

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 23.09.2022

Date of decision: 15.11.2022

+ BAIL APPLN. 2159/2022

ANIL

..... Petitioner

Through: Mr. Abhinandan Gautam, Ms.
Samriddhi & Mr. Suresh Sisodia,
Advocates.

Versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Shoaib Haider, APP for
State with SI Jagdish, PS
Fatehpur Beri.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J

1. The applicant, vide the present application seeks the grant of regular bail in relation to FIR No.507/2018, PS Fatehpur Beri under Section 376 Indian Penal Code, 1860 r/w Sections 4 & 6 of the POCSO Act, 2012 submitting to the effect that he is incarcerated since 07.12.2018.

2. The present application is the third bail application filed by the applicant herein before this Court with the first bail application i.e. Bail Appln. No.449/2019 having been dismissed as withdrawn vide order dated 23.04.2019 and vide order dated

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17.09.2020 in Bail Appln. No.2437/2020, i.e. the second bail application filed by the applicant seeking the grant of bail was declined with observations therein to the effect:-

“..... On a consideration of the rival submissions made on behalf of either side without any observations on the trial that is in progress, taking into account the factum that the deposition of the prosecutrix is yet to be completed and the testimony of her parents also yet to be completed, coupled with the factum that both through her deposition on oath to the extent that it has been recorded and through her statement under Section 164 of the CrPC the prosecutrix has stated in relation to the alleged commission of rape on her by the petitioner and taking into account the young age of the prosecutrix, she being a minor at the time of the alleged commission of the offence being only 14 years of age, there is no ground whatsoever to grant bail to the applicant.

The petition is declined.”

3. It has been submitted on behalf of the applicant that the cross-examination of the prosecutrix has since been conducted and that the prosecution version set forth through the FIR, MLC and the statement under Section 164 of the Cr.P.C., 1973 and the depositions made by the prosecutrix before the learned Trial Court are all at variance. It has also been submitted on behalf of the applicant that there are no injuries i.e. internal or external recorded in the MLC of the prosecutrix and no sexual assault can thus be attributed to the applicant.

4. The State through its status report dated 15.08.2022 submitted under the signatures of the SHO, PS Fatehpur Beri vehemently opposes the prayer made by the applicant seeking the grant of bail. It has been submitted through the said status report

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that on the complaint of the prosecutrix Ms. 'P', the FIR No. No.507/2018, PS Fatehpur Beri under Section 376 of the Indian Penal Code, 1860 & Sections 4/6 of the POCSO Act, 2012 was registered against the applicant herein, wherein, the complainant stated that she was a student of 9th class and for the past one year she was taking tuitions from the applicant herein, a resident of Sanjay Colony Bhati Mines and that on 5/12/2018, the applicant herein called her mother and asked her to send the complainant for tuition and before going for tuition she went to her friend Priya's house and took Priya along with her to the applicant's house for tuition and when they reached his house they saw that nobody else was there at his house. As per the status report, the prosecutrix is stated to have told the applicant that since there was no one who had come that day, she would go back to which the applicant gave a note to her on which it was written that you should come to the bathroom after her friend named Priya had left the place and thereafter the applicant herein had sent Priya to call Anjali (student) from her house and asked the prosecutrix to accompany him inside the bathroom and she refused to go inside the bathroom, thereafter the applicant caught hold of her hand and pulled her inside the bathroom and forced himself upon her and raped her. As per the prosecution version, the prosecutrix narrated the entire incident to her mother after which she got her complaint recorded at the Bhati Mines Police Post.

5. It is indicated further through the status report that the prosecutrix/victim was medically examined at the AIIMS

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Hospital vide MLC No 12452/2018, wherein, it was recorded to the effect:-

"As told by P** she was called by her tuition master Anil to his residence in Bhati mines at 2:30 PM 6/12/2018 she went to his residence with another friend but Anil sent her friend to another place on some pretext then he forcefully pulled P***** in to the bathroom & sexually assaulted her".***

6. It is further indicated through the said status report dated 15.08.2022 that on 07-12-2018, the applicant was interrogated about the incident, though, initially he tried to mislead but thereafter he admitted his guilt and was arrested after the incriminating evidence was found against him. The statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix is stated to have been recorded on 7/12/2018 and the age of proof of the victim was also collected by the Investigating Agency showing her date of birth to be 05.09.2004 from the school she first attended as per her school certificate.

7. The State has further submitted through its status report that during the course of investigation, the exhibits have been sent to the RFSL and after analysis, the result has been filed through the supplementary charge sheet before the learned Trial Court. It has further been submitted by the State that the applicant is involved in a heinous case of rape and sexual assault with a minor girl that the applicant is a married man with a baby girl and despite the same he had raped the victim who is of 14 years of age; that the minor victim in her testimony before the learned Trial Court and in her statement under Section 164 of the

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Cr.P.C. has corroborated the prosecution version. It is inter alia submitted by the State that the applicant is a neighbour of the victim and if he is granted bail, he would be flee from the trial and would threaten and influence the prosecution witnesses.

8. The applicant through his application submits that he has been falsely implicated in the instant case because he was not paid the tuition fees by the prosecutrix and her family members, as a consequence of which a dispute had arisen and because of the non-payment of tuition fees, the applicant had scolded the prosecutrix on 05.12.2018 and had expelled her from his tuition classes with which the prosecutrix's family members had been enraged and humiliated and had come to his house by the evening of 06.12.2018 requesting the applicant to tender an apology from the applicant and his family members to which the applicant and his family members did not concede to and thus, the family of the complainant had threatened and conspired to falsely implicate the applicant in the present case.

9. Inter alia, the applicant submits that there is even a delay in the registration of the FIR, which was registered on 07.12.2018 in relation to the alleged incident of the date 06.12.2018 and thus, the FIR is completely an afterthought and cannot be relied upon. The applicant further submits that he himself had gone to the police station before the prosecutrix and her family members to avoid the registration of the vexatious FIR against him but it was to no avail. The applicant further submits that the prosecutrix reached the AIIMS, New Delhi for her

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medical inspection along with her mother and W/Ct. Vijeta at 1:15 am on 07.12.2018 and subsequently MLC no. 12452/2018 was prepared on examination being conducted by Dr. Sheena Sobti, Sr. Resident, AIIMS, wherein, it had been observed to the effect:-

- “i. No abnormality detected with Labia Majora and Labia Minora***
- ii. Hymen torn.***
- iii. Speculum Examination could not be conducted because as patient did not cooperate.***
- iv. Place of ejaculation : On his bed.***
- v. Last menstrual period : 06.11.2018.”***

10. The applicant has thus submitted that it is a matter of record that there were no injuries internal or external observed by the doctor on the body of the prosecutrix and that the doctor had also collected various samples and clothes of the prosecutrix which were later handed over to the police vide a seizure memo and that, on 07.12.2018 the statement under Section 164 Cr.P.C. of the prosecutrix was recorded wherein she fumbled whilst giving details of the alleged assault. Inter alia, the applicant in his application itself states that the prosecutrix was a child of a very tender age and thus, she was unable to narrate the whole concocted story as it had been narrated by her parents the previous day before the police.

11. The applicant has further submitted that the prosecutrix did not mention before the Court that the sexual assault on her had been committed in the bathroom and it is unlikely that she would have forgotten this detail if it had been truthful, because she has

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so stated at the time of MLC. The applicant has thus submitted that there are vital contradictions and improvements in the statement recorded, in the FIR, in the MLC, in the statement under Section 164 of the Cr.P.C. and the three depositions made by the prosecutrix before the Ld. Trial Court.

12. The applicant has further submitted that as mentioned in the MLC, the ejaculation had been made by the applicant on the bed and it is submitted by the applicant that the same is impossible when the allegations against the applicant relate to his having committed the alleged rape on the prosecutrix in the bathroom as per the prosecution version. The applicant has further submitted that in the absence of any injury internal or external, the presence of blood on the clothes of the prosecutrix cannot be attributed to any sexual assault, in fact the MLC also mentions that the prosecutrix's last menstrual period was on 06.11.2018 which means the blood could be from her menstrual period.

13. Inter alia, the applicant submits that the prosecution has relied heavily on a paper slip allegedly given by the applicant to the prosecutrix asking her to go to the bathroom to bring forth the culpable *mens rea* of the applicant but submits that the applicant was made to write that slip in the police station. The applicant has also placed reliance on the testimony of the prosecutrix to contend to the effect that on 15.09.2021 in her deposition on oath, the prosecution version had been completely shattered by

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the testimony of the prosecutrix itself which brought forth the falsity of the entire prosecution version.

14. The applicant has further submitted that whilst adjudicating an application for release of the prosecutrix from the shelter home, vide order dated 15.01.2022, it had been observed to the effect:-

"It is stated by Ld. Counsel for complainant/victim that the victim has changed her version and not supported the version the prosecution in her cross-examination as threats were extended by the friends and relatives of the accused and they threatened to kill the victim and her only brother if the victim did not change her statement..."

and it has thus been submitted on behalf of the applicant that the prosecutrix however during her re-examination on 23.04.2022, starkly contradicted the submissions made by her counsel and stated that she had changed her statement because the applicant's parents allegedly met with her parents and requested them to change her statement, that his father also stated that he had suffered from a heart attack and they used to weep in front of her and her family to change her statement.

15. Inter alia, the applicant submits that there was no CDR taken in the matter to ascertain the veracity of the alleged phone call made by the applicant calling the prosecutrix to his home, that the Trial Court had erred in sending the prosecutrix to a shelter home when she deposed against the prosecution case on 15.09.2021, which led the prosecutrix being separate from her parents for a period of three months and this dissuaded her from

speaking the truth on the date of her final deposition on 23.04.2022; that the deposition of the prosecutrix on 15.01.2022 is in stark contradiction to the deposition of the prosecutrix on 23.04.2022, that the applicant is a young boy with his whole life ahead of him and he has already spent almost four crucial years of his youth behind the bars on false allegations and the applicant be thus released on bail.

16. On a consideration of the submissions that have been made on behalf of either side, without any observations on the merits or demerits of the trial that is in progress in the instant case, in as much as, the statement under Section 164 of the prosecutrix dated 07.12.2018 recorded one day after the incident as well as the deposition of the prosecutrix on the date 23.04.2022 as well as her examination in chief recorded on 06.05.2019 substantially corroborate the prosecution version in relation to all material particulars, though, there is a variation in the statement dated 15.09.2021, wherein, she has retracted from her examination in chief earlier, taking into account the factum that there is corroboration in the testimony of the prosecutrix of her having identified the slip Ex.PW1/E given to her by the applicant as well as the factum that the hymen of the prosecutrix in her medical examination on the date 07.12.2018 at 12.58.54 AM after the alleged incident of rape on 06.12.2018 at 2.30 PM was found to be torn, coupled with the presence of semen on the undergarments of the applicant as per the RFSL result dated 30.07.2019, coupled with the factum that the prosecutrix was

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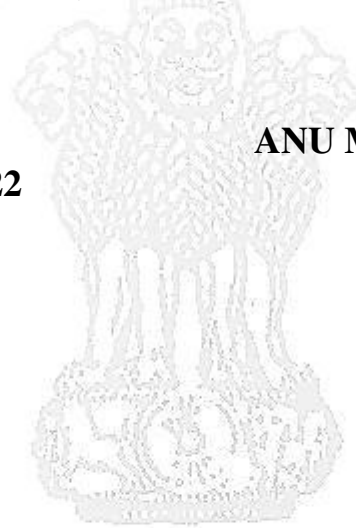
only 14 years of age at the time of the alleged commission of the offence, in the facts and circumstances of the case, it is not considered appropriate to allow the prayer made by the applicant seeking the grant of bail, in as much as, as already observed hereinabove, the deposition of the prosecutrix in her initial examination in chief dated 06.05.2019 & 23.04.2022 corroborated materially the statement under Section 164 of the Cr.P.C. of the prosecutrix.

17. The application is thus, declined.

ANU MALHOTRA, J.

NOVEMBER 15th, 2022

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