

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 10th DECEMBER, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 2542/2021**

SURAJ

..... Petitioner

Through: Mr. Rajpal Kasana, Advocate.

versus

STATE

..... Respondent

Through: Ms. Neelam Sharma, APP for the
State with SI Sandeep, PS Mahrauli.
Ms. Neha Mathen, Advocate for the
prosecutrix

+ **BAIL APPLN. 3082/2021**

LAL MOHAMMAD ALIAS ATUL

..... Petitioner

Through: Mr. Amit Kumar and Mr. Dinesh
Kumar & Mr. Rohit Yadav,
Advocates.

versus

GOVT OF NCT DELHI

..... Respondent

Through: Ms. Neelam Sharma, APP for the
State with SI Sandeep, PS Mahrauli.
Ms. Neha Mathen, Advocate for the
prosecutrix

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The present applications have been filed with a prayer for grant of regular bail to the petitioners in FIR No.427/2018 registered at Police Station Mehrauli under Sections 376, 376D, 506 and 34 IPC read with

Section 6 of the POCSO Act.

2. The facts leading to the registration of the present FIR are as follows:-
 - i. The complainant/prosecutrix states that she is a 17 year old girl studying in 9th Standard and that she was residing with her mother who was working as a house maid.
 - ii. It is stated that the prosecutrix met accused Suraj in 5th Standard through the Petitioner Lal Mohammed and his sister-in-law/Hasina Khatoon. It is stated that they developed a friendship and he used to take her for walks. The FIR further states that mutual friendship developed. It is stated that 2-3 months into their friendship, Suraj took her to Inderpuri forest post school hours and raped her.
 - iii. It is stated that Suraj took explicit videos of the prosecutrix and then compelled her to come to the forest again where after raping the prosecutrix, the friends of Suraj, namely, Rohit, Sachin, Anurag, Atul @ Lal Mohammad arrived at the spot.
 - iv. It is stated that they blackmailed the prosecutrix by showing her explicit videos of herself and threatened to circulate and upload them on the internet if she did not have intercourse with all of them.
 - v. It is stated that this began a continuous sequence of exploitation of the prosecutrix and that all the five persons mentioned in the FIR, including the petitioner herein, ravaged her after blackmailing her.
 - vi. It is stated that despite resistance shown by the prosecutrix to meet Suraj, he would send letters through children and demanded to meet her. Further, when the prosecutrix resisted meeting him, he sent letters where he would threaten the prosecutrix with horrific

consequences, namely that he would upload her videos and would kidnap her younger sister.

vii. It is stated that in March 2018, the prosecutrix missed her menstrual cycle and realized that something was amiss. It is stated that she gathered strength from her peers at school and informed her mother of these events of collective exploitation. Accordingly, the present FIR was lodged.

viii. The prosecutrix was thereafter sent to AIIMS hospital for a complete medical examination and medical counselling was done for the victim.

ix. After the relevant examination was done, it was found that the prosecutrix had been impregnated and permission was sought for the medical termination of her pregnancy. It was done on 14.07.2018 after obtaining court orders.

x. The Section 164 CrPC statement was recorded before the learned Metropolitan Magistrate, Saket Courts on 18.07.2018. The statement under Section 164 CrPC matches with Section 161 CrPC statement of the prosecutrix and from the contents of the FIR and there is no discrepancy in any of the above statements.

xi. The Petitioners were arrested on 10.07.2018. During investigation, the mobile phones of all the accused persons were seized by the Police, their call records were analysed and were sent for FSL examination. It was also found that the age of the prosecutrix at the time of registering the FIR was 17 years which had been verified via her school records. Chargesheet was filed on 18.09.2018 and charges have been framed.

xii. The petitioners' application for regular bail was dismissed vide order dated 03.05.2021 by the learned Trial Court stating that the role of the petitioner has been clearly defined and the accusation has been specifically attributed to the petitioner, given that with the severity of the offence and the duration of continuous exploitation, enlarging the petitioner on bail at this stage would not be prudent. The statement of the victim was yet to be recorded in trial, therefore, bail could not be granted.

3. Heard Mr. Rajpal Kasana, learned counsel for the Petitioner, in BAIL APPLN. 2542/2021, Mr. Amit Kumar, learned counsel for the Petitioner in BAIL APPLN. 3082/2021, Ms. Neelam Sharma, learned APP for the State, Ms. Neha Mathen, learned counsel for the prosecutrix, and perused the material on record.

4. Mr. Amit Kumar, learned counsel for the petitioner submits that the co-accused, namely, Anurag and Ravinder have been released on bail by the Court *vide* order dated 07.12.2020 and 19.02.2021 respectfully, and, therefore, claims parity on that ground. Further, it is submitted that the custodial interrogation of the petitioner is no longer required as chargesheet has been filed along with supplementary chargesheet, charges have been framed by the Trial Court and the statement of the victim has also been recorded by the Trial Court.

5. The learned counsel for the petitioner submitted that an analysis of the CDR records of the petitioner and the other accused shows that no incriminating material therein was found. Further, it is stated that the forensic analysis of the clothes of the prosecutrix showed that no DNA of the petitioner was to be found. He further submitted that there is an

unexplained and inordinate delay of four years in filing of the FIR. It has also been submitted that the sister of the petitioner herein, who stated to have been instrumental in introducing the prosecutrix to accused Suraj has been discharged from the case.

6. Ms. Neelam Sharma, learned APP, opposes the bail application stating that the petitioner has been accused of a heinous offence whereby she was blackmailed for a prolonged and continuous period of time and then compelled to have intercourse with the accused petitioners and four other accused mentioned in the FIR. She submits that the contents of the FIR, the Section 161 CrPC statement of the prosecutrix and Section 164 CrPC statement recorded before the Magistrate a complete facsimile of each other and is therefore iron-bound. It is submitted that this horrific brutalisation of the prosecutrix has led her to be under constant fear and the mental state of the prosecutrix has been hampered over the last four years where she could not continue to live a normal life as a teenager and her youth had been snatched away. She counters the argument of the learned counsel for the petitioner and submits that the contents of the CDR and the forensic reports are a subject matter of trial and not of any relevant consideration for grant of bail to the Petitioners. She submits that the framing of charges or the discharge of one of the co-accused (sister-in-law of the petitioner herein i.e. Lal Mohammad Alias Atul) bears no consequence as the punishment under Section 6 of the POCSO Act is life imprisonment extending upto the natural life of the accused, therefore, bail ought not be granted to the petitioner.

7. Ms. Neha Mathen, the learned counsel for the prosecutrix, has made submissions opposing the grant of bail to the petitioner. The learned counsel for the prosecutrix/victim sought to distinguish the role ascribed to the

petitioner from the roles attributed to co-accused/Ravinder and co-accused/Anurag who have been granted bail by this Court. She submitted that the bail application of Ravinder was heard and decided without issuing notice to the prosecutrix/victim as mandated under Section 439(1)(a) of the CrPC. It is further contended that this Court had granted bail to Ravinder primarily on the ground that his name has not been specified by the victim in her statement under Section 164 Cr.P.C which is not correct. She states that, unfortunately, the victim has not been given notice. This fact could not be brought to the notice of this Court at the time when bail was granted to Ravinder. It is further contended that Suraj is the main accused who had committed the first offence of rape against the prosecutrix who was only around 13 years of age at the time when she was first assaulted by Suraj.

8. The purpose of the POCSO Act is to treat minors as a class by itself and to treat them separately so that an attempt to sexual assault or harass or molest or abuse the minor entails graver and stricter consequences. The ultimate purpose of this law is the paramount well-being of the child and to protect minors from flagrant violence inflicted on them.

9. The facts of the present case pose a simple question as to whether the liberty of the petitioner can be dispensed with, in light of the continuing nature of the heinous act. The Petitioner's name has been mentioned both, in the FIR as well as the Section 164 statement by the prosecutrix before the learned Metropolitan Magistrate.

10. The factors that a court needs to remind itself while deciding a bail application are:-

- i. Whether there is a *prima facie* reasonable ground that the accused has committed the offence.

- ii. Nature and gravity of the accusation.
- iii. Severity of the punishment in the event of conviction.
- iv. The danger of absconsion of the accused.
- v. Reasonable apprehension that witnesses may be influenced or evidence may be tampered with.
- vi. The likelihood of the offence being repeated.
- vii. The danger of justice or processes thereof being stifled by grant of bail.

11. The prosecutrix was a minor when she was first assaulted by Suraj. It is the allegation of the prosecutrix that a video had been shot and the prosecutrix was constantly threatened that if she did not agree with the demands of Suraj, the video would be circulated. A reading of the statements under Section 164 Cr.P.C recorded before the Magistrate would show that both the petitioners in the instant petition have been named by the prosecutrix with Suraj being the prime accused. It is evident from the material on record that this Court granted bail to Anurag Yadav solely on the basis of the fact that Ravinder has been granted bail. In the statement under Section 164 Cr.P.C, it is categorically mentioned that Suraj first raped the prosecutrix and he made a video of the incident, and on the next day four of his friends i.e. Atul (the petitioner herein), Sachin, Anurag and Rohit came to Inderpuri forest and Suraj started showing the video to the prosecutrix and said that if the prosecutrix did not agree with his demands, he would upload the video on the internet and after that she was constantly threatened.

12. The prosecutrix has categorically stated that she knows five out of six boys who raped her and she does not remember the name of the sixth boy

but she can identify him.

13. As rightly pointed out that while granting bail to Anurag, the co-accused, no notice was given to the prosecutrix and it could not be made out that Ravinder and Anurag. Ravinder do not stand on the same footing. Anurag has been specially named in the statement under Section 164 Cr.P.C. The principle of parity, therefore, cannot be applied in the facts of this case.

14. Rape is an offence which not only violates the physical body of the survivor, but is also capable of inflicting trauma on the mental psyche which can end up persisting for years. Keeping in mind this nature of the offence, this Court inhabits a duty to consider such matters with utmost care.

15. In this case, the prosecutrix has been consistently traumatised since she was 13 years of age till she attained 16 years of age. The prosecutrix became pregnant also. Charges have been framed against all the accused, including the petitioners herein, for offences under Sections 376(2), 376(D), 506(ii) read with Section 34 IPC and Section 6 of the POCSO Act. Punishment under Section 6 of the POCSO Act is imprisonment for a minimum period of 20 years which can extend up to life, which means the remainder life of the accused. The petitioners are, therefore, accused of a very serious offence and the fact that they can threaten the prosecutrix cannot be ruled out.

16. This Court is, therefore, not inclined to grant bail to the petitioners till the examination of prosecutrix.

17. Considering the fact that the petitioners are youngsters, the Trial Court is requested to expedite the trial and examine the prosecutrix within a period of six months from today.

18. The petitioners are at liberty to approach the competent Court after

the prosecutrix is examined.

19. With these observations the bail applications are dismissed.

SUBRAMONIUM PRASAD, J

DECEMBER 10, 2021

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