

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

Date of Order: February 25, 2019

+ **BAIL APPLN. 2350/2018**

DILSHAD KHAN

..... Petitioner

Through: Mr. Sunil K.Mittal, Mr. Anshul
Mittal and Mr. Sushant Bali,
Advocates

Versus

STATE

..... Respondent

Through: Mr. M.P. Singh, Additional Public
Prosecutor

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

Petitioner seeks pre-arrest bail in FIR No. 274/18, under Sections 4/17 of *Prevention of Children from Sexual Offences Act, 2012* (hereinafter referred to as '*POCSO Act*') and under Sections 370/373/211/182/120-B of IPC, registered at police station *Burari*, Delhi while claiming to be innocent.

Learned counsel for petitioner submits that there are two contradictory statements of prosecutrix i.e. one on the basis of which FIR of this case has been recorded and another one recorded under Section 164 Cr.P.C., which makes the prosecution case unreliable, as petitioner has never interacted with *Sabreen* or *Rubina*. It is pointed out that as per the call detail record (CDR) of petitioner's mobile, there was no interaction between petitioner and these two ladies. It is pointed out that as per respondent's status report, *Tabassum* and *Sabreen* were in constant

touch and petitioner has been roped falsely in this case at the instance of one *Haroon*, against whom the FIR of this case was initially registered. It is also submitted that petitioner has already joined the investigation and as per status report, custodial interrogation of petitioner is required to recover his mobile phone, but it has already been handed over to police and nothing incriminating has come in the supplementary status report against petitioner. It is pointed out that petitioner's son -*Ishran Khan* has been arrested and as per his disclosure statement, he had paid ₹60,000/- to co-accused *Inamul Haq (Nana of prosecutrix)* and so, there is no justification to deny pre-arrest bail to petitioner. It is submitted that no offence is made out against petitioner under Section 370 of IPC or under Section 4 of *POCSO Act*. Lastly, it is submitted that custodial interrogation of petitioner is not required to trace out *Sabreen*, as petitioner does not know her and cannot get her traced.

On the contrary, Mr. M.P. Singh, Additional Public Prosecutor submits that petitioner's custodial interrogation is required to arrest co-accused *Sabreen and Irfan* and their mobile phone with sim numbers are required to be traced for effective investigation of this case. It is also submitted that the offence committed by petitioner is heinous and he has not cooperated in the investigation and unless custodial interrogation of petitioner is granted, effective investigation is not possible. Lastly, it is submitted that petitioner is threatening *Rubina* of dire consequences and so, no case for grant of pre-arrest bail to petitioner is made out.

Upon hearing and on perusal of FIR of this case, status report, I find that prosecutrix has been frequently changing her stand. In the first

instance, prosecutrix had initially named *Haroon* and lateron, she had named petitioner as an accused. The allegations levelled against son of petitioner are of serious nature but petitioner is sought to be made an accused on the basis of statement of co-accused *Inamul Haq, s/o. Mohd. Zameel*, who lateron, in his statement under Section 164 Cr.P.C. implicated petitioner.

It is a matter of record that *Inamul Haq* is related to prosecutrix and *Sabreen, Rubina* etc. are also related to him. Petitioner has already joined investigation of this case. Petitioner's custodial interrogation is sought to trace out co-accused *Sabreen*. Infact, co-accused *Sabreen* is related to co-accused *Inamul Haq* and so, there appears to be no justification to deny pre-arrest bail to petitioner to trace out co-accused *Sabreen*. Another ground to oppose petitioner's pre-arrest bail is that if petitioner is released on bail, then there are very high chances of his manipulating witnesses and tampering with the evidence. Petitioner is already on pre-arrest bail for long and so, apprehension expressed is misplaced. There is no basis to assert that petitioner has been trying to tamper with the evidence.

Considering the fact that petitioner's son is in custody and petitioner is sought to be implicated on basis of statement of co-accused *Inamul Haq*, who has substantial role to play, and that petitioner has already joined the investigation, it is deemed appropriate to make interim order of 8th October, 2018 absolute.

Without commenting on the merits of this case, it is directed that in the event of arrest, petitioner be admitted to bail subject to his furnishing bail bond in the sum of ₹25,000/- with one local surety in the like amount

to the satisfaction of Investigation Officer/Arresting Officer. It is made clear that in case petitioner is found to be tampering with the evidence, then respondent-State shall be at liberty to get this order revoked.

With aforesaid rider, this application is disposed of.

Dasti.

(SUNIL GAUR)
JUDGE

FEBRUARY 25, 2019
v/r

