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

+ **BAIL APPLN.1519/2017 & CRL.M.A.12552/2017**

KAPIL

..... Petitioner

Through: Mr.Sachin Mittal, Advocate

versus

STATE

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State with

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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04.08.2017

1. The petitioner is seeking regular bail in FIR No.99/2013, under Sections 376/328/506/377/34 IPC, registered at PS Kanjhawala, Delhi.
2. Learned counsel for the petitioner has submitted that the petitioner is closely related to the victims of alleged sexual assault. It has been submitted that the co-accused had already been released on bail vide order dated 15th December, 2015 interalia on the ground that the main accused is the father at whose behest other relatives sexually abused the victims. While observing that in view of the number of accused persons against whom the allegations have been made and the nature of allegations, the trial would take some time, hence they were ordered to be released on bail. The petitioner was declined bail mainly on the ground that he was the cousin of the victims of alleged sexual assault and cannot claim parity with other accused.

3. Learned counsel for the petitioner has submitted that now the main witnesses have already been examined, trial is likely to take long time. The petitioner could not have been denied parity by the learned Trial Court merely because he is closely related to the victims of sexual assault.
4. Learned counsel for the petitioner has also sought release of the petitioner on bail on the ground that since material witnesses have been examined, the apprehension, if any, that he can influence the witnesses, is over. While contending that there was delay in lodging the FIR and the ground taken for delay that mother of the victims of sexual assault was suffering from some kind of mental disorder, is falsified from the fact that before registration of this case she has filed complaint before CAW Cell, Central Women Commission as well as under Domestic Violence Act.
5. Learned counsel for the petitioner has also contended that on the face of it the case is false and there is no direct evidence against the petitioner who has been in custody since April, 2013 and trial is likely to take long time. It has also been contended that the MLC does not corroborate the statement of the victims of the sexual assault, hence he may be released on bail.
6. Learned counsel for the petitioner has relied upon the decision of **Sanjay Chandra vs. CBI** (2012) 1 SCC 40, **Vinod Bhandari vs. State of M.P.** 2015 (2) SCJ 627 & **Pappu vs. State of Delhi** 2009 CriLJ 3342, in support of his contention.
7. In the instant case the victims of the alleged sexual assault are brothers and sisters. The sister was aged about 9 years and brother was 6 years old at the time when this case was registered. In the complaint made by the victims and the statement made by them before the learned

Magistrate when they were produced for recording of their statement under Section 164 Cr.P.C., a detailed account has been given as to how at such a tender age they have been found easy target to satisfy the lust of not only the father and close relatives but also their acquaintances. Reliance placed by the learned counsel for the petitioner in decision **Sanjay Chandra vs. CBI** (2012) 1 SCC 40, is not of any help to the petitioner as that case pertained to an offence under Prevention of Corruption Act and has no applicability when the bail application of a petitioner/accused of repeatedly sexual abuse on the small children aged 9 years and 6 years has to be considered. The observation made in the decisions relied upon by the learned counsel for the petitioner cannot have universal application for the reason that factual matrix in offences where victims of sexual abuse are innocent children of tender age has to be kept in mind.

8. Learned counsel for the petitioner has relied upon the decision of Supreme Court in **Vinod Bhandari vs. State of M.P.** 2015 (2) SCJ 627 and submitting that at pre-conviction stage there is presumption of innocence and delay in commencement and conclusion of trial is a factor to be taken into account while considering the prayer for release on bail.

9. In the above noted decision after referring to the decision of the Apex Court in **Kalyan Chandra Sarkar vs. Rajesh Ranjan** (2005) 2 SCC 42 & **State of U.P. vs. Amarmani Tripathi** (2005) 8 SCC 21 while accepting that the trial will be expedited and will proceed on day-to-day basis, liberty was given to the appellant to apply for bail afresh if the trial is not completed within one year.

10. In case **State of Bihar vs. Rajballav Prasad @ Rajballav Pd. Yadav**

@ Rajballabh Yadav 2017(2) SCC 178, the Supreme Court has held as under:

“20. The High Court also ignored another viral aspect, namely, while rejecting the bail application of co-accused the High Court had ordered expeditious, nay, day-to-day trial to ensure that the trial comes to an end most expeditiously. When order had already been passed to fast-track the trial, and the application for bail by co-accused Sandeep Suman @ Pushpanjay was also rejected the High Court, while considering the bail application of the respondent, was supposed to take into consideration this material fact as well. Further, while making a general statement of law that the accused is innocent, till proved guilty, the provisions of Section 29 of POCSO Act have not been taken into consideration, which reads as follows:

29. Presumption as to certain offences: *Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.”*

11. The learned counsel for the petitioner also cannot get any support to seek release on bail by placing reliance on decision of the Supreme Court in Pappu vs. State of Delhi 2009 CriLJ 3342 wherein on the basis of evidence while observing that there was possibility of false implication, the conviction was set aside.

12. In my considered view merely because the petitioner had been in incarceration for about four years or that trial is likely to take more time, in itself is no ground to enlarge him on bail for the reason that the victim of sexual assault were girl about 9 years and boy was aged about 6 years on the date when there statement was recorded and they were being sexually

abused, much prior to that date. The MLC of both the children also record of their own version of being sexually abused repeatedly.

13. In view of the nature and gravity of the offence wherein the victims who were in need of the protection from the close relatives as they were being allegedly sexually exploited by and at the behest of their own father, the petitioner being the cousin of the victims does not deserve to be released on bail being involved in a heinous offence.

14. The application is dismissed.

PRATIBHA RANI, J.

AUGUST 04, 2017

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