

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

+ **BAIL APPLN. 2322/2021**

Date of decision: 02nd AUGUST, 2021

IN THE MATTER OF:

DHARMENDRA BHATI@ KALU

..... Petitioner

Through Mr. Salim Malik, Advocate

versus

STATE

..... Respondent

Through Mr. Amit Chadha, APP for the State
with SI Naresh Kumar, PS Pul
Prahladpur along with Complainant in
person

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No. 206/2019 dated 03.10.2019 registered at Police Station Pul Prahladpur for offences punishable under Sections 323/354-B/452/506/509/34 IPC and Section 12 of the POCSO Act.

2. The facts, in brief, leading to this bail application are as follows:

- a) On 14.08.2019, information regarding a quarrel was received at Police station, Pul Prahladpur which was entered vide DD No.44 & 46A. On receiving the information ASI Rajbir Singh reached the spot and found that the injured had gone to the Hospital. On 15.08.2019, information was received from AIIMS Trauma Centre that one Shabir Ansari and his wife Ishrat Ansari, both residents of C-33/E, Chungi

No.3, Lal Kuan Delhi, had come to AIIMS Hospital for treatment. The said information was received vide DD No.9A. On receiving the information ASI Sher Singh reached AIIMS Trauma Centre and collected the MLCs of the victims, being MLC No. 500188387 of Sabir Ansari and MLC No. 500188388 of Ishrat Ansari.

b) After about one-and-a-half months of the incident, on 03.10.2019, the statement of the victims, Ishrat Ansair and Sabir Ansari, were recorded. In her statement Ishrat Ansari alleged that on 14.08.2019, the petitioner along with one Aryan, Sonu & Sonu Tomar came to her house and they were carrying *dandas* & iron rods. It is stated that the accused persons entered into her house and said that her husband was destroying their livelihood by supplying water to the colony which had affected their business. It is stated that the petitioner, who was carrying a *danda*, started beating her husband. It is stated that other accused persons also started beating the husband of the complainant with kicks and punches. It is stated that when the complainant tried to save her husband, the petitioner held her hand and pulled her. It is stated that the petitioner tore her clothes and pressed her breast in order to outrage her modesty. It is stated that when the complainant objected to it, the petitioner and other accused persons started beating her. It is stated that when the complainant and her husband shouted for help all the accused ran away. It is stated that while the accused were going they threatened the complainants with dire consequences and they also threatened them stating that if they inform Police about the incident they would kidnap their children from school. On the basis of the statements, FIR No. 206/2019 for offences punishable under

Sections 323/354-B/452/506/509/34 IPC was registered on 03.10.2019.

c) Material on record discloses that on the next day of registering the FIR, i.e. on 04.10.2019, the statement of the daughter of the complainants was recorded wherein it was stated that the accused had threatened the child that they would rape her and only then her parents would understand. On the basis of the said statement offence under Section 12 of the POCSO Act was added.

d) The petitioner was arrested on 16.01.2020 and he has been in judicial custody since then.

e) The petitioner filed applications for bail before learned Additional Sessions Judge, POCSO, South East Saket Courts on 18.07.2020, 03.02.2021 and 04.06.2021 which have been dismissed.

f) The petitioner has thereafter approached this Court by filing the instant bail application.

3. Heard Mr. Salim Malik, learned counsel for the petitioner and Mr. Amit Chadha, learned APP for the State and perused the material on record.

4. The learned counsel for the petitioner contends that the FIR was registered after one-and-a-half months of the incident. He contends that the FIR was initially registered under Sections 323/354-B/452/506/509/34 IPC and in the said FIR there is not a single averment that the petitioner and other assailants threatened the child. He states that the offence under Section 12 of the POCSO Act was added after the statement of the child was recorded on 04.10.2019. He states that the fact that there was an inordinate

delay of one-and-a-half months in recording the FIR is sufficient for the petitioner to be released on bail. He further states that the fact that even after one-and-a-half months of the incident there was not even a whisper of any offence against the child and it was introduced by the statement of the child just after the registering of the FIR. He states that this gives rise to a strong suspicion that the complainants are trying to implicate the petitioners because of business rivalry. The learned counsel for the petitioner states that the petitioner is in custody since 16.01.2020, the charge-sheet has been filed and therefore the petitioner be released on bail.

5. *Per contra*, Ms. Meenakshi Dahiya, learned APP for the State contends that the petitioner is accused of a serious offence and the fact that there is a delay in filing the FIR cannot be a reason to grant bail to the petitioner. It is further contended by the learned APP for the State that the petitioner is involved in one similar case being FIR No. 762/19, registered at Police Station Surajkund (Faridabad) for offences under Sections 323/452/506/376D/342/201/109/120B IPC. She also contends that if the petitioner is released on bail he would threaten the witnesses and therefore the petitioner ought not to be released on bail.

6. The material on record indicates that on 14.08.2019, information was received about the incident. On 15.08.2019, the MLCs of the complainants were received by ASI Sher Singh and on 03.10.2019, i.e. after one-and-a-half months of the incident, the statements of the victims were recorded and the FIR was registered. The Status Report does not indicate or give any reason as to why there was a delay of one-and-a-half months in recording the statements of the victims and getting the FIR registered. The FIR was registered on 03.10.2019 and the fact that the daughter of the complainants

was threatened to be raped by the petitioner and other assailants was introduced in the complaint only on 04.10.2019. There is a lot of force in the statement made by the learned counsel for the petitioner that such a thing could not be missed by any parent in their first statement which was made after one-and-a-half months of the incident. As rightly submitted by the learned counsel for the petitioner this is not a trivial issue which any parent would have forgotten while registering a complaint, that too after one-and-a-half months of the incident because by that time the complainants would have gained their composure. In any event the petitioner is accused of an offence punishable under Section 354B IPC for which the maximum punishment is seven years. For all other offences, the punishment is less than seven years. The petitioner is in custody for the last 18 months. The fact that the petitioner is involved in another case being FIR No. 762/19 cannot be a ground to deny bail to the petitioner in the present case where the maximum sentence is seven years.

7. Laying down the parameters for granting or refusing to the grant of bail, in Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, the Supreme Court observed as under:

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other

circumstances, the factors to be borne in mind while considering an application for bail are:

- i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- ii. nature and gravity of the accusation;*
- iii. severity of the punishment in the event of conviction;*
- iv. danger of the accused absconding or fleeing, if released on bail;*
- v. character, behaviour, means, position and standing of the accused;*
- vi. likelihood of the offence being repeated;*
- vii. reasonable apprehension of the witnesses being influenced; and*
- viii. danger, of course, of justice being thwarted by grant of bail.*

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal.”

8. This Court is of the opinion that the delay of one-and-a-half months in filing the FIR, the improvement made by the complainants in subsequent statements there is a reasonable ground to believe that the petitioner has not committed the offence punishable under Section 12 of POCSO Act. As stated earlier, the petitioner is in custody for the last 18 months and the material on record reveals that the petitioner has roots in the society and there is no danger of the accused absconding or fleeing from justice.

9. The charge-sheet has been filed. The petitioner is in custody for the last 18 months. In view of the present pandemic it is unlikely that the trial will commence in the near future. Keeping all these facts in mind, this Court

is inclined to grant bail to the petitioner on the following conditions:

- a) The petitioner shall furnish a personal bond in the sum of ₹50,000/- with one surety of the like amount who should be a relative of the petitioner, to the satisfaction of the Trial Court/Duty Magistrate.
- b) The petitioner shall not leave NCT of Delhi without prior permission of this Court.
- c) The petitioner shall report to the concerned Police Station every alternate day at 10:30 AM and should be released after completing the formalities within half an hour.
- d) The petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- e) The petitioner has given his address in the memo of parties as HR-130, first floor, Street No.6, Pul Prahladpur, Delhi. The petitioner shall continue to reside at the same address. In case there is any change in the address, the petitioner is directed to intimate the same to the IO.
- f) The petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses.
- g) Violation of any of these conditions will result in the cancellation of the bail given to the petitioner.

10. It is made clear that the observations made in this order are only for the purpose of grant of bail and cannot be taken into consideration during the trial.

11. Accordingly, the bail application is disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J.

AUGUST 02, 2021

Rahul

