

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

+ **BAIL APPLN. No.1563/2020**

Judgment reserved on : 02.09.2020

Date of decision: 16.09.2020

SHIVAM SAHU

..... Applicant

Through: Mr.Yogesh Sharma, Advocate.

Versus

STATE (GNCT OF DELHI)

.....Respondent

Through: Mr. Kamal Kumar Ghei, APP for State
with SI Gazal Chugh.
Mr. Bharat Bhushan Kaushik, Advocate
for complainant.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The applicant, vide the present application seeks the grant of bail in relation to FIR No.114/2020, PS Seemapuri under Sections 376/506 of the Indian Penal Code, 1860 and Section 6 of the POCSO Act, 2012 submitting *inter alia* to the effect that he has been falsely implicated in

the instant case at the behest of the mother of the complainant who seeks to settle her personal scores with the first wife of her husband and the brother of his first wife of her husband who is the father of the applicant herein. It has further been submitted on behalf of the applicant that the FIR has been lodged against the applicant by the complainant in collusion and connivance with the medical staff of the GTB Hospital and the police department who have ruined the life of the applicant and also to teach his father a lesson for helping his sister who is the step mother of the alleged victim/prosecutrix. The applicant submits that the charge sheet, the FIR and the medical documents annexed thereto, make it clear that the entire allegations levelled against the applicant are concocted and planned.

2. Notice of the application was issued to the State. In as much as, there are allegations qua the alleged commission of the offence punishable under Section 376 of the Indian Penal Code, 1860 and Section 6 of the POCSO Act, 2012, notice of the application was also directed to be issued to the prosecutrix through the Investigating Officer concerned for her obligatory presence through video conferencing either by herself or by her authorized representative.

3. The State has submitted its status report dated 20.07.2020 under the signatures of the SHO, PS Seemapuri in response and during the course of the proceedings taken up through video conferencing, the State has also placed on record through email, copy of which print out is placed on record, the copy of the ERSS sheet in question in the instant case. The prosecutrix was also represented through her counsel.
4. Submissions were made on behalf of the applicant by the learned counsel for the applicant, on behalf of the State by the learned APP for the State and on behalf of the prosecutrix by the learned counsel for the prosecutrix.

PROSECUTION VERSION

5. As per averments made in the charge sheet on 20.03.2020, DD No.5A was lodged pursuant to MLC No.G-28/2020 as prepared at the GTB Hospital and was entrusted to ASI Sanjay Pandey No.208/SHD and furthermore, DD No.6A was also received through a PCR call by ASI Sanjay Pandey and thus, on receipt of DD No.5A, ASI Sanjay Pandey along with Constable Umesh No.1455/SHD went to the GTB Hospital and vide DD No.7B, PSI Gazal Chugh on directions of the Senior Officers also reached the GTB Hospital where PSI Gazal Chugh

met ASI Sanjay and Constable Umesh, the victim 'A' and her mother 'HK' along with the NGO Counsellor. ASI Sanjay handed over the MLC bearing No.G-28/2020 of the victim 'A' on which the doctor had observed "alleged history of sexual assault", whereafter, PSI Gazal Chugh made inquiries from the victim 'A' in the presence of her mother 'HK' after which the victim was counselled by the Counselor of the NGO and the Counselor's report was prepared and the PSI observed that there was a prima facie offence committed under Sections 376/354B/506 of the Indian Penal Code, 1860 and Section 6 of the POCSO Act, 2012 and thus, the FIR was got registered thereunder.

6. The statement of the victim 'A' was recorded on 20.03.2020 which states to the effect that she resided at 'X' with her parents and was studying in Standard 10 in the school 'Y' and that she had got friendly with Shivam i.e. the applicant herein who used to visit her step brother named Ravikant's house and she, the victim 'A' also used to visit Ravikant's house where the applicant and the victim 'A' got friendly. As per the complaint made by the victim 'A' to the PSI Gazal Chugh in December 2017 when she had gone to her step brother's house i.e. to Ravikant's house, then, there the applicant came and after

some time her step brother Ravikant told them that he had some work and was going outside and at that time there was no one in the house except the applicant and the prosecutrix and the applicant came and sat near her on the bed and started touching her inappropriately and forcibly took off her top and took her photograph on his phone, whereafter, the applicant pressed her breasts on which the prosecutrix told him what he was doing on which the applicant told her not to speak much and she got frightened because there was no one at home and then the applicant forcibly put his private part into her mouth and threatened her that if she told anyone about the same, he would make her photograph viral as a consequence of which she quietly out of fear went back to her house.

7. As per the FIR, on 04.01.2018 the applicant came to the house of the prosecutrix and there was no one at the house at that time and she asked the applicant for what he had come to her house and she would call her mother on which the applicant again started threatening her that he would make her photograph viral and the applicant forcibly took her to the bed room and forcibly removed her clothes and took off his clothes and put his private part into her private part and also threatened

her that if she would not do such acts with him then he would kill her and her family members, whereafter, the applicant repeatedly kept on having forcible physical relations with her at her house itself, as a consequence of which she started remaining quiet but despite her mother asked her as to why she used to be quiet, but because of the threats of the applicant, she did not tell her mother anything but on 19.03.2020, she told her mother and her sister about what had taken place with her and then her mother and her sister brought her to the GTB Hospital where the counsellor of the NGO was also there who also counselled her at the hospital and the doctor medically examined her.

8. As per the statement of the prosecutrix which forms the basis of the FIR, the prosecutrix stated that the applicant had several times had physical intercourse with her against her consent and that she sought legal action against him. She further stated that she had given her statement in the hospital in the presence of her mother and had been read over the contents of her statement.

9. As per the charge sheet, copy of which is on the record, the applicant herein was arrested on the identification of the mother of the prosecutrix, the prosecutrix was however unable to assist in relation to

the phone in which the applicant had allegedly clicked her obscene photograph.

10. The statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix was also recorded during the course of the investigation as per which statement recorded on 07.04.2020 by the learned Duty MM, Shahdara, KKD Courts, Delhi, the prosecutrix stated that she was 16 years of age and was studying in Standard 10 and that she understood the veracity of truth and she was thus, administered oath and through her statement under Section 164 of the Cr.P.C., 1973, she virtually reiterated the statement that she made at the time of the lodging of the FIR and stated that in December 2017, she had gone to her step brother namely Ravikant's house and at about 10:00 am, the applicant, the son of her family friend/relative came there and that her step brother Ravikant had to go out for some work and thus, only she and the applicant were at home and she whilst being on the bed was watching television and the applicant came and sat next to her and started behaving inappropriately and pressed her breasts and took off her top and took her photograph and when she resisted and told him not to do so, he told her to keep quiet or else he would put her photograph on to

the internet and then he put his private part into her mouth and then in the meantime, her brother Ravikant reached there and she went back to her home. As per this statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix, in January 2018, the applicant had come to her house and when she told him that she would inform her mother, the applicant told her that he would make her photograph viral and would kill her and then took off her top and put his private parts into her private parts and repeated the same acts as he had committed previously and thereafter, the applicant had several times repeated the said acts and kept threatening her as a consequence of which she continued to remain in depression and as her mother also used to remain upset, she could not tell her mother about anything but on 19.03.2020, she told her sister about the same and her sister informed her mother.

11. As per the charge sheet, the police conducted investigation in relation to the aspect of the parents of the prosecutrix being aware of what had taken place with the prosecutrix but on investigation found that there was nothing to indicate that the parents of the prosecutrix were aware of the acts of the applicant and thus, no action was taken against them nor was any action taken against the step brother namely

Ravikant of the prosecutrix as there was no evidence found against him who was thus arrayed under Column no.12.

12. The MLC of the prosecutrix prepared on 19.03.2020 at the GTB Hospital, Dilshad Garden, the said MLC reads to the effect:-

राष्ट्रीय राजधानी क्षेत्र, दिल्ली सरकार Govt. of National Capital Territory of Delhi गुरु तेग बहादुर अस्पताल CURU TEG BAHADUR HOSPITAL, DILSHAD GARDEN, DELHI-110095 EMERGENCY REGISTRATION CARD आपातकालीन पंजीकरण कार्ड		
UHR/No. 879774	Emergency Regn. No. GTBE-90469	IPD No.
Name/ नाम Father/Husband Name पिता व पति का नाम	Date / Time दिनांक व समय 18/03/2020 09:54PM 18-03-2020	MLC No. YES 67-28/2020 Religion(वि) Deptt. CASUALTY
Age आयु 16	Sex लिंग FEMALE	
Address पता		
Date	History / Clinical Findings / Reports	Treatment / Instructions
19/3/2020 10:50 AM	Brought By: FATHER NAME UNIT 18210459 Alleged MO Sexual Assault As per the victim the incident happened 2nd in December 2019 (1st time) followed by repeated episodes (around 8-10 times) till January 2020. As per the victim she has her step brother (Ravikant 29 years) who got married in Nov, 2019 where the first her brother's friend's sister named Palak in his marriage. She became her close friend and she used to talk with Palak on phone. As per the victim Palak's brother named Shivam who is 29 years old took the victim's number from Palak and called the victim once at twice on phone. It was a casual call. As per the victim her father friends are working and when her friends used to go at work she used to go to her step brother i.e. (Ravikant 29 years) the accused (Shivam) who was close friend of her step brother. She knew that during this time the victim lived with her brother. He took advantage of this thing and she accused came to her step brother's i.e. Shivam's house in the morning at around 10-11 AM in the morning. The victim's brother i.e. Ravikant left the house while the accused was in the house for some personal work. Then the accused removed the victim's clothes did sexual intercourse with her. He also did oral sex with her and also took her hair and all the pieces on hand held. As per the victim her brother came back after 1-2 hours and the अंगदान - महादान victim told the whole incident.	

To her Mother who didn't give any response to it and not
 not to talk any nonsense with him. She then came back
 home. and when next day again as per routine she has to go to
 her brother's house she found there she narrated the whole incidence
 to her Mother; who initially kept quiet. Then as per victim she used
 to stay in her own house when her parents go to their work. The
 accused came to know of this and as per victim he then contacted
 the victim in her own house did Intimacy there multiple
 times in the month of December and January (2018). As per the victim
 her Mother called her son and he accused (himself) to her
 house and asked the whole incidence who admitted the fact. The
 victim Mother then narrated the incidence to her husband who called
 asked her to stay quiet and not to inform the police. He also
 gave threat that he will give prison in case they inform the
 police. The accused father is also friend of victim's father. As per
 the victim when she came to know that her Mother is living alone
 up by her father and they all happened after 2 years and her
 Mother and sister (victim) both covering and came here to file
 a complaint against him. As per the victim she accused some one after
 January 2018.

o/s: 1-30/Jan
 2-19/Jan/2018
 3-19/Jan/2018
 4-19/Jan/2018
 5-19/Jan/2018
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 30-19/Jan/2018

Date	History/clinical Findings/Reports	Treatment/Instructions
19/3/2020 10:50 PM.	Alleged H/O sexual assault. As per the victim the incidence happened 1 st on December 2017 (1 st time) followed by repeated episodes (around 8-9 times) till January 2018. As per the victim she has her step	

brother (Ravikant 29 years) who got married in Nov, 2017 where she met her brother's friend's sister named X, in his marriage she became her close friend and she used to call with the accused X on phone. As per the victim X brother's named Shivam who is 24 years old took the victim's number from X and called the victim once or twice on phone. It was a casual call. As per the victim her both parents are working and when her parents used to go at work she used to go to her step brother i.e. (Ravikant's house) the accused (Shivam) who was close friend of her step brother came to know that during this time the victim lives with her brother and he took advantage of this timing and the accused came to her step brother's i.e. Ravikant's house in this morning at around 10-11 AM. The victim's brother i.e. Ravikant left the house while the accused was in the house for some personal work. Then the accused removed the victim's clothes did sexual intercourse with her. He also did oral sex with her and also took her pics and blackmailed her that if she tells anyone he would viral all the pics on social sites. As per the victim her brother came back

after 1-2 hours and the victim told the whole incidence to her brother who didn't give any response to it and said not to talk any nonsense with him. She then came her home and when next day again as per routine she has to go her brother's house she informed them she narrated the whole incidence to her mother: who initially kept quiet. Then as per victim she used to stay in her own house when her parents go to their work. The accused came to know of this and as per victim he then tortured the victim in her own house did intercourse (oral and vaginal) there multiple times in the month of December (2017) and January (2018). As per the victim her mother called her son and the accused (Shivam) to her house and asked. the whole incidence who admitted the fact. The victim's mother then narrated the incidence to her husband who rather asked her to stay quiet and not to inform the police. He also gave threat that he will give poison in case they inform the police. The accused father is close friend of victim's father. As per the victim when she came to know that her mother is being beaten up by her father and they all suffered after 2 years now her mother and

	<i>sister (R) took courage and came here to file a complaint against him. As per the victim the accused never met her after January 2018.</i>		
	CMP-24/2/2020	OPT -Negative	
O/E	P/A	soft	O/E No Evidence of Redness, swelling, Inflammation, tenderness seen
P: 90/mm		tenderness,	
BP- 124/80	Rigidity	No E/o Any local Injury	
		_kit not opined as the incidence is 2 years old	
		Advised No gynae intervention required at present A/v in gynae OPD in case of missed period	
Marks of : Identification	1. Mole in left face head	2. Mole on Right side of upper lips	
I am not willing for my internal examination.			

As per this MLC, the victim's mother called her son and the applicant to her house and asked of the whole incident and the applicant admitted the fact and the victim's mother had narrated the incident to her husband who rather asked her to stay quiet and not to inform the police and also threatened that he would give poison in case they informed the police as the applicant's father was a close friend of the victim's father and when the victim came to know that her mother was even being

beaten by her father, they all suffered this for two years but thereafter the mother and sister of the prosecutrix plucked courage and went to the hospital and lodged the complaint and as per this MLC, the applicant had never met the prosecutrix after January 2018. The applicant herein was arrested on 20.03.2020 and the charge sheet was filed on 20.05.2020.

13. The status report dated 20.07.2020 submitted by the State is to the effect that the material witnesses were yet to be examined and if the applicant is released on bail, he may influence the victim and the witnesses of the case. The State has thus vehemently opposed the prayer made by the applicant seeking the grant of bail submitting that the offence allegedly committed by the applicant with the minor child was grave.

CONTENTIONS OF THE APPLICANT

14. The applicant while submitting that he has been falsely implicated has placed reliance on the ERSS sheet i.e. the Emergency Response Support System sheet of the Delhi Police to submit that as per the said ERSS sheet, it was the sister of the prosecutrix who called on

19.03.2020 at 23 hours 9 minutes 10 seconds and the information recorded was to the effect:-

“Caller Bol Rahi Hai Ki Mere Sath Kisi Ne Galat Kaam Kiya Hai Need Police”,

and on the next day i.e. on 20.03.2020, the name of the victim got changed to ‘A’, in relation to this aspect, in as much as, the ERSS sheet relied upon on behalf of the applicant as filed along with the application, did not give the name of the victim and the name appeared to have been removed with the fluid.

15. The applicant was directed to place on record the typed version of the ERSS sheet which was however not placed on the record on behalf of the applicant. The State, however, emailed the copy of the same and the print out of the same has since been placed on the record which gives the name of the victim on 19.03.2020 as being that of ‘A’ i.e. the prosecutrix and this contention thus raised on behalf of the applicant that the victim had changed, cannot be accepted.

16. It was further submitted on behalf of the applicant that the mother of the prosecutrix despite knowledge of the alleged incident on 19.03.2020 did not inform the police at the outset and rather took the prosecutrix to the hospital where she herself was working as a Senior

Nursing Officer and she took her there despite the factum that there was no medical attention required at that point of time. It has thus been submitted on behalf of the applicant that this could only be to prepare a good case and evidence in the form of the MLC before informing the police to ensure the false implication of the applicant. It was further submitted on behalf of the applicant that the MLC was got prepared by the victim's mother and that itself falsifies the prosecution version and brings forth that it was a concocted story.

17. It was submitted further on behalf of the applicant that though the police was informed at 12.43 pm on 20.03.2020 and the Investigating Officer reached the hospital and found everything in place and converted the narration of the doctor in the MLC through a ruqqa and sent the same to the police station for the registration of the FIR by mentioning the time of the ruqqa on 20.03.2020 at 1.05 pm which also brought forth the falsity of the prosecution version. Furthermore, it was submitted on behalf of the applicant that despite the information having reached the police for the registration of the FIR, the sister of the prosecutrix 'R1' sent further information to the police that someone had done a wrong act with her and that there was no explanation qua this

call when 'R1' was present at the GTB Hospital with the prosecutrix. *Inter alia* it has been submitted on behalf of the applicant that the alleged incident had taken place two years ago and the prosecutrix had refused for her internal medical examination and thus, there was nothing to ascertain whether the victim had any sexual intercourse or not and that without any supporting evidence, the presumption of a *prima facie* happening of a physical violation, cannot be drawn against the applicant. *Inter alia* it has been submitted on behalf of the applicant that the prosecutrix had failed to bring on record any of the photographs in relation to her being in any compromising situation to support her contentions which it was contended is fatal to the prosecution version.

18. It has further been submitted on behalf of the applicant that there was an undue haste in the chain of events in which the victim was medically examined, the case registered, the statement recorded before the learned Magistrate and the arrest of the applicant within 20 hours of the matter coming into light and that this itself indicated that the entire incident was planted. It is further submitted on behalf of the applicant that the prosecutrix has contended that she was violated 8-9 times from December 2017 to January 2018 but gave only one specific date and

only two specific incidents before the learned Magistrate without any date and that the prosecutrix had not narrated any recent incident despite her having stated that the applicant continued a relationship with her. *Inter alia* it has been submitted on behalf of the applicant that the version put forth by the prosecutrix in the MLC to the doctor was not spelt out in the FIR nor in her statement under Section 164 of the Cr.P.C., 1973 in relation to the applicant having been allegedly in touch with the prosecutrix and of the applicant having met the prosecutrix in November 2017.

19. The applicant further submits that the aspect of the prosecutrix having recounted the stated entire story to Ravikant, her step brother and to her family, is missing in the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix which itself indicates that the applicant is an innocent boy and has been falsely implicated in the instant case and that the entire investigation and the charge sheet are concocted. It has further been submitted on behalf of the applicant that there are several inconsistencies in the statement of the victim. *Inter alia* the applicant has further submitted that the investigation has been concluded, the charge sheet has been filed, both the families are

relatives and there can be deliberation between them and further incarceration of the applicant being a young boy, would serve no useful purpose. *Inter alia* the applicant submits that his personal liberties cannot be compromised in terms of Articles 14 & 21 of the Constitution of India and that the entire period of time since the registration of the FIR registered on 20.03.2020 till date, has been of imprisonment for the applicant which has tarnished his image and no useful purpose would be served by further incarceration of the applicant who is not likely to flee and there are no chances of his absconding, he having deep roots in society and he being a permanent resident of Delhi.

CONTENTIONS OF THE STATE AND THE PROSECUTRIX

20. The State through arguments addressed on its behalf has vehemently opposed the prayer made by the applicant and so has the learned counsel for the prosecutrix submitting to the effect that the averments made in the FIR, the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix and even the statement made by the prosecutrix at the GTB Hospital to the doctor explaining the trauma and fear of the prosecutrix was after her alleged sexual molestation and violation of her person and dignity by the applicant which itself

explains the silence of the prosecutrix in reporting the matter to the police and the delay in registration of FIR is explained and does not in any manner detract from the veracity of the prosecution version.

21. It has been submitted further on behalf of the State and the prosecutrix that the allegations levelled against the applicant are gross and grave and that the prosecutrix having been a minor at the time of the alleged commission of the offence, the gravity of the offence is multiplied. *Inter alia* the State has submitted that the applicant has taken an undue advantage of being a person known to the prosecutrix and her family and there exists no scope for any mitigation in the instant case of the allegations levelled against the applicant.

ANALYSIS

22. On a consideration of the rival analysis submissions made on behalf of either side and on a perusal of the record, it is essential to observe that the prosecutrix was of 16 years of age at the time of the alleged commission of the offence and has stated categorically through her statement which forms the basis of the FIR, through her statement under Section 164 of the Cr.P.C., 1973 and through her statement that she has made at the GTB Hospital that she has been violated sexually

by the applicant without her consent and will. Though, there appears to be some delay in registration of the FIR and delay in getting the prosecutrix medically examined, (though the prosecutrix declined the interval examination) the same itself does not suffice to negate the *prima facie* allegations levelled against the applicant of having allegedly raped the prosecutrix several times against her consent and also otherwise having sexual molested her without her consent and as per the MLC prepared at the GTB Hospital of his having taken advantage of the knowledge of the fact as to when the prosecutrix would be visiting her step brother Ravikant's house when both her parents used to go out for work. Taking into account, thus the gravity of the allegations levelled against the applicant which have been reiterated by the prosecutrix through her statement made both at the time of the registration of the FIR and her statement under Section 164 of the Cr.P.C., 1973 as well as to the doctor at the GTB Hospital despite the variations therein, which variations however, do not detract from the material allegations levelled by the prosecutrix of the applicant having repeatedly raped her and sexually molested her against her will, which in any event have to be tested at the anvil of cross examination during

trial, there is no ground whatsoever for grant of bail to the applicant presently.

CONCLUSION

23. The bail application is thus, declined.

24. Nothing stated hereinabove, shall however, amount to any expression on the merits or demerits of the trial in the instant case.

ANU MALHOTRA, J.

SEPTEMBER 16th, 2020
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