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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 11th December, 2019

Date of Decision: 10th January, 2020

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BAIL APPLN.713/2019

PREM PRAKASH

..... Petitioner

Through: Mr. Anilendra Kumar,
Advocate

versus

STATE

..... Respondent

Through: Mr. Amit Chadha, APP with
Inspector Arvind Kumar,
PS:Khyala, Delhi

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

1. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C.) by the petitioner for the grant of bail.
2. Brief stated, the facts of the case allegedly are that, on 8.1.2017, two women, namely, Surinder Kaur and Paramjeet Kaur came to the police station Khayala, Delhi with an abandoned minor girl. Thereafter, W/SI Neelam enquired the matter and the victim girl was medically examined at Guru Gobind Singh Hospital. After her medical examination, the victim girl was admitted to Nari Niketan.
3. On 11.4.2017, an information was received from Nari Niketan that the victim girl stated that she was sexually assaulted. Upon this, W/SI Ranjana was deputed and she recorded the statement of the

victim girl in the presence of the Welfare Officer on the same day and the instant FIR No.105/2017, dated 12.04.2017, under Sections 376/34 of the Indian Penal Code, 1860 and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and Sections 4/5/6 of the Immoral Traffic (Prevention) Act, 1956 was registered.

4. The investigation of the case was marked to W/SI Neelam and the victim was medically examined. Her statement under Section 164 Cr.P.C was also recorded. During the investigation, the mobile phone of the victim was seized and search of accused person was carried out, but he could not be traced.

5. Thereafter, further investigation of the case was marked to Inspector Rajni Chopra. During the course of investigation, local enquiries were conducted and the statement of the witnesses, namely, Surinder Kaur and Paramjeet Kaur and other public witnesses were recorded. In her statement, Surinder Kaur stated that the victim girl was brought by her and Pramjeet Kaur from the house of Prem Prakash (the petitioner herein). After this statement, the house of the petitioner was searched, but he was not found there and was evading arrest.

6. On this, non-bailable warrant was issued and the proceedings under Section 82 of the Cr.P.C were initiated against the petitioner. Thereafter, on 4.9.2018, the petitioner was arrested and in his disclosure statement, he admitted to the crime and disclosed that one Rama Tripathi and one Sunita are involved in human trafficking. The whereabouts of Rama Tripathi and Sunita as well as her brother-in-law could not be known. Thereafter, a charge-sheet was filed against the

petitioner and the charges under Section 376 of the IPC and Section 6 of the POCSO Act were framed against the petitioner vide order dated 1.12.2018.

7. It is pertinent to mention here that the petitioner had filed a bail application before the Sessions Court and the same was dismissed vide order dated 5.11.2018. Thereafter, the petitioner had moved another bail application under Section 439 of the Cr.P.C., which was also dismissed by the Sessions Court vide order dated 14.1.2019. Third bail application filed by the petitioner before the Sessions Court was also dismissed vide order dated 7.3.2019.

8. It would be quite relevant to reproduce the orders dated 5.11.2018, 14.1.2019 and 7.3.2019 which, respectively, read as follows:

“ORDER DATED 5.11.2018

Reply filed by the IO.

The instant bail application has been taken up along with the case file/charge-sheet of the instant case.

The IO submits that victim is at Uttarpara, Hoogly, West Bengal and she could not be contacted and, therefore, she has no information about the instant bail application.

I have heard the detailed submissions and have perused the record carefully.

It has been argued by Ld. Counsel for applicant-accused Prem Prakash that actual dispute between the victim and the applicant-accused relate to payment of salary. The victim was in fact domestic help in the house of applicant-accused Prem Prakash. It is also submitted that in the statement U/s 161 Cr.P.C. of witness Smt. Surender Kaur, the address of the applicant-accused is mentioned as Flat No. 183, Shivaji Enclave, New Delhi.

She also stated that on 09.01.2017 she had gone to Flat No. 183, Shivaji Enclave, New Delhi alongwith one Smt. Paramjeet Kaur and rescued the victim. Further, the applicant-accused Prakash and his wife Rama were found there. It has been pointed out that on the other hand witness Smt. Paramjeet Kaur has stated that on 08.01.2017 at night time she had gone to Police Station Rajouri Garden wherein she had found Smt. Surrender Kaur with a 15 to 16 year old girl. It is material contradiction. Reliance has also been placed on Order dated 25.01.2017 of CWC wherein dispute between applicant-accused and victim has been stated to be that of domestic help and employer. The address of the applicant-accused is mentioned as Flat No. 193, Shivaji Enclave, New Delhi. It is submitted that Flat No. 193, Shivaji Enclave, New Delhi is the correct address of the applicant-accused Prem Prakash and he has been falsely implicated in the instant case.

IO, on the other hand, submits that initially the victim was rescued and sent to Nirmal Chhaya. After about 3 to 4 months of her stay in Nirmal Chhaya, information was received from there that victim was alleging that she was forced into prostitution by various persons including applicant-accused Prem Prakash. The bail application has been strongly opposed.

I have considered the rival contentions.

As per the record, the victim was a minor at the time when she was rescued.

The child was produced before CWC on 09.01.2017. It has been observed in the Order dated 25.01.2017 of CWC that the victim was found to be working as domestic help at Flat No. 193, Shivaji Enclave, New Delhi, residence of applicant-accused Prem Prakash. It was only later that the victim opened up and the police received an information from Nirmal Chhaya and registered the instant FIR on 12.04.2017. The statement U/s 164 Cr.P.C. of the victim was recorded on 13.04.2017. She explained in the statement

how she was brought to Delhi by one Sunita for work. Sunita got her employed in a house. Her statement shows that in this house she was made to work as a prostitute and the main person from house used to call other men/customers for this purpose.

The proceedings U/s 82 Cr.P.C, against the applicant-accused Prem Prakash were also initiated. The record of those proceedings are part of the record. It was found that one H M Saleem had rented out Flat No. 183, Shivaji Enclave, New Delhi to one Shri Atul Mishra. As per Atul Mishra, Prem Prakash used to live with him at this address. Be that as it may, there are specific allegations of the victim regarding her trauma and the manner in which she was forced into prostitution. Contentions of Ld. Counsel for applicant-accused are subject matter of trial. The offences U/s 376 IPC, Section 6 of POCSO Act and Section 4, 5 and 6 of ITP Act have been pressed against the applicant-accused in the charge-sheet. The victim being minor is vulnerable witness and is deemed to be at risk.

In these circumstances, the Court is not inclined to enlarge applicant-accused on bail.

The first bail application of the applicant-accused Prem Prakash is, accordingly, dismissed.

Copy of the Order be given dasti to Ld. Counsel for applicant-accused as well as IO of the case.

Let record of this bail application be annexed with the case file.

Case file be taken up on date already fixed, i.e. 28.11.2018.

ORDER DATED 14.01.2019

Bail application has been taken up alongwith the Court record.

IO submits that the Complainant/Victim has been served the notice of the bail application, even though the process has not been received back. She submits that as

per intimation received, Complainant is away and, therefore, she is not in a position to attend the Court today.

I have heard the detailed submissions and have perused the Court record carefully.

The contention of the applicant-accused is that he is a cloth vendor who sells clothes door to door. When he reached near H.No. 193, DDA Janta Flats, Shivaji Enclave, New Delhi, he saw a girl in distress. Since the applicant-accused did not understand language of that girl, he called the police. Before the police could reach, two ladies took the girl with them. The applicant-accused had forgotten about the incident but one day four persons took him away to a solitary place while he was selling clothes door to door. The two ladies who had taken the victim away were also present. They snatched his articles and beat him up for calling the police. They also stated that victim was their domestic help. It is submitted that the applicant-accused is infact a victim himself. It is further submitted that the applicant-accused has three daughters.

Ld. Addl. PP for the State, assisted by the IO, has vehemently opposed the bail application of the applicant-accused.

I have considered the rival contentions as well as the Order dated 05.11.2018 in respect of the first bail application of the applicant accused.

The stand taken by the applicant-accused in the application under consideration is contradictory to the submissions made on 05.11.2018. On 05.11.2018, it had been argued on behalf of the applicant-accused that victim was his domestic help and that his correct address was Flat No. 193, Shivaji Enclave, New Delhi. These contradictions in submissions on behalf of the applicant-accused have not been explained.

No such material change in circumstance has been put forth as would warrant enlarging applicant-accused on

bail. In these circumstances, the Court is not inclined to enlarge applicant-accused on bail.

The second bail application of the applicant-accused Prem Prakash @ Babu @ Pappu is, accordingly, dismissed.

Put up for purpose fixed on date already fixed, i.e, 08.02.2019.

Copy of the Order be given dasti to Ld. Counsel for applicant-accused as well as IO of the case.

ORDER DATED 07.03.2019

I have already heard detailed arguments on the bail application of the applicant - accused and have perused the record carefully.

Ld. Counsel for the accused has argued that it was one Atul who was the tenant in flat No. 183 from where the victim was allegedly recovered. It is submitted that it has been wrongly alleged that applicant-accused was the husband of one Rama. It has also been argued that the applicant-accused has been falsely implicated to save owner of the house Const. M.H.Salim. It is further submitted that in the statement u/s 161 Cr.P.C. of witness Smt. Surinder Kaur, she has stated that Prem Prakash was found running away from the flat in question and the victim told her that this accused had committed rape upon her. In her testimony, however, the victim has stated that accused never sexually assaulted her at any point of time. It is also submitted that even though there is a reference to two ladies who had rescued the victim as per the charge sheet, witness Smt. Paramjit Kaur denied having accompanied Smt. Surinder Kaur in her statement u/s 161 Cr.P.C. Ld. Counsel for applicant-accused has also pointed out certain contradictions in the statements of the victim before various authorities.

Ld. Substitute Addl. PP for State has vehemently opposed the bail application. It has been argued that in her statement, the victim has clearly stated that applicant-

accused Prem Prakash used to live in the flat where she was forced into prostitution and he was very well aware of this fact.

I have considered the rival contentions.

No doubt, in her testimony the victim has stated categorically that the applicant-accused did not sexually assault her but she has deposed that accused resided in the same flat where she was being sexually exploited and was very well aware of prostitution going on from the said flat.

No doubt, co-tenant/ co-occupant of the said flat, namely, Ankit as also the owner of the said flat have not been made even witnesses in the instant case and certain aspects of the case need to be clarified through further evidence, it cannot be ignored that the other prime accused, namely, Sunita, Rama as also the brother-in-law of Sunita are absconding and the testimony of the victim discloses commission of grave offence upon her.

In such circumstances, the Court is not inclined to admit the applicant-accused to bail. The 3rd bail application of the applicant-accused Prem Prakash is dismissed.

At request, copy of order be given DASTI to Ld. Counsel for applicant-accused as well as the IO.”

9. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated to save the owner of the house, M.H.Salim. Learned counsel further submitted that the prosecutrix, in her testimony, has stated that the accused never sexually assaulted her at any point of time.

10. *Per contra*, learned APP submitted that the petitioner used to live in the flat where the prosecutrix was forced into prostitution and the petitioner was very well aware of the same and that the prosecutrix

has deposed in her evidence, in this regard, specifically stating that the petitioner resided in the same flat where she was being sexually exploited and the petitioner was very well aware of the prostitution going on in the said flat.

11. Learned APP further submitted that the petitioner has made contradictory statements on 5.11.2018 and 14.1.2019 and earlier the petitioner has stated that the prosecutrix was his domestic help, however, later on, the petitioner changed the stand and submitted that the petitioner is a cloth vendor who sells clothes door-to-door and when he reached near House No.193, DDA Janta Flats, Shivaji Enclave, New Delhi, he saw a girl in distress as is evident from the orders dated 5.11.2018 and 14.1.2019.

12. The *prima-facie* fact which now emerges from the above discussions and record is that the petitioner has certainly taken two different contradictory stands as is evident from the orders dated 5.11.2018 and 14.1.2019 and is trying to mislead the Court. The victim was a minor at the time when she was rescued and there are specific allegations against the petitioner by the prosecutrix regarding her trauma and the manner in which she was forced into prostitution as well as about the role of the petitioner. The petitioner has failed to explain the aforesaid contradictions and the allegations.

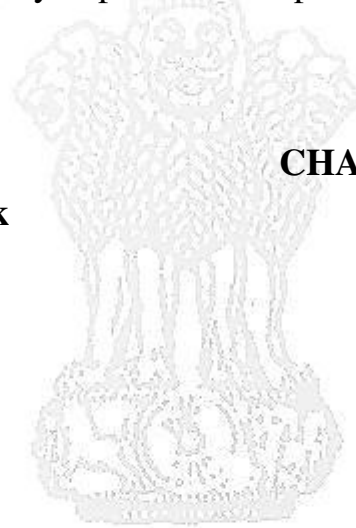
13. In this case, the material on record, *prima facie* does not, in any manner, reflect that the prosecution is inherently doubtful or there is a possibility of false implication. The element of criminality is allegedly involved.

14. Hence, taking into consideration the aforesaid facts, the material available on record, the orders of the Trial Court, objections raised by the State, gravity of the offence, the role of the petitioner and severity of the punishment and the impact of the granting of bail to the petitioner upon the society, at this stage, I do not find any merit in the bail application of the petitioner. Accordingly, the anticipatory bail application of the petitioner is dismissed.

15. It is clarified that whatever is stated or expressed hereinabove shall not tantamount to any expression or opinion on the merits of the case.

CHANDER SHEKHAR, J

JANUARY 10, 2020/rk



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