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

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Reserved on: September 06, 2023

Decided on: September 12, 2023

+ **BAIL APPLN. 2660/2023**

SAURABH TRIPATHI

..... Petitioner

**Through: Mr. Prashant Ghai,
Mr. Yasharth Jayant Lal
and Mr. Simontini Poul,
Advocates.**

V

STATE OF NCT OF DELHI

..... Respondent

**Through: Ms. Rupali Bandhopadya,
ASC with Mr. Akshat
Kumar and Mr. Abhijeet
Kumar, Advocates for State
along with SI Sandeep
Kumar, P.S. Uttam Nagar,
New Delhi and SI Ekta, P.S.
Dabri.**

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present petition is filed under section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”) read with section 482 of the Code on behalf of the petitioner Saurabh Tripathi for grant of bail in FIR bearing no.0733/2020 dated 11.08.2020 registered under section 376 of the Indian Penal Code,



1860 (hereinafter referred to as “**IPC**”) and section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “**POCSO Act**”) at P.S. Uttam Nagar.

2. The present FIR was got registered on the basis of complaint made by the mother of the victim wherein she stated that the petitioner used to give tuitions to the children of the locality. The complainant sent her daughter i.e. the victim to the house of the petitioner for taking tuitions. The complainant left the victim on 10.08.2020 at 4:00 PM at the house of the petitioner for tuition and at that time, the petitioner was alone at his home. The victim came back at 5:30 PM and stated to the complainant that she does not want to take tuitions from the petitioner and thereafter, the complainant made enquiries. The complainant also saw that there were blood stains on the clothes of the victim and on being asked, the victim started crying loudly and stated that the petitioner had pulled down her lower (*pyjama*) and underwear (*kachhi*) and thereafter, inserted his private part into the private part of the victim. Thereafter, the complainant went to the house of the petitioner to make enquiries who stated that he had received injury on his leg due to which blood oozed out and



stained the underwear of the victim. The husband of the complainant came back home at 9:00 PM and thereafter, the complainant and her husband along with the victim, came to the police station. The victim was taken to DDU Hospital for medical examination. The investigation was conducted. The statement of the victim was also recorded under section 164 of the Code wherein the victim narrated the incident happened on 10.08.2020 (Monday). The statement of the victim recorded under section 164 of the Code on 13.08.2020 is reproduced as under:-

Washroom wala, susu wala mere mein daal diya. Mere susu wala mein daal diya. Taareekh yaad nahi hai. Somwaar ko daala tha. Saurabh bhaiya ne daala tha. Vo tuition padhaate hain mujhe. Chaar baje jaati thi aur 5:00-5:30 baje aati thi. Tuition vale ke ghar mein daala tha. Ghar mein koi nahi tha. Aur bache bhi nahi the.

3. The petitioner was arrested on 11.08.2020. After investigation, the charge-sheet was filed under section 376 IPC and section 6 of the POCSO Act. Charges have already been framed vide proceedings dated 29.09.2021 for the offences punishable under section 6 read with section 5(m) and section 5(p) of the POCSO Act or in alternative under section 376 IPC and the prosecution has already examined the victim and the complainant.



4. The petitioner filed a bail application bearing no. 33/2023, which was dismissed vide order dated 20.07.2023 passed by the court of Ms. Archana Beniwal, ASJ (FTSC)(POCSO)-01, South West, Dwarka Courts, New Delhi. The relevant portion of the order dated 20.07.2023 is reproduced as under:-

After going through the aforesaid judgments relied upon in support of the arguments by Id. Counsel for the applicant/ accused, this court is of the view that the said judgments can be differentiated on facts from those of the present case. In the instant case, though the testimony of the child victim has been recorded, several other material witnesses are yet to be examined and there is every possibility of the accused influencing or threatening the witnesses of the prosecution, especially the family of the child victim, since both the family of the applicant/accused and the child victim reside in the same locality, near to each other. The child victim was the student of the accused/applicant and he was in a relationship of trust with the victim who was merely 08 years of age on the date of the incident. She has identified him as the perpetrator of the alleged offence while recording her testimony in the court after he was asked to wear spectacles, since the incident had occurred almost two and a half years before the examination in chief of the child victim and she was seeing the accused after such a long time and had stated during her testimony that the perpetrator used to wear spectacles and as soon as the accused/applicant wore spectacles, she immediately identified him. If the child victim was tutored, she would have identified him on the very first instance, even without his spectacles.

Further, contrary to the submissions of the Id. Counsel for the defence, both the MLC as well as the FSL report support the case of the prosecution. As per the FSL



report, DNA profile of the accused was found matching from the DNA (semen stains) found on the top, lower and underwear of the child victim. The MLC also shows blood stains over top and lower of the child victim and no semen could be found on the body/private parts of the child victim as she has washed her genitalia before her medical examination. The medical examination was conducted at 1.17 AM, almost after 08 hours of the incident, explaining why there was no bleeding at the time of her medical examination.

Further, the child victim who is present in court today, has also stated, '*usko dekh ker dar lagata hai*', showing that she is still undergoing mental trauma at the very sight of the accused, who lives in the same locality (as the applicant/accused has been released on interim bail on several occasions). The same is also reflected in her examination in chief recorded on 22.02.2023, wherein the testimony of the child victim was deferred as she got uncomfortable during her testimony and wanted to go back home.

Considering the above mentioned facts and circumstances, the court does not deem it fit to release the accused on bail. Hence, application u/s 439 Cr.P.C is dismissed.

5. The counsel for the petitioner, in the present petition, sought grant of bail to the petitioner on the grounds that the petitioner is in judicial custody since 17.08.2020 and after completion of investigation, the charge-sheet has already been filed. The victim has already been examined as such there is no possibility of tampering of evidence. The petitioner has never violated any condition of the interim bail as and when granted. The victim and the petitioner are



not living in the same locality. The victim has been tutored by her mother. The victim has not given the details of the alleged incident in her statement under section 164 of the Code recorded on 13.08.2020. The victim also repeated the same allegations without additional details in her examination-in-chief recorded on 22.02.2023. The MLC and the FSL report also do not support the case of the prosecution. The counsel for the petitioner during arguments, referred MLC of the petitioner and victim. The counsel for the petitioner also raised other grounds and prayed that the petitioner be granted bail.

6. The Additional Public Prosecutor for the respondent/State stated that after considering the manner in which the offence was committed and the gravity of offence, no ground for bail is made out. The Additional Public Prosecutor further stated that the FSL report is also supporting the prosecution version.

7. In the present case, after conclusion of investigation, the charge-sheet has already been filed. The charges have already been framed. The complainant and the victim have already been examined. The petitioner was granted interim bail during the trial and



surrendered before the concerned authority after expiry of the interim bail.

8. The perusal of FIR and the statement of the victim under section 164 of the Code reflect that the petitioner has committed penetrative sexual assault on the victim, who was aged about just 8 years at the time when the offence was committed. The petitioner was a tutor and the victim was sent to him for taking tuitions. It is mentioned in the MLC of the petitioner that no fresh external injury was seen on the person of the petitioner. The MLC of the victim reflects that when she was taken to the hospital, her vitals were normal and no external injury was found. However, the complainant has given the history to the concerned doctor by stating that on 10.08.2020 at about 4 PM, the victim was physically and sexually assaulted by her tuition teacher i.e. the petitioner with history of vaginal penetration. As per the FSL report, human semen was detected on the clothes of the victim i.e. the top, lower (*pyjama*) and underwear as well as on the bedsheet. The DNA profile generated from the blood gauze of the accused i.e. the petitioner was found to be matching with the DNA profile generated from the clothes of the



victim i.e. the top, lower (*pyjama*) and underwear and the bedsheet. The arguments advanced by the counsel for the petitioner that the FSL report and MLC pertaining to the petitioner and the victim do not support the case of the prosecution is without any basis.

9. The counsel for the petitioner also cited judgment dated 07.05.2018 passed by Coordinate Bench of this Court in BAIL APPLN. 599/2018 titled as **Ramkishan @ Sonu V State** and the judgment dated 08.01.2020 passed by Coordinate Bench of this Court in BAIL APPLN. 18/2020 titled as **Sanjay Mahalwal V State of NCT of Delhi** and by referring to these two judgments, the counsel for the petitioner also stated that under similar circumstances, Coordinate Benches of this court have granted bail to the accused.

10. In the case titled as **Ramkishan @ Sonu V State**, it appears that the petitioner i.e. the accused and the prosecutrix were known to each other and the petitioner/accused had picked up the prosecutrix to take her to attend the birthday party of the friend of the petitioner/accused. In the present case, the victim was sent to the petitioner only for taking tuitions and they were not having any



acquaintance with each other. The facts of the **Ramkishan @ Sonu V State** are not similar to the facts of the present case.

11. The perusal of judgment passed in **Sanjay Mahalwal V State of NCT of Delhi** reflects that the petitioner/accused was neither named in the FIR nor in the statement of the prosecutrix under section 161 of the Code. In the said case, the prosecutrix and the complainant i.e. the mother of the prosecutrix denied the version of the prosecution in their statements recorded under sections 161 and 164 of the Code and deposed against the accused due to the threats and pressure exerted by the police officials. In the present case, the victim in her statement under section 164 of the Code and in deposition before the court, supported the case of the prosecution and also identified the petitioner as the person who committed the offence. The complainant i.e. the mother of the victim also supported the version of the prosecution in the FIR as well as in her deposition before the court, as such, the facts of **Sanjay Mahalwal V State of NCT of Delhi** are not similar to the facts of the present case.

12. After considering the gravity of the offence and the manner in which the offence was committed, no ground for bail is made out.



Hence, the present bail application stands dismissed along with pending applications, if any.

DR. SUDHIR KUMAR JAIN
(JUDGE)

SEPTEMBER 12, 2023

N/AM