

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

DECIDED ON : MARCH 11, 2016

+ BAIL APPLN. No. 1048/2015

SHASHI SHEKHAR THAKUR Petitioner
Through : Ms.Geeta Luthra, Sr.Advocate,
with Mr.R K Bachchan, Advocate.

Versus

STATE Respondent
Through : Ms.Richa Kapoor, ASC with
Mr. Ashish Negi, Advocate
Mr. Sandeep Das, Advocate for the
Complainant.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J. (ORAL)

1. The petitioner seeks regular bail under Section 439 Cr.P.C. in case FIR No.61/2013 under Section 376(2)(f)/109/34 IPC registered at Police Station Connaught Place. The bail is highly opposed by respondent No.2/victim. The State has filed status report, it is taken on record.

2. Ld. Senior counsel urged that the petitioner aged around 65 years, a senior citizen and resident of Muzaffarpur, Bihar, is in custody since 30.11.2013. Charge-sheet has already been filed and the statement

of the prosecutrix is being recorded before the trial court. PW-2 to PW-6 in their statements before the Court have not supported the prosecution. In the complaint dated 24.04.2013, the prosecutrix has leveled allegations of sexual abuse/assault from June 1994 to July, 2005. She however did not furnish any plausible explanation for inordinate delay of ten years after turning major in 2003 to lodge the complaint. 'X' aged 28 years has graduated from a prestigious fashion designing college i.e. NIFT, Hyderabad and is a fashion designer by profession. Learned Senior Counsel further urged that despite grant of various opportunities by the trial court, 'X' did not come forward to record her statement. The trial is expected to take long time to examine. 37 witnesses relied on by it. The petitioner is to take care of his two young children including a daughter of marriageable age. There is no apprehension of the petitioner to abscond or misuse the liberty, if released on bail. It is further urged that in order to put his defence properly and effectively, the petitioner requires regular interaction with his counsel at the time of cross-examination of the prosecutrix. Reliance has been placed on *Rohit Chauhan vs.State* Bail Appl.311/13; *Nirmal Vaid vs.State* Bail.Appl. 1760/2012; *Jagdish Nautial vs.State* Bail.Appl.1317/2012; *Kishan Singh vs.Gurpal Singh* 2010 (8) SCC 775; *Deepak Gulati vs.State of Haryana* 2013 (7) SCC 675; *Bail.Appl.1048/2015*

Bhagirath Singh vs.State of Gujrat 1984 (1) SCC 284; *Jagannivasan vs.State of Kerla* 1995 Supl.(3) SCC 204; *Rajesh Patel vs.State of Jharkhand* 2013 (2) SCC (Crl.)279; *Raju vs.State of MP* 2008 (15) SCC 133; *Abbas Ahmad Chaudhary vs.State of Assam* 2010 (12) SCC 115; *Bhardresh Bipinbhai Seth vs.State of Gujrat* 2015(9) SCALE 403; *Sanjay Chandra vs.CBI* 2012 (1) SCC.

3. Complainant's counsel refuting the contentions vigorously contended that the petitioner has been charged with a heinous crime of rape under Section 376(2)(f)/109/34 IPC. 'X' has moved this court for amendment of the charge and to proceed against him for the crime u/s 313 and 377 IPC too. Earlier the petitioner had not joined the investigation and non-bailable warrants were issued for his arrest. There is highly likelihood of his fleeing from justice if enlarged on bail. Meena Mishra, petitioner's family member, is still to be examined and there is a likelihood of the petitioner to exert pressure on her. The victim being a married lady with an infant daughter is vulnerable to all kinds of threats and pressure from the accused, who has criminal antecedents and was previously involved in a murder case. It is further urged that delay in lodging the FIR is not fatal. The prosecutrix had no support system to raise her voice against the petitioner who occupied an influential position in the family and the

society. Reliance was placed upon *Court on its own Motion vs. Vishnu Pandit and Anr.* 1993 CriLJ 2025; *State of Rajasthan vs. Om Prakash* (2002) 5 SCC 745. The State has also opposed the grant of bail as allegations against the accused are very serious and grave.

4. Admittedly, the petitioner is involved in a rape case lodged by the complainant on her complaint dated 24.04.2013. In her comprehensive complaint, she has given detailed account as to how under what circumstances and in what manner on various dates and locations, she was sexually assaulted/abused by the petitioner and his brother (since discharged) since the time she was aged around nine years. She attributed specific and definite role to the petitioner. Sexual abuse allegedly continued till 2005. The prosecutrix after her marriage in 2013 gathered courage to raise her voice and lodge the complaint. The petitioner and the prosecutrix are closely related to each other. It is a matter on record that 'X' was financially supported by the petitioner. She had reposed utmost faith and trust in him after the death of her father and she was compelled to live at his house at Muzaffarpur. In her examination-in-chief recorded on various dates, she has reiterated the version given to the police. Her cross-examination is yet to be recorded. It is also on record that she has filed an application for amendment of the charges under Section 216

Cr.P.C. which is under challenge. Vide order dated 17.09.2015 this Court, dismissed her petition (Crl.Rev.P.637/2014) whereby she had challenged the order of the Trial Court dated 03.07.2014 to discharge Respondent No.2 (Meera Thakur) and Respondent No.3 (Mukul Thakur). She has filed SLP (Crl.) No. 9960/2015 against the said order and the Hon'ble Supreme Court has stayed the cross-examination of the prosecutrix before the Trial Court by an order dated 7.12.2015.

5. Delay in lodging the FIR/complaint in sexual offences is not always fatal. There may be various reasons for such delay. The prosecutrix who is under examination will have to explain the delay in lodging the FIR. The fact remains that the prosecutrix was allegedly sexually abused by her own close acquaintance for about 10 years repeatedly. She was apparently dependent upon the petitioner for financial support and was in a very vulnerable position to raise her voice against exploitation.

6. The contention that she is interested to delay the recording of her statement is devoid of merits. Her examination-in-chief, a very lengthy statement, has been recorded on various dates for considerable time. For all the adjournments before the Trial Court, she alone cannot be faulted as on many occasions, the Trial Court record had been

requisitioned by this Court for disposal of this case as well as in the Criminal Revision Petition 637/2014. Moreover, considering the facts and circumstances, during the pendency of the SLP, the Hon'ble Supreme Court has stayed the recording of the cross-examination of the victim.

7. Heinous nature of the case warrants more caution. While granting bail, the Court has to keep in mind not only the nature of accusations but the severity of the punishment, if the accused entails a conviction. Reasonable apprehension of the prosecutrix/witness being tempered with or the apprehension of there being a threat for the complainant are other factors to decline bail. It must be remembered that child sexual abuse cases by known family members are on the rise and have a very serious impact on the society. The petitioner being represented by a counsel including Senior Counsel in various petitions for or against him can defend himself properly even in custody as no restrictions have been placed upon him not to be in contact with his counsel to brief him / her on relevant issues.

8. The judgments cited by the learned Senior Counsel for the petitioner primarily relate to the cases/offences in which physical relations took place between the accused and the prosecutrix/victim with consent albeit on the alleged promise to marry. This is not so in the instant case

where a tender aged child around nine years old was sexually abused and exploited when she had not adequate intelligence and maturity to understand as to what was happening with her. Being minor, even her 'consent' was of no relevance.

9. The prosecution has further relied upon the conversation recorded in CDs between the prosecutrix and the petitioner whereby he allegedly admitted to have sexually abused the prosecutrix. On the face of it, it can't be inferred that the complaint is frivolous. The petitioner did not in categorical terms assigned any specific and oblique motive to the complainant to implicate him. Nothing has been brought on record to show if any time any illegal demand in the terms of monetary consideration or property was raised by the complainant or her in-laws to extract money from the petitioner. The allegations of property consideration are vague and uncertain. It is true that the petitioner is in custody since 30.11.2013 and the statement of the prosecutrix is incomplete yet. That may be one of the factors but cannot be the whole and sole factor in every case to grant bail.

10. Considering the gravity of the offence and serious allegations against the petitioner, regular bail to the petitioner is declined and the bail application is dismissed.

11. Observations in the order would have no impact on the merits of the case.

12. Trial Court record be sent back immediately through 'Special Messenger'.

S.P.GARG)
JUDGE

MARCH 11, 2016
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