973 ("CrPC"), seeking grant of regular bail on behalf of the petitioner, i.e., Manoj Singh Thapa, S/o Prem Singh Thapa, arising out of the First Information Report ("FIR") being *FIR No. 272/2023* dated 02nd May, 2023, under Sections 376/323 of the Indian Penal Code, 1860 ("IPC"), and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act"), registered at Police Station ("PS") Vasant Kunj (South), South West, Delhi, which is pending before the Additional Sessions Judge ("ASJ")-01 (POCSO), Patiala House Court, Delhi

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
16:51:32

in *SC Case No. 258/2023.*

2. This Court is informed that the petitioner had earlier preferred 03 (three) applications seeking regular bail, out of which 02 (two) applications were preferred before the Trial Court and 01 (one) regular bail application was preferred before this Court, which came to be dismissed *vide* orders dated 04th July, 2024, 02nd September, 2025, and 05th March, 2025, respectively.

3. The case of the prosecution, as emerging from the material on record, is as follows:

3.1. On 02nd May, 2023, during emergency duty, Assistant Sub-Inspector ("ASI"), Surender Sahab was present at PS Vasant Kunj (South), where the petitioner, i.e., father of respondent no. 2, approached the PS and made a complaint regarding the disappearance of his minor daughter, aged about 15 (fifteen) years and 3 (three) months. He stated that his daughter had gone missing from their residence on 01st May, 2023, at about 07:00 PM without informing anyone. Accordingly, on the basis of the said complaint, an FIR under Section 363 of the IPC was registered and investigation was initiated.

3.2. During the initial investigation, ASI Surender Sahab uploaded the particulars of the missing minor girl on ZIPNET and forwarded the relevant information to various authorities, including the Deputy Commissioner of Police ("DCP") Office, Central Bureau of Investigation ("CBI"), National Crime Records Bureau ("NCRB") and Doordarshan and also prepared a Call Detail Records ("CDRs") search form for tracking the mobile number of the missing minor girl.

3.3. On 16th May, 2023, the minor girl returned to the PS along with her mother and father. Thereafter, further investigation was marked to the Sub-Inspector, who recorded the statement of the minor girl under Section 161 of

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
16:51:32

the CrPC, wherein, she alleged that her father, i.e., the petitioner herein, had misbehaved with her and that she had left the house without informing anyone on account of the said alleged conduct.

3.4. During the course of investigation, the statement of the mother of the minor girl was also recorded under Section 161 of the CrPC, wherein she stated that the minor girl had informed her at the PS that her father, the petitioner herein, used to do wrong things with her. However, she further stated that the minor girl had never disclosed any such incident to her earlier, nor had she shown any video to her. The statements of the minor girl's brother and aunt were also recorded, who similarly stated that the minor girl had never disclosed any incident of physical abuse to them prior to the present complaint.

3.5. Thereafter, the Investigating Officer ("IO") got the minor girl medically examined at Safdarjung Hospital, which is recorded in the *Medico-Legal Certificate ("MLC") No. 526/2023*. During her medical examination, the minor girl reiterated the allegations of sexual assault against her father and alleged that such incidents had been occurring for approximately 02 (two) years, with the last alleged incident having taken place on 20th April, 2023. She also alleged instances of physical assault by the petitioner.

3.6. The minor girl refused to undergo an internal medical examination, and the doctor gave a negative Urine Pregnancy Test ("UPT") Report in the said MLC.

3.7. During the investigation, the minor girl handed over a mobile phone to the IO, containing a video which, as per her allegations, depicted the petitioner committing the alleged wrongful act with her. The said mobile phone was taken into police possession and seized as evidence. Subsequently, on the

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
16:51:32

basis of the statements recorded during investigation, charges under Section 376 of the IPC and Section 6 of the POCSO Act were added to the present case.

3.8. Thereafter, a case was registered against the petitioner, and he was arrested in the present case. He was then medically examined at Deen Dayal Upadhyay Hospital, which is recorded in the *MLC No. 4140*, wherein, the doctor opined that there was nothing to suggest that the petitioner was incapable of performing any sexual act.

3.9. Thereafter, the petitioner was produced before the Court and was remanded to Judicial Custody ("JC") for a period of 14 (fourteen) days.

3.10. Subsequently, an application was moved for recording the statement of the minor girl under Section 164 of the CrPC, wherein she reiterated the allegations against the petitioner and alleged that the petitioner had been committing wrongful acts with her for approximately 02 (two) years. She further alleged that the last incident had taken place on 20th April, 2023, which she had recorded on her mobile phone and subsequently handed over to the police.

3.11. She further stated that she had left her house on 26th April, 2023, and had gone to Nashik to stay with one person, namely, Tushar. She alleged that she had disclosed the alleged incidents to Tushar and his family during her stay and subsequently returned to Delhi on 16th May, 2023, whereafter she lodged the present complaint.

3.12. During the investigation, the IO issued a notice under Section 91 of the CrPC to South Delhi Municipal Corporation ("SDMC") Pratibha School, pursuant to which the school furnished the age-related documents of the minor girl, including an affidavit submitted by her mother, wherein her date of birth

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
16:51:32

was mentioned as 28th January, 2008. On the basis of the said documents, the age of the minor girl was stated to be 15 (fifteen) years at the time of the alleged incident.

3.13. Upon completion of the investigation, the IO filed a Final Report/Chargesheet dated 13th July, 2023, against the petitioner herein, before the ASJ-01, Patiala House Court, Delhi.

4. In support of the present bail application, the following submissions have been made on behalf of the petitioner:

4.1. Respondent no. 2, during her testimonies recorded on 01st October, 2024, and 09th July, 2025, turned hostile and categorically deposed that the allegations against the petitioner were false. She further stated that no sexual intercourse had taken place between her and the petitioner and expressed regret for implicating her father, i.e., the petitioner.

4.2. Despite being cross-examined by the Additional Public Prosecutor ("APP") for the State after she was declared a hostile witness, nothing material could be elicited from respondent no. 2 in support of the prosecution case. Respondent no. 2 has already been examined and discharged as *PW-1*.

4.3. The mother of respondent no. 2 has also been examined as *PW-2* on 12th August, 2025. Thus, both material witnesses have already been examined, and there is no likelihood of the petitioner influencing or tampering with their testimonies.

4.4. The petitioner has been in JC since 16th May, 2023, and only 02 (two) out of the 15 (fifteen) prosecution witnesses have been examined till date. The trial is likely to take considerable time to conclude, and continued incarceration would amount to pre-trial punishment and infringe the petitioner's right to personal liberty under Article 21 of the Constitution of

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
16:51:32

India, 1950 ("Constitution").

4.5. There is no medical evidence establishing the alleged sexual assault. Further, the mother of respondent no. 2, in her testimony dated 12th August, 2025, questioned the correctness of the year of birth mentioned in the school records. It is also submitted that no ossification test of respondent no. 2 was ever conducted by the Investigating Agency ("IA").

4.6. Respondent no. 2 and her mother appeared before the ASJ-01 (POCSO), Patiala House Court, Delhi, on 29th August, 2025, and expressed no objection to the grant of bail to the petitioner.

4.7. The earlier regular bail application filed on behalf of the petitioner, bearing *BAIL APPL. No. 551/2025*, was dismissed by this Court on 05th March, 2025. However, there has been a substantial change in circumstances thereafter, particularly the examination of respondent no. 2 and her mother before the Trial Court.

4.8. The petitioner is 40 (forty) years of age, and has no previous criminal antecedents. Further, nothing incriminating has been recovered from the petitioner or at his instance.

4.9. Investigation *qua* the petitioner has already been concluded and the chargesheet, along with the supplementary chargesheet, has already been filed. There is no further requirement for custodial interrogation of the petitioner.

4.10. In view of the prolonged incarceration, completion of investigation, examination of the material witnesses, changed circumstances since the dismissal of the earlier bail applications and no objection of respondent no. 2 to the grant of bail to the petitioner, the petitioner deserves to be enlarged on regular bail.

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
16:51:32

5. Learned counsel appearing for the petitioner has also drawn the attention of this Court to the reply/submissions made on behalf of respondent no. 2, wherein respondent no. 2 has submitted that the allegations against the petitioner are totally false, and she has no objection to the grant of bail to the petitioner.

6. This Court has interacted with respondent no. 2, who submits that all the allegations against her father, i.e., the petitioner herein, are totally false. She submits that she made those false allegations as her father used to admonish her, on account of which she was angry with him.

7. She, thus, submits that her friend misguided her into making such allegations against her father so that her father did not admonish her in any manner whatsoever.

8. The mother of respondent no. 2 is also present in the Court and supports the submissions made by her.

9. Learned APP for the State submits that in view of the categorical statement made by respondent no. 2, the State has no serious objection.

10. Having heard learned counsels for the parties, at the outset, this Court notes that the present application is the 04th (fourth) application seeking regular bail on behalf of the petitioner. The earlier applications preferred by the petitioner came to be dismissed *vide* orders dated 04th July, 2024, 02nd September, 2025 and 05th March, 2025, respectively. However, the dismissal of an earlier bail application does not preclude consideration of a subsequent application where there is a material change in circumstances.

11. In this regard, reliance may be placed upon the judgment of the Supreme Court in ***Kalyan Chandra Sarakar Versus Rajesh Ranjan @ Pappu Yadav, (2005) 2 SCC 42***, wherein it was held that while considering a

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
16:51:32

subsequent bail application, the Court is required to consider the grounds on which the earlier application was rejected as well as the fresh circumstances warranting reconsideration of the prayer for bail. The relevant portions of the judgment read as:

> *"xxx xxx xxx*
> *18. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law.* ***But even persons accused of non-bailable offences are entitled to bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing require that such persons be released on bail, in spite of his earlier applications being rejected, the courts can do so.***
> *19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country.* ***The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitated on the same grounds, as the same would lead to a speculation and***

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
16:51:32

uncertainty in the administration of justice and may lead to forum hunting.
xxx xxx xxx"

(Emphasis Supplied)

12. In the present case, this Court finds that there has been a substantial change in circumstances after the dismissal of the earlier bail application preferred by the petitioner. Respondent no. 2, who is the principal witness in the present case, has already been examined before the Trial Court as *PW-1* and has not supported the prosecution case. Rather, she has categorically denied the allegations levelled against the petitioner. Further, the mother of respondent no. 2 has also been examined as *PW-2*, wherein she questioned the correctness of the year of birth mentioned in the school records of respondent no. 2. Both the material witnesses have already been examined and turned hostile before the Trial Court.

13. In this regard, reliance may be placed upon the order dated 19th November, 2025, passed by a Single Bench of this Court in ***BAIL APPLN. 3501/2025***, titled ***Shree Krishan Versus State (NCT of Delhi)***, which is similar to the facts and circumstances of the present case. By the said order, the Court granted regular bail to an accused, who was alleged to have committed sexual offences against his minor daughters. It was noted that the victims had already been examined before the Trial Court, had not supported the prosecution case and had expressed no objection to the grant of bail to their father. The relevant paragraphs of the order are reproduced below:

"xxx xxx xxx
6. ***At the outset, this Court notes that the victims have already been examined before the learned Trial Court, and though they had initially supported the prosecution case, they later turned***

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
16:51:32

hostile before the learned Trial Court. The mother of the child victim also did not support the case of prosecution.

7. ***Considering the fact that the victims, who have been examined, have not supported the prosecution case, and also since they are present before this Court alongwith their counsel and state that they have no objection if bail is granted to the present applicant, who is their father, this Court is inclined to grant regular bail to the applicant herein****, on his furnishing personal bond in the sum of Rs.10,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court/Successor Court/Link Court/Duty Judge concerned on the following terms and conditions:*

xxx xxx xxx"

(Emphasis Supplied)

14. A fruitful reference may also be made to the order dated 10th August, 2026, passed by the Supreme Court in ***Special Leave Petition (Crl.) No. 8875/2026***, titled ***Jeetram Versus State of Rajasthan***, wherein, the alleged accused, facing serious allegations under Section 376 of the IPC and Section 6 of the POCSO Act, was granted regular bail, taking into consideration that the victim had been declared hostile during the course of trial. The relevant excerpt of the order is reproduced below:

"xxx xxx xxx

6. ***Having regard to the fact that the victim has been declared hostile, and there is also an issue in respect of the real age of the victim, without expressing any opinion on the merits of the prosecution case, we are of the view that the appellant is entitled to be released on bail, at this stage.***

xxx xxx xxx"

(Emphasis Supplied)

15. Accordingly, considering the facts and circumstances of the present case and the statement made by respondent no. 2, the petitioner is admitted to regular bail in connection with *FIR No. 272/2023* dated 02nd May, 2023, under Sections 376/323 of the IPC and Section 6 of the POCSO Act, registered at

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
16:51:32

PS Vasant Kunj (South), South West, Delhi, subject to furnishing a personal bond in the sum of Rs. 10,000/- (Rupees Ten Thousand only), with 01 (one) surety in the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions:

a. The petitioner shall cooperate in any further investigation as and when directed by the concerned IO;
b. The petitioner shall furnish his residential address to the IO and shall not change the address without informing the concerned IO/Station House Officer ("SHO") of the local PS;
c. The petitioner 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 petitioner shall appear before the Trial Court as and when directed;
e. The petitioner shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times. The mobile number shall not be changed, nor shall the phone be switched off, without prior intimation to the IO/SHO;
f. The petitioner shall report to the concerned local PS on the 01st (first) Monday of every month.

16. In the event of there being any FIR/Daily Diary ("DD") entry/complaint lodged against the petitioner, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

17. Needless to state, any observations made in the present order are solely for the purpose of deciding the present bail application, and shall neither influence the outcome of the trial proceedings, nor be construed as an expression of opinion on the merits of the case.

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
16:51:32

18. The bail application is allowed and accordingly disposed of in the aforementioned terms.

19. Copy of the order be communicated to the concerned Jail Superintendent for information and necessary compliance.

MINI PUSHKARNA, J

NOVEMBER 17, 2026/KR

Signature Not Verified
Digitally Signed
By:HARIOM SHARMA
Signing Date:18.11.2026
16:51:32