



2026-DHC-508



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: January 15, 2026
Pronounced on: January 21, 2026

+ **BAIL APPLN. 3249/2025**

HABIBUR MOLLA @ SONU

.....Applicant

Through: Mr. Deeparghya Datta, Mr. Prem Nath Upadhyay and Mr. Akshay Chandra, Advs.

Versus

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

Through: Ms. Meenakshi Dahiya, APP for the State with Ms. Vanshika Singh and Ms. Divya Bakshi, Advocates and SI Aarti Yadav, SI Amisha, Main IO and SI Kamal Kant (Arresting Officer), PS.: Kapashera.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

1. By virtue of the present application under *Section 483* of the Bharatiya Nagarik Suraksha Sanhita, 2023¹, the applicant, namely Habibur Molla @ Sonu S/o Sirajul Molla seeks grant of regular bail in proceeding arising out of FIR No.242/2024 registered at Police Station Kapashera, Delhi, under *Section(s) 363/366(A)/370/376/506/120B/34* of the Indian Penal Code, 1860²,

¹ Hereinafter referred to as '**BNSS**'

² Hereinafter referred to as '**IPC**'



Section 6 of the Protection of Children from Sexual Offences Act, 2012³ and Sections 3/4 of the Immoral Traffic Prevention Act.

2. *Briefly put*, it is the case of the prosecution against the applicant that an FIR came to be registered on 10.05.2024 at the instance of the mother of prosecutrix⁴, alleging that her minor daughter had been missing since 08:00 A.M. on 10.05.2024.

3. During the course of investigation, the co-accused namely Rashid Sardar and Rimpa Sardar were apprehended from New Bamroli Road, near Bank of Baroda, Surat, Gujarat, and the prosecutrix was recovered from their custody. The said co-accused, who were residing in the same vicinity as the prosecutrix, had lured her on the pretext of going to the market and thereafter forcibly taken her to Surat, Gujarat, via Mumbai, where she was held captive.

4. On 24.05.2024, the statement of the prosecutrix under *Section 164* of Code of Criminal Procedure⁵ was recorded, wherein she alleged that the applicant Habibur Molla @ Sonu had made arrangements for their accommodation in Surat, Gujarat. The co-accused Rashid Sardar forcibly had physical relations with her as also compelled her to establish physical relations with two other persons for money.

5. Thereafter, at the instance of co-accused Rashid Sardar, the applicant, Vipul Kumar and Bhole were arrested on 28.05.2024 from Surat, Gujarat. During investigation, the applicant had confessed that he had made arrangement for a room on rent for the co-accused in return of which he

³ Hereinafter referred to as '**POCSO Act**'

⁴ Hereinafter referred to as '**complainant**'

⁵ Hereinafter referred to as '**CrPC**'



forcefully had physical relations with the prosecutrix. Upon completion of investigation, a chargesheet was filed on 11.07.2024 under *Section(s) 363/366(A)/370/376/506/120B/34* of the IPC, *Section 6* of the POCSO Act and *Section(s) 3/4* of the Immoral Traffic Prevention Act.

6. Amongst the various grounds taken in the present bail application, Mr. Deeparghya Datta, learned counsel for the applicant primarily submitted that the applicant was arrested without being informed of the grounds of arrest, either orally or in writing, which amounts to a gross violation of his constitutional right under *Article 22(1)* of the Constitution of India⁶ as well as statutory right under *Section 50 CrPC* (now *Section 47 BNSS*). The learned counsel further submitted that requirement of *Article 22(1)* is not a mere procedural formality but a constitutional safeguard in form of fundamental rights which, irrespective of the statute, is available to every arrestee to defend himself.

7. As such, the learned counsel submitted that since the fundamental right of the applicant has been violated, his arrest and subsequent remand, being illegal, stands vitiated calling for release of the applicant. The learned counsel places reliance upon the decision of the Hon'ble Supreme Court in *Mihir Rajesh Shah vs. State of Maharashtra & Anr.*⁷, *Pankaj Bansal vs. Union of India*⁸, *Prabir Purkayastha vs. State (NCT of Delhi)*⁹, *Vihaan*

⁶ Hereinafter referred to as '**Constitution**'

⁷ 2025 SCC OnLine SC 2356

⁸ (2024) 7 SCC 576

⁹ (2024) 8 SCC 254



Kumar vs. State of Haryana & Anr.¹⁰, and Directorate of Enforcement Vs. Subhash Sharma¹¹.

8. Mr. Deeparghya Datta, learned counsel then submitted that the applicant has been falsely implicated in the present case and there is no material evidence creating any hypothesis of guilt against him, and that the applicant, being the cousin brother of the co-accused Rashid Sardar provided accommodation to the co-accused Rashid Sardar and Rimpa Sardar in good faith, and the applicant had no knowledge or suspicion of criminal activities of the other co-accused persons.

9. In furtherance, the learned counsel submitted that prosecutrix in her statement under *Section 164 CrPC* had not alleged that the applicant had exploited her sexually. The learned counsel has further drawn attention of this Court to the cross-examination of the prosecutrix wherein she has stated as under:

“Sonu kaa apna alag makaan tha. Rashid ki biwi ne kaha ki aur ladko ko bhi bulaaongi, to mai rone lagi or maine kaha ki ab agar tumne kisi aur ko bulaya to mai mar jaaongi.

Q. Kya Sonu ne bhi aisa kuch kiya tha?

Ans. Nahi, Sonu mujhe bol raha tha aisa karne ke liye par mene use mana kar diya tha aur usne kaha tha ki jab teri marzi hogi tab karenge par mene kaha tha ki meri koi marzi nahi hai.”

10. In view of the aforesaid submissions, the learned counsel for the applicant seeks release of the applicant on regular bail.

¹⁰ (2025) 5 SCC 799

¹¹ 2025 SCC OnLine SC 240



11. *Per Contra*, Ms. Meenakshi Dahiya, learned APP for the State submitted that the allegations against the applicant are of serious nature, and while drawing attention of this Court to the cross-examination of the prosecutrix, submitted that the prosecutrix upon seeing the applicant on screen, first identified him and then stated as under:

“Q. Jab aap Tihar Jail gaye the to jisko aapne pehchana tha kya ye wahi hai?

Ans. Nahi, uske to aise baal nahi the.

At this stage, accused Sonu is shown to the witness on screen.

After seeing him, the child victim said 'ye sonu hai'.

Q. Ye kaisa ladka hai?

Ans. Isi ne kamra dilwaya tha. Isne bhi mere sath jabardasti sex kiya tha”

12. The learned APP, relying upon *Ash Mohammad vs. Shiv Raj Singh @ Lalla Bahu & Anr.*¹², submitted that in cases such as the present, involving grave and serious offences, the Court is required to exercise greater care and circumspection and should take into account the gravity of the offence and its impact on society.

13. The learned APP then submitted that though the constitutional and statutory framework mandates that an arrestee be informed of the grounds of arrest, however, the mode or manner of such communication is not prescribed. The learned APP, relying upon *State of Karnataka vs. Sri*

¹² (2012) 9 SCC 446



Darshan Etc.¹³, submitted that mere absence of written grounds of arrest does not *ipso facto* render the arrest illegal, unless, it results in demonstrable prejudice or denial of fair opportunity to defend and therefore, cannot be a valid ground for grant of bail. Lastly, the learned APP submitted that the decision in *Mihir (supra)* is of no assistance to the accused, as the requirement of communication of the grounds of arrest in all cases has been held to apply only prospectively.

14. This Court has heard the counsel for the applicant and the learned APP for the State and perused the documents as also the Status Report on record along with the judgements cited.

15. The *right to life and personal liberty*, as enshrined under *Article 21* of the Constitution, is sacrosanct in nature of a guarantee available to every person within the territory of India. *Article 21* of the Constitution mandates that no person shall be deprived of his/ her personal liberty, except in accordance with the procedure established by law. Inextricably flowing therefrom, *Article 22(1)* of the Constitution mandates that an arrestee be informed, as soon as may be, of the grounds of arrest to enable him/ her to effectively defend himself/ herself by securing legal assistance, opposing police remand, seeking bail, etc. and any infraction/ encroachment upon this fundamental protection has been consistently and sternly deprecated by the Hon'ble Supreme Court in a catena of judicial pronouncements.

16. In fact, the Hon'ble Supreme Court in *Prabir Purkayastha (supra)*, following the decision of *Pankaj Bansal (supra)*, has held that the violation/

¹³ SLP (Crl.) Nos. 516-522 of 2025



infringement of Article 22(1) of the Constitution, in any case irrespective of the statute, would vitiate the arrest and the consequent remand in the following words:

“20. Resultantly, there is no doubt in the mind of the court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as this information would be the only effective means for the arrested person to consult his advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India.

21. The right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to the following observations made by this Court in Roy V.D. v. State of Kerala [Roy V.D. v. State of Kerala, (2000) 8 SCC 590 : 2001 SCC (Cri) 42] : (SCC p. 593, para 7)

“7. The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle



which has been recognised and applied in all civilised countries. In our Constitution Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens."

Thus, any attempt to violate such fundamental right, guaranteed by Articles 20, 21 and 22 of the Constitution of India, would have to be dealt with strictly.

22. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge-sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused."

[Emphasis supplied]

17. The aforesaid legal position, as it stood on the date of arrest, i.e., 28.05.2024, was further reiterated and fortified by the Hon'ble Supreme Court once again in *Vihaan Kumar (supra)* and *Mihir (supra)*.

18. Adverting to the case at hand, the primary case of the applicant is that he was not supplied with grounds of arrest at the time of arrest. Once such an allegation/ contention is raised by the arrestee then the burden, as held by the Hon'ble Supreme Court in *Vihaan Kumar (supra)*, shifts upon the investigating officer/ agency to establish the due compliance thereof. In the present case, since the learned APP for the State fairly admitted that the grounds of arrest were not given to the applicant at the time of arrest or subsequently, rather were furnished at a much later stage, the whole process is rendered ineffective and will serve no purpose.



19. Thus, considering that the applicant's fundamental right under *Article(s) 21 and 22(1)* of the Constitution has been violated, his arrest and subsequent remand, being illegal, stands vitiated and the same in itself is sufficient to release the applicant on bail, without adverting to the other considerations.

20. Accordingly, the applicant is granted regular bail in FIR No.242/2024 registered at Police Station Kapashera, Delhi, under *Section(s) 363/366(A)/370/376/506/120B/34* of the IPC, *Section 6* of the POCSO Act, and *Section(s) 3/4* of the Immoral Traffic Prevention Act. The applicant be released, subject to him furnishing a personal bond in the sum of Rs.50,000/- [*Rupees Fifty Thousand Only*] along with one surety of the like amount by a family member/ friend having no criminal case pending against them and further subject to the satisfaction of the learned Trial Court and further subject to the following conditions: -

- a. Applicant shall not leave National Capital Territory of Delhi without prior permission of this Court and shall ordinarily reside at the address as per the Trial Court records. If he so wishes to change his residential address, he shall immediately intimate about the same to the I.O. by way of an affidavit.
- b. Applicant shall surrender his Passport to the I.O., within *one week*. If he does not possess the same, he shall file an affidavit before the I.O. to that effect within the stipulated period of *one week* as aforesaid.



- c. Applicant shall appear before the Trial Court as and when listed for hearing, unless discharged by the learned Trial Court.
- d. Applicant shall join the investigation as and when called by the I.O. concerned. He shall not obstruct or hamper with the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police Authorities.
- e. Applicant shall provide all his mobile numbers to the I.O. concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the I.O. concerned. The mobile location be kept on at all times.
- f. Applicant shall report to the I.O. at Kapashera, Delhi once every month in the first week of the month, unless exempted by the learned Trial Court.
- g. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case or try to dissuade the witnesses from disclosing such facts to the Court or to any Police Officer(s)/ Official(s).

21. Accordingly, the present application is allowed and disposed of in the aforesaid terms.

22. A copy of this order be sent to the concerned Jail Superintendent for information and compliance forthwith.



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23. Needless to say, the observations made hereinabove, if any, on the merits of the matter are purely for the purposes of adjudicating the present application and shall not be construed as expressions on the merits therein.

SAURABH BANERJEE, J.

JANUARY 21, 2026/Ab/GA