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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 21.09.2020

Pronounced on: 19.10.2020

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BAIL APPLN. 1673/2020

VIKAS

.....Applicant

Through Mr. Ashwin Vaish, Mr. Vinod
Pandey and Mr. V. Thomas,
Advocates

versus

STATE

.....Respondent

Through Ms. Meenakshi Dahiya, APP for
State with SI Jitender Singh, PS
Sangam Vihar.
Ms. Tara Narula, Advocate for
Complainant.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

1. By way of present petition filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') Petitioner seeks grant of Regular Bail in SC No. 127/2019 in FIR No. 564/2018, Police Station Sangam Vihar under Sections 376AB, 342 IPC and Section 6 read with Section 5(m) of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO' Act). The Petitioner is in judicial custody since 25.12.2018.

2. The brief facts as culled out from the Status Report filed by the State are that on 24.12.2018 night a child victim 'A', aged 6 years came to the Police Station along with her parents and complained about a sexual assault. Enquiry was made from 'A' and statement of the child was recorded in front of her mother who stated that she was studying in Class-I at 'B' School. On coming back from the school, she was playing with her friend 'C' when Chhotu bhaiyya who was residing in the house of 'C' came to 'A' and took her to her chachi's room and committed sexual assault.

3. Child 'A' was sent to the hospital where her counseling was done and she was medically examined. Based on the statement of the child, an FIR was registered under Sections 376/342 IPC and Section 6 of POCSO Act. During investigation by the Investigating Officer, the Applicant was arrested on 25.12.2018. His medical examination and potency test were carried out and he was produced before the Court on 25.12.2018 and sent to judicial custody.

4. On 26.12.2018 statements of 'A' as well as her mother were recorded under Section 164 Cr.P.C. before the duty MM, Saket Court. The child corroborated the contents of the FIR. On 31.12.2018 a site plan was drawn up on the statement of 'A', when the chachi of 'A' was also present and on inquiry the chachi informed that the Applicant was the brother of her tenant. The age of 'A' was verified from the school records and after completion of the investigation, charge sheet was filed on 23.02.2019.

5. On 28.05.2019 charges were framed against the Applicant under Sections 376AB/342 IPC and Section 6 read with Section 5(m) POCSO

Act. On 05.08.2019 and 09.08.2019 testimony of 'A' was recorded as PW-1 where she corroborated the FIR and the statement under Section 164 Cr.P.C. On 05.08.2019, during the testimony, 'A' identified the Applicant. On 20.02.2020 'A's' mother testified as PW-3 wherein she corroborated her statement under Section 164 Cr.P.C. and also explained why she refused the internal/gynecological examination of her daughter as she did not want her to undergo more pain.

6. Previous application for grant of bail filed before the Additional Sessions Judge was dismissed on 23.06.2020. Hence the present bail application was filed.

7. Learned counsel for the Petitioner has argued that the Applicant has been falsely implicated in the present case as even 'A' had failed to identify him at the Police Station and had instead identified another person called Rahul. The Applicant is neither identified nor named in the FIR. It is argued that the genesis of the case lies in a dispute between 'A's' mother and her chachi qua the payment of rent by the Applicant's brother who is a tenant of the chachi. The Applicant had come to stay with his brother only 3 to 4 days prior to the date of the alleged incident and was informed that on earlier occasions there had been repeated confrontations between 'A's' mother and chachi on account of the fact that the Applicant's brother was paying rent to the chachi. In fact, the mother of 'A' was also making efforts that the tenants vacate the premises and the child has been used as a pawn to settle scores between the two women.

8. Learned counsel further argued that the Trial Court while dismissing the bail application failed to consider two key points placed

for its consideration, during arguments. Firstly, the child or the mother did not know the Applicant either by name or face and secondly adverse inference ought to be drawn against the prosecution since not only did PW-3 prevent the best evidence of alleged penetrative sexual assault come on record by preventing 'A's' medical examination, but also failed to get PW-1's and the Applicant's clothes examined for signs of semen stains or such other evidence of the alleged assault, coupled with a fact that neither of the two witnesses deposed about any injury or pleading due to the alleged assault.

9. Learned counsel has vehemently argued that the chachi of 'A' has not supported the case of the prosecution inasmuch as she has filed an affidavit wherein she categorically stated that the victim did not come down to play either on the first floor or on the ground floor, on the date of the alleged incident and that no incident ever took place, as stated in the FIR. She has also stated in the affidavit that no person by the name of Chhotu resides in the building. Learned counsel submits that the affidavit was brought to the notice of the Trial Court while arguing the application for grant of bail, but no credence has been given to the same by the Trial Court.

10. Learned counsel has relied on judgements in support of the proposition that bail is a matter of right and should be refused in rare cases as well as that the accused is to be presumed to be innocent till found guilty, being *Noor Aga vs. State of Punjab & Anr. (2008) 16 SCC 417* and *Kailash Nath vs. State 2001 (57) DRJ 293 (DB)*.

11. Learned APP for the State assisted by the counsel for the prosecutrix vehemently opposed the bail application. It was argued that

the victim had identified the Applicant in Court and stated that he was the person responsible for the wrong doing. The victim has given a narrative of the entire incident in her first complaint which was corroborated by her in the statement under Section 164 Cr.P.C. as well as her deposition in Court which stands unimpeached during extensive cross-examination by the counsel for the Applicant. The victim was only 6 years of age at the time of the incident and merely because she did not know the name of the Applicant, who had admittedly moved into the house only three/four days ago, cannot be a ground to doubt the veracity of her statements or deposition.

12. It is next contended that while the child's testimony is clear and cogent on all material particulars and unimpeached, without prejudice, the Petitioner is even otherwise seeking bail on grounds that are wholly related to appreciation of evidence which this Court cannot enter at this stage, the same being subject matter of trial. Cross-examination of PW-3 is not yet complete and it would not be in the interest of justice and fair trial to release the Applicant on bail at this stage. It is argued that the ground taken by the Applicant with regard to the refusal of the mother for internal medical examination of 'A' is totally misconceived. The law is settled that clear, consistent testimony of a victim of sexual assault/rape is sufficient to support a conviction even in the absence of medical evidence. The apprehensions or the concerns of a mother in allowing the six year old child to undergo internal examination, which is an extremely painful procedure, is understandable keeping in background the trauma the victim has already suffered during and due to the sexual assault.

13. I have heard the counsel for the parties and perused the material on record.

14. Perusal of the record reveals that in the examination-in-chief the face of the Applicant was shown to the victim and she identified him. The statements of the victim are consistent and coherent and in her deposition before the Court she has corroborated her statements made earlier. The mother of the victim has also made consistent statements corroborating the statement of the victim and has also explained the reason for not allowing internal medical examination of the victim, during her examination-in-chief. At this stage it is not open to the court to examine or evaluate the evidence lest it prejudices the case of either party, on merits.

15. Learned APP is also correct in her submission that the testimony of the mother of the victim PW-3 is yet to be concluded and it may not be appropriate at this stage to release the Applicant on bail. In so far as the affidavit of the chachi is concerned, which has also been filed in this Court, suffice would it be to state that the evidence of the chachi is yet to be tested and impeached on the anvil of cross-examination and till such time the contents of the affidavit cannot be treated as the gospel truth so is to doubt the case of the prosecution.

16. I have also carefully perused the testimony of the child victim who was examined as PW-3. She has in so many words narrated the incident and alleged that the Petitioner took her to the room of her chachi and after disrobing himself and the victim, committed act of aggravated sexual assault. It is settled law that the solitary testimony of a victim, if the same inspires confidence is sufficient to record conviction and if the testimony

is found to be credible, no corroboration is required. In this context I may rely on passages from a judgement of the Supreme Court in *State of H.P.*

v. Manga Singh, (2019) 16 SCC 759 which are as under:-

“11. It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the “probabilities factor” does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.

12. In State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316], it was held as under: (SCC pp. 395-96, para 8)

“8. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking

*for *corroboration* of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion?."*

(emphasis supplied)

17. In view of the above, more particularly the fact that the examination of PW-3 is still pending, this Court is not inclined to grant bail to the Applicant at this stage. It is however made clear that the reference to the evidence and any other observation made is only for the purpose of deciding the present bail application and shall not affect the trial on merits.

18. The application is accordingly dismissed.

JYOTI SINGH, J

OCTOBER 19th, 2020/yo