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

% *Date of Decision: 11.09.2017*

+ **BAIL APPLN. 1363/2017**

SALMAN Petitioner
Through: Mr.Lekhraj Rehalia, Advocate.

versus

THE STATE GNCT OF DELHI & ANR. Respondents
Through: Mr.Amit Chadha, APP for State
with SI Manisha, PS Hazrat Nizamuddin,
Delhi.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (Oral)

1. The petitioner seeks bail under Section 439 of the Code of Criminal Procedure, 1973 (in short 'Cr.PC') in a case vide FIR No. 370/2014 under Section 363/376 of Indian Penal Code, 1860 (in short 'IPC') read with Section 4 of the Prevention of Children from Sexual Offences Act, 2012 (in short 'POCSO Act'), PS Hazrat Nizammuddin, Delhi.
2. Status report has been filed.

3. Learned counsel for the petitioner submits that the charges were framed on 01.10.2014 and trial has so far not been concluded and the case is being adjourned for prosecution evidence and as such the petitioner be released on regular bail. He refers the judgment of the Apex Court in **Akhtari BI (SMT) Vs. State of M.P., (2001) 4 SCC 355** and **Hussain and Anr. Vs. Union of India, 2017 (3) SCALE 460 (SC)**. He submits that the petitioner cannot be kept in judicial custody as a measure of pre-trial punishment and relies upon a single Bench judgment of this court in **Anurag Vardhan Vs. Central Bureau of Investigation, 2003 (3) Crimes 401**. He also submits that in her statement recorded under Section 164 Cr.PC, the victim had stated that no rape was committed. He submits that the IO had fabricated the record and filed a false charge sheet. He also relies upon the judgment of Apex Court reported as **Tarun Tejpal Vs. State of Goa, (2015) 14 SCC 481**.
4. The FIR in question was registered on the complaint of father of the prosecutrix to the effect that on 11.07.2014 his son-in-law i.e. the petitioner had kidnapped his youngest daughter aged 14 years. The father of the prosecutrix also alleged that the petitioner had also taken away Rs.60,000/-.
5. Learned APP for State submits that after conclusion of investigation, the charge-sheet was filed under Section 363/376 of IPC read with Section 4 of POCSO Act. However, the trial court has framed the charges against the petitioner on

01.10.2014 under Section 363/366 of IPC read with Section 4 of POCSO Act. Learned APP submits that in the status report charge under Section 376 of IPC has been wrongly mentioned and in fact charge under Section 363/366 of IPC read with Section 4 of POCSO Act had been framed. He submits that the prosecutrix had testified before the trial court that the petitioner had committed rape and she was scared of him as the petitioner had extended threats that in case she discloses the incident to her parents he would kill her parents. He further submits that the regular bail application of the petitioner had been dismissed twice by the learned Sessions Judge. He submits that 05 out of 12 witnesses have so far been examined by the prosecution and next date of hearing is 6.11.2017 for further prosecution evidence. He further submits that the offence is of very serious nature and that the petitioner has committed rape on the prosecutrix, who is none else but the sister of his wife belonging to a tender age group i.e. 14 years.

6. The principles for considering the bail under Section 439 of Cr.PC have been laid down by the Hon'ble Supreme Court in **Prasanta Kumar Sarkar Vs. Ashish Chatterjee and Another, (2010) 14 SCC 496** and Para 9 and 10 of the judgment reads as under: -

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused.

However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;**
- (ii) nature of gravity of the accusation;**
- (iii) severity of the punishment in the event of conviction;**
- (iv) danger of the accused absconding or fleeing, if released on bail;**
- (v) character, behavior, means, position and standing of the accused;**
- (vi) likelihood of the offence being repeated;**
- (vii) reasonable apprehension of the witnesses being influenced; and**
- (viii) danger, of course, of justice being thwarted by grant of bail.**

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In *Masroor*, a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows:-

“13. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.”

7. Further, the Apex Court has laid down the similar principles for considering the bail application in its another judgment **Dipak Shubhashchandra Mehta Vs. Central Bureau of Investigation and Another, (2012) 4 SCC 134** and Para 32 of the judgment reads as under: -

32. The court **granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken**, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The court granting bail has to consider, among other circumstances, the factors such as (a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (c) prima facie satisfaction of the court in support of the charge. In addition to the same, the court while considering a petition for **grant of bail in a non-bailable offence, apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted.**

8. There is no force in the arguments of the learned counsel for the petitioner that simply because the trial has not been concluded, the petitioner should be enlarged on bail. In the judgment of **Dipak Shubhashchandra Mehta (supra)**, the Hon'ble Supreme Court has held that the principles of granting bail

where there is a delay in trial should not be applied to all cases mechanically.

9. The judgments relied upon by the learned counsel for the petitioner in **Akhtari BI (SMT) (*supra*)** and **Tarun Tejpal (*supra*)** are decided on particular facts and circumstances of the case, which are not applicable to the facts of the present case.
10. In view of the judgment of the Apex Court in **Dipak Shubhashchandra Mehta (*supra*)** at the stage of granting the bail, the detail examination and evaluation of the evidence need not be undertaken particularly when the petitioner is charged of having committed a serious offence of rape on a minor girl of tender age.
11. Hence, keeping in view the nature of the accusation, severity of punishment in case of conviction which can be awarded upto life, nature of the supporting evidence and reasonable apprehension of the petitioner tampering with the witnesses and danger of the petitioner absconding or fleeing from justice, the petitioner has no ground in his favour for grant of bail. As such the application is dismissed.

VINOD GOEL, J.

SEPTEMBER 11, 2017

"shailendra"