



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

CRL.M.C. 1909/2020

Reserved on : 21.12.2021

Date of Decision : 05.01.2022

IN THE MATTER OF:

MISS M (MINOR)

..... Appellant

Through: Mr. Ashish Kumar and Mr. Zishaan
Iskandari, Advocates

Versus

STATE OF NCT DELHI & ANR.

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP for State
Mr. Jaan Mohd., Advocate for respondent No.2

CORAM:

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
(VIA VIDEO CONFERENCING)**

J U D G M E N T

MANOJ KUMAR OHRI, J.

1. The present petition has been filed under Article 227 of the Constitution of India read with Section 439(2) Cr.P.C. on behalf of the petitioner/complainant assailing the order dated 19.08.2020 passed by the learned Additional Sessions Judge-06, Special Court (POCSO), Shahdara District, Karkardooma Courts, New Delhi in SC No. 274/19, whereby respondent No. 2/accused was released on regular bail in FIR No. 127/2019 registered under Sections 376/506 IPC and Section 4 of the POCSO Act at P.S. Jyoti Nagar, Delhi.



2. Mr. Ashish Kumar, learned counsel for the petitioner, submitted that the bail has been granted to respondent No. 2 on extraneous reasons. He further submitted that the child victim had alleged that after committing the offence, respondent No. 2 had threatened her not to report the incident to the police and also gave her life threat. It was also submitted that the mother of the child victim is yet to be examined.

Learned counsel contended that the bail applications filed by respondent No. 2 were earlier dismissed twice by the concerned Court on 23.05.2019 and 13.08.2019 and a third bail application came to be filed on 18.08.2020, which was listed for the first time on 19.08.2020, on which date, respondent No. 2 was granted regular bail. He also assailed the aforesaid order on the ground that the same was passed in violation of Practice Directions No. 67/Rules/DHC, issued by this Court on 24.09.2019 in compliance of the mandate of the amended Section 439 Cr.P.C. which came into effect on 21.04.2018, as well as Section 40 of the POCSO Act. It was submitted that at the time of hearing of the bail application, though the petitioner's mother joined the V.C. proceedings alongwith the Investigating Officer, however, he, being the petitioner's counsel, could not join due to technical issues. In this regard, messages were sent and calls were made to the Reader of the concerned Court. On the same day, at 4:15 p.m., an email was also sent to the Reader requesting to place the information contained therein before the concerned Court and seeking necessary directions.

In support of his contentions, learned counsel placed reliance on the decisions in Reena Jha and Another v. Union of India and Others reported as **2020 SCC OnLine Del 1389** and Miss G. (Minor) Thr. her v. State of NCT of Delhi and Another reported as **2020 SCC OnLine Del 629**.



3. Mr. Jaan Mohd., learned counsel for the accused/respondent No.2, on the other hand, supported the impugned order and submitted that respondent No. 2 has been falsely implicated in the present case. It was contended that respondent No. 2 is around 72 years of age and he has remained in custody since 20.04.2019 to 19.08.2020, when he was directed to be released on bail by the impugned order. Lastly, it was submitted that the child victim as well as the concerned doctor have already been examined.

4. Learned APP for the State supported the present petition and submitted that the child victim has been consistent in her statements recorded during investigation as well as before the Court. It was also submitted that as per the MLC of the child victim, the hymen was found to be freshly torn. Further, the *capri* of the child victim was sent for FSL examination and the blood stains found on the same matched with her blood. Learned APP, on instructions, also submitted that besides the child victim, the concerned doctor as well as the school teacher have also been examined.

5. I have heard learned counsels for the parties as well as learned APP for the State and have also gone through the impugned order as well as the Trial Court Record.

6. The FIR in the instant case was registered on a complaint made by the mother of the child victim, who stated that at around 10:00 a.m. on 20.04.2019, when her daughter returned after playing, she noticed blood stains on her *capri*. On enquiry, she was told by the child victim that she had gone to play at the house of her friend 'M', where her friend's grandfather called her inside the house. He gave her chips and took her to the staircase of the house and there, he inserted his finger in her private part. The child



victim also told her mother that on the previous day, i.e. on 19.04.2019, respondent No. 2 had done '*galat kaam*' with her at about 07:00 p.m.

The child victim is stated to have been about 7 years of age at the time of the incident. As per the MLC, on local examination, '*old blood smeared on vulva hymen torn freshly*' was noticed and '*post-fourchette*' was found torn. The said MLC was conducted on 20.04.2019 at 03:25 p.m., i.e. on the day of the second alleged incident.

7. In her statement recorded under Section 164 Cr.P.C., the child victim recounted that respondent No. 2 had forcibly taken her to a staircase while stating that he would give her chips. Upon reaching there, he inserted his finger in her private part, which resulted in bleeding. It was further stated that respondent No. 2 had threatened to kill the child victim if she disclosed the incident to her mother and that he had committed similar act earlier as well.

8. During the course of trial, the child victim has been examined as PW-3. She duly identified respondent No. 2 as the accused person and deposed that he had taken her to a staircase by stating that he would give her chips. She further deposed that he had inserted his finger in her private part and threatened to kill her if she disclosed the incident to her mother. She also deposed that respondent No. 2 had committed similar act on earlier occasion as well.

In cross-examination, the child victim denied the suggestion that no such incident had taken place and/or that she had sustained the injury by falling in the street drainage. A suggestion to the effect that she was deposing falsely at the instance of her mother was also denied by the child victim.



9. On a *prima facie* view of the statements of the child victim during investigation and trial as well as her MLC, this Court is inclined to interfere with the impugned order granting bail to respondent No. 2, as the same suffers from perversity and is unsustainable under the facts and circumstances of the case.

10. Accordingly, the present petition is allowed and the impugned order dated 19.08.2020 is set aside. The concession of regular bail granted to respondent No. 2 stands withdrawn. The bail bonds are cancelled and respondent No. 2 is directed to surrender before the concerned jail authority forthwith.

11. Needless to state, nothing stated hereinabove shall amount to an expression on the merits of the case as the observations are only *prima facie* and have been made to dispose of the present petition.

12. A copy of this order be communicated electronically to the concerned Trial Court.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 5, 2022

na