

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2206/2021**

Date of decision: 31st August, 2021

IN THE MATTER OF:

KULDEEP

..... Petitioner

Through Mr. Joginder Tuli, Advocate

versus

STATE (NCT OF DELHI)

..... Respondent

Through Ms. Meenakshi Chauhan, APP for the
State with SI Anju PS Aman Vihar

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The petitioner seeks bail in FIR No.510/2020 dated 25.10.2020 registered at Police Station Aman Vihar for offences under Section 366A, 372, 376, 120B, 506 and 34 IPC.
2. The brief facts leading to the present case are as follows:-
 - i. FIR No.510/2020 dated 25.10.2020 was registered on the statement of the prosecutrix. The prosecutrix is aged about 16/17 years. It is stated by the prosecutrix that they are five siblings i.e. four sisters and one brother.
 - ii. It is stated that the prosecutrix lost her father about 10 years back before the lodging of the FIR and her mother left them. All the siblings were living with their grandmother who also passed away four years prior to the filing of the FIR.

- iii. It is stated that her aunt (father's sister) kept the prosecutrix with her and brother of the prosecutrix started living with his aunt. It is stated that her eldest sister is married and her elder brother has taken a room on rent and is living separately.
- iv. It is stated that certain differences arose between the prosecutrix and her aunt (father's sister) and when she narrated out the incident to her aunt and uncle (father's brother), they kept the prosecutrix with them. It is stated that certain difference arose with them also and the prosecutrix later shifted to her father' brother and his wife, i.e. accused/Suman.
- v. She started living with them at H.No. A-307/1 Khasra No.675, Ramesh Enclave, Aman Vihar, Delhi. It is stated that accused/Suman told her that she need not sit idle at home and that she would take her to work.
- vi. It is stated that accused/Suman used to work in a Spa and the prosecutrix went with her aunt to the Spa where she was introduced to accused/Poonam, who was running the Spa.
- vii. It is stated that the next day accused/Suman took the prosecutrix to the parlour where the prosecutrix noticed that there were cabins and there were beds inside the cabins.
- viii. It is stated that the accused/Poonam called her and asked her to go into the cabin where a person was waiting. It is stated that when the prosecutrix refused to go, accused/Poonam called her aunt/Suman and she slapped her. It is stated that accused/Suman threatened her and asked the prosecutrix not to reveal anything otherwise she would kill her.

- ix. It is stated that the prosecutrix tried to narrate the incident to her uncle but was unable to do so as her aunt came in between and gave a beating to her. After the beating, the prosecutrix was scared to reveal this incident.
- x. It is stated that from the parlour, they used to send the prosecutrix to various hotels where she was physically exploited. It is stated that on 20.10.2020, the prosecutrix got a chance to escape and went to her sister where she narrated the whole incident to her sister and brother.
- xi. After lodging the FIR, investigation was conducted. The petitioner herein is the husband of the accused/Poonam, who was running the Spa.
- xii. The petitioner has taken the premises on lease. He was arrested on 29.10.2020 in the present FIR. Charge sheet was filed on 08.12.2020.
- xiii. The petitioner filed a regular bail application before the learned Additional Sessions Judge which was dismissed by order dated 07.05.2021. Upon dismissal of the said bail application, the petitioner had approached this Court by filing the instant bail application.
3. Heard Mr.Joginder Tuli, learned counsel for the petitioner and Ms.Meenakshi Chauhan, learned APP for the State and perused the material on record.
4. A reading of the charge sheet reveals that the prosecutrix, who is a girl aged about 16/17 years was forced into prostitution by her own aunt i.e. accused/Suman, who was working in a Spa which was run by

accused/Poonam, wife of the petitioner. The prosecutrix was sent to various customers in the Spa and also to persons in various hotels. The Spa was taken on rent/lease deed in the name of the Petitioner.

5. Mr. Joginder Tuli, learned counsel for the Petitioner contends that the petitioner was unaware of what was happening in the Spa. He further states that the lease deed had already expired and, therefore, the petitioner cannot be said to be the tenant.

6. Material on record shows i.e. the CCTV footage obtained from the premises shows that the petitioner was regularly visiting the Spa. It cannot be said that the petitioner was unaware of the activities of his own wife and that the petitioner was unaware that the girl aged 16/17 years was forced into prostitution and she was being physically exploited in the Spa.

7. The contention of Mr.Tuli that since lease deed had expired and he was no longer the tenant of the premises cannot be accepted. The Call Detail Records of the numbers used by the petitioner and his wife shows that the petitioner was in constant touch with his wife.

8. The Apex Court in a series of judgments has laid down the parameters for grant of bail, which reads as under:-

"(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."

Refer to Ram Govind Upadhyay v. Sudarshan Singh reported as (2002) 3 SCC 598, Mahipal v. Rajesh Kumar reported as (2020) 2 SCC 118 and judgment dated 24.08.2021 in **CRIMINAL APPEAL No.883/2021** in Harjit Singh v. Inderpreet Singh @ Inder and Anr.

9. The petitioner is accused of an extremely heinous offence under Section 376 IPC read with Section 6 of the POCSO Act, if convicted, the petitioner will be sentenced to an imprisonment which will not be less than 20 years but which may extend upto imprisonment for life, which shall be remainder of natural life of that person or with death.

10. Looking at the age of the prosecutrix and the fact that the petitioner is a man of means, the chances of the petitioner influencing the witnesses cannot be ruled out. There are chances of the petitioner tampering with evidence and also looking at the severity of punishments, the chances of the petitioner absconding or jumping the bail also cannot be ruled out.

11. As stated above, it cannot be said that the petitioner was unaware of the activities of his wife, rather material on record shows that the petitioner was in constant touch with his wife and was a regular visitor to the Spa and, therefore, it can be reasonably presumed at this stage that the petitioner was fully aware of the activities of his wife in the Spa.

12. Considering the fact that the proceedings are at a nascent stage and charges have yet not been framed, this Court is not inclined to grant bail to the petitioner at this stage.

13. The application is dismissed with above observations.

SUBRAMONIUM PRASAD, J

AUGUST 31, 2021

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