

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 07.05.2021

Pronounced on: 10.05.2021

+ **BAIL APPLN. 1343/2021**

PANKAJ KUMAR

.....Petitioner

Through: Mr. Govinda Ramanan, Advocate

Versus

THE STATE

.....Respondent

Through: Mr. Sanjeev Sabharwal, Additional
Public Prosecutor for respondent/
State
Mr. Shreyans Raniwala, Advocate for
complainant

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. The present petition has been preferred by the petitioner seeking bail in FIR No. 134/2021, under Sections 323/341/354 IPC & Section 8 of Prevention of Children from Sexual Offence Act, 2012 ('POCSO Act'), registered at police station Prem Nagar, Delhi.

2. Mr. Govinda Ramanan, learned counsel appearing for petitioner submitted that the petitioner has been falsely implicated in this case and was arrested from his house on 05.03.2021 without any cause and reason and

since then he is in judicial custody. Further submitted that a bare perusal of FIR itself reveals that petitioner has been taken into custody by the Police solely on the figment of imagination of the complainant and neither it is the case of complainant nor of the prosecution that petitioner had tried to touch private parts of prosecutrix or any body part with a sexual intent. Learned counsel next submitted that there is no evidence whatsoever to prove, that the petitioner had committed sexual assault on the complainant much less any other offences punishable under the India Penal Code (IPC).

3. Learned counsel further submitted that the learned Sessions Judge while passing impugned order dated 31.03.2021 has completely ignored the law laid down by the Hon'ble Supreme Court in various judgments that mere non-filing of charge sheet cannot be a ground for rejection of the bail, especially when no evidence has been brought on record to keep the accused behind bars.

4. Lastly, learned counsel submitted that petitioner is innocent and has been languishing in jail for the offence which he has not committed and, therefore, this petition deserves to be allowed.

5. On the other hand, Mr. Sanjeev Sabharwal, learned Additional Public Prosecutor for State submitted that the FIR in question was registered on the

complaint of prosecutrix, wherein serious allegations have been made against the petitioner and, hence, this petition deserves to be dismissed. Learned Additional Public Prosecutor drew attention of this Court to the provisions of Section 8 of POCSO Act to submit that *whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years, but which may extend to five years and shall also be liable to fine.*

6. Learned Additional Public Prosecutor further submitted that the complainant in her statement recorded under Section 164 Cr.P.C. has supported the version put forth in her complaint and so, petitioner does not deserve any leniency and this petition deserves to be dismissed.

7. Mr. Shreyans Raniwala, Advocate entered appearance on behalf of the complainant/ prosecutrix and supported the submissions advanced by the learned Additional Public Prosecutor and submitted that keeping in view the serious allegations against the petitioner, the present petition is liable to be dismissed.

8. The recital of FIR in question is that complainant, aged around 15 years, alleged that on 05.03.2021 while she was going to school with her friend, an unknown boy blocked their way and hold her hand and when she

tried to free herself and could not succeed, her friend pushed the said boy and rescued her. Thereafter both the girls reached a nearby grocery shop and narrated the story to a lady sitting in the shop, who raised a voice and the public around caught hold that boy and started beating him, however, the boy managed to escape from the spot. The public around disclosed the name of boy as Pankaj Kumar. A PCR call was also made in this regard but when SI Gagandeep reached at the spot, the complainant/prosecutrix had already left the place.

9. Upon reaching home, prosecutrix told her parents about the incident, who took her to the police station and registered a complaint. In the police station SI Gagandeep, who had visited the spot of incident, met the complainant and recorded her statement and FIR in question was registered for the offences under Sections 323/341/354 IPC & Section 8 of POCSO Act.

10. During investigation, petitioner/accused was arrested from his residence on 05.03.2021 and since then he is behind bars in this case.

11. The learned trial court vide order dated 31.03.2021 has dismissed petitioner's bail application observing that in view of nature and gravity of offence, no ground for bail is made out.

12. The POCSO Act has been enacted to redress sexual offences against the children and Special Courts have been established for speedy trial of such cases. In the present case, since the complainant is a minor, provisions of POCSO Act have been invoked, which is a non-bailable offence. The Hon'ble Supreme Court in a catena of decisions has cautioned the courts that in cases pertaining to heinous offences, especially those of non-bailable offences, bails should be granted in a judicious manner. In ***Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598** the Hon'ble Supreme Court has held as under:-

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance

of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

13. At the stage of grant of bail, this Court is not required to analyse the merits of the prosecution case, but has to ensure that if a person is in judicial custody, there has to be sufficient material/evidence in support of the allegations he has been charged with.

14. Further, the Hon'ble Supreme Court in ***Mahipal Vs. Rajesh Kumar***, (2020) 2 SCC 118 has held as under:-

“12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the

principles set out for the exercise of the power to set aside bail.”

15. As per status report, the medical examination of victim was got conducted at SGM Hospital, Mangolpuri, Delhi, however no report/MLC has been placed on record. Despite directions of this Court, prosecution has failed to place on record the copy of statement of prosecutrix recorded under Section 164 Cr.P.C.

16. Pertinently, the alleged incident had taken place in broad day light, in a public place and it has been specifically alleged by the complainant/prosecutrix that the boy had hold her hand. There are no allegations that the petitioner had misappropriately touched her or sexually assaulted her or in any way hurt her. But the fact remains that the veracity of allegations are not required to be gone into at this stage. Moreover, charge sheet in this case has been filed but charge is yet to be framed and trial will take substantial time. In the *prima facie* opinion of this Court, a case for bail is made out against the petitioner.

17. Accordingly, without commenting on the merits of the prosecution case, the petitioner is directed to be released on bail forthwith upon his furnishing personal bond in the sum of Rs.15,000/-, with one surety in the like amount to the satisfaction of the Trial Court/Duty Magistrate, subject to

the condition that:-

- i. Petitioner shall not directly or indirectly influence the witnesses or tamper with the evidence;
- ii. Petitioner shall not directly or indirectly approach the prosecutrix or his family members;

18. The present petition is allowed in aforesaid terms and is accordingly disposed of.

19. A copy of this order be transmitted to the Trial Court and Jail Superintendent concerned for information and compliance.

(SURESH KUMAR KAIT)
JUDGE

MAY 10, 2021

r