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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1175/2020 & CRL.M.As. 7381-82/2020**
NAVEEN KUMAR ... Petitioner
Through: Mr. Ananya Mohan, Adv.

versus

THE STATE OF NCT OF DELHI ... Respondent
Through: Ms. Kusum Dhalla, APP

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGEMENT
% **09.06.2020**

This matter has been taken up for hearing by video-conferencing.

CRL.M.A. 7381/2020 (exemption)

Allowed, subject to all just exceptions. Application is disposed of.

CRL.M.A. 7382/2020 (exemption from filing affidavit and court fees)

1. This application seeks exemption from filing duly affirmed affidavit as well as payment of requisite court fees, in view of prevailing lockdown, consequent to the COVID-2019 pandemic.

2. Keeping in view the notification dated 4th April, 2020, this

application is allowed, subject to the petitioner filing duly affirmed affidavit and depositing requisite court fee within 72 hours of the resumption of normal Court work.

3. The application is disposed of.

BAIL APPLN. 1175/2020

1. This is an application under Section 439 of the Code of Criminal Procedure, 1973 (Cr PC), for regular bail.

2. The applicant is incarcerated in connection with the FIR No. 826/2019 dated 5th November, 2019.

3. Consequent on the registration of the FIR, and investigations following thereupon, charge sheet stands filed before the learned Additional Sessions Judge, Karkardooma Courts, Delhi.

4. The applicant is alleged to have committed the offences under Section 354, 376 (2)(n), 376AB of the Indian Penal Code, 1881 (IPC), as well as Section 6 and 10, of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

5. The case against the applicant is based upon the statement of the prosecutrix, who was 7 years of age. The charge-sheet specifically refers to the statement of the prosecutrix, under Section 161 Cr PC, in which she has clearly described the manner in which sexual assault was committed by the applicant.

6. Though Mr. Ananya Mohan, learned counsel appearing for the applicant seeks to submit that the alleged offence, as per the statement of the prosecutrix, is alleged to have taken place on Sunday in premises, which were “extensively occupied”, I am not inclined, at this stage, especially when hearing an application for bail, to enter into countenance of the said submission. At this stage, *and for the purposes of adjudicating on the applicant’s prayer for bail*, the statement of the prosecutrix has to be believed as depicting what had actually transpired with her.

7. The applicant is in judicial custody since 5th November, 2019, i.e. for less than 7 months, as on date. The charge against the applicant is gross, and extremely serious. I may refer to the decision taken by the High Powered Committee, headed by a learned Judge of this Court, in its meeting, dated 18th May, 2020, in which, while recommending grant of bail/interim bail to various categories of under trial prisoners, it was, nevertheless, resolved, *inter alia*, that under trial prisoners facing trial under Sections 4 and 6 of the POCSO Act, or for commission of offences under Section 376, 376A, 376B, 376C, 376D and 376E of the IPC, should not be considered for grant of bail or interim bail.

8. The application, moreover, contains no legitimate ground, on which the applicant’s prayer for bail could be maintained.

9. All that is stated is that the allegations against the applicant are untrue, and that the applicant’s father is HIV positive and is

undergoing antiretroviral treatment. It is a matter of common knowledge that HIV positive patients can successfully be treated, using antiretroviral therapy, and Mr. Ananya Mohan submits, frankly, that the father of the applicant has to visit the hospital once a month for the said treatment. There is no whisper or any averment, in the application, to the effect that there is no other family member available, who can assist in the treatment of the applicant's father if any such assistance is required. Though the application is completely silent in this regard, Mr. Ananya Mohan, to a pointed query from the Bench, acknowledges that the applicant has two younger brothers, who, according to him, would be about 16 to 18 years of age, as well as younger sister. Clearly, therefore, no case is made out for entertaining a view, even *prima facie*, that the presence of the applicant is necessary in order to assist his father's treatment, can be said to exist.

10. Mr. Ananya Mohan further seeks to submit that presence of the applicant would be required to completion the hospital formalities including payment of bills etc. This, clearly, is an argument of desperation. There is no reason, whatsoever, for this Court to believe the specific presence of the applicant is necessary, in order to assist the applicant's father in obtaining hospital treatment, or in paying his bills.

11. In fact, Mr. Ananya Mohan also seeks to point out that HIV positive patients are especially susceptible to infection by the COVID-2019 virus. The presence of the applicant, according to Mr. Ananya

Mohan, would result in less exposure of his father. It is impossible to understand this contention. If anything, as a HIV positive patient, it would be advisable that the father of the applicant is not exposed to a large number of persons, including the applicant, who would be returning home from jail, if the application were to be allowed.

12. Resultantly, no case, whatsoever, for grant of bail to the applicant, can be said to exist.

13. The application is dismissed.

14. Needless to say, all observations, made in this order, are intended solely for disposal of the present bail application, and are not to be treated as an expression of opinion, even *prima facie*, regarding the merits of rival contentions of the parties.

C. HARI SHANKAR, J.

JUNE 09, 2020

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