

\$~4

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

+ **BAIL APPLN. 1115/2020**

ARVIND SHAKYA

..... Petitioner

Through: Mr Zulfiquar Khan and Mr Deepak
Mishra, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms Kusum Dhalla, APP for State.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

09.07.2020

1. The petitioner has filed the present petition, *inter alia*, seeking bail in FIR No.0171/2020 under Section 376 of the IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act), registered with PS Sagarpur.

2. A status report has been filed, which indicates that the said FIR was lodged by the father of the victim – a girl child aged about four years. He alleges that on 23.03.2020 he was at his residence, which is on the second floor of the building. The petitioner's room is located on the first floor of the building and his daughter (the victim) was watching TV in the petitioner's room. The petitioner is a landlord of the said building. He stated that at about 1:30 PM, the victim came to his room and lied down on his stomach. She was weeping and complained that her vagina was paining. On further inquiries, she alleged that the petitioner (referred to as 'baba') had removed

her *pajami* and had put his penis in her private parts. She also alleged that he moistened her private part and cleaned the same with the help of a cloth and the same was painful. The complainant alleged that immediately on hearing this, he went downstairs to the petitioner's room and accosted him. At that time, the victim pointed out towards the cloth on the chair and informed him that *baba* had cleaned her private parts with that cloth. He stated that he took the cloth and at that stage, the petitioner started scuffling with him. His family members (his brother, wife and nephew) came at the spot on hearing a noise and the police were contacted.

3. The MLC of the victim was done. However, that did not indicate any injuries.

4. The statement of the victim under Section 164 of the CrPC was recorded on 21.04.2020. This Court has examined the said statement and the same largely supports the allegations made in the FIR. The clothes worn by the petitioner on the said date were seized and were sent to FSL.

5. The piece of cloth, which is mentioned in the FIR is, undoubtedly, a vital piece of evidence and, therefore, this Court had specifically enquired whether the said piece of cloth had been seized. In the status report, it is stated that the said cloth was handed over to the concerned doctor examining the victim and the doctor had then handed it over to the Investigating Officer. The same is part of the clothes seized by the IO. However, the seizure memo specifically indicating the seizure of this cloth has not been placed on record.

6. The petitioner had also stated that there was little possibility of the incident having taken place because he resides in the premises along with

his family and thus a commission of this offence is highly improbable. According to him, he has been falsely implicated as the complainant was not paying rent and was not vacating the premises either.

7. The status report indicates that the petitioner was residing and occupying one room on the first floor of the building in question and his family members were residing on the ground floor. There were two other rooms, which are occupied by other tenants on the first floor of the building and one room was vacant.

8. The question whether the petitioner was residing alone in that room is a matter that would be considered by the trial court at an appropriate stage. However, at this stage, the commission of the alleged offence cannot be ruled out solely on the ground that the family members of the petitioner were also residing in the said building.

9. Whilst, the petitioner has raised substantial issues, this Court does not consider it apposite to grant bail at this stage as the victim has not been examined as yet. Thus, the possibility of the petitioner attempting to influence the witnesses cannot be ruled out.

10. The petition is, accordingly, dismissed with liberty to the petitioner to apply afresh after the statement of the victim has been recorded.

11. At this stage, learned counsel for the petitioner states that the petitioner was placed in ICU for three days and ought to be granted interim bail.

12. There are no documents on record or pleadings to the effect that the petitioner was/is critically ill. The petitioner is at liberty to file appropriate

application in this regard. Needless to state that if any such application is filed, it will be considered on its merits.

VIBHU BAKHRU, J

JULY 09, 2020

pkv