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

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Date of decision: 20th July, 2023

+ W.P.(CRL) 817/2023 and CRL.M.A. 7494/2023 (for stay)

SADIQUE MALIK

..... Petitioner

Through: Mr.Arvind Kumar and Mr.Ankit
Kumar Vats, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Ritesh Kumar Bahri, APP for the
State.
SI Akshay, PS Shaheen Bagh.
Mr.Fidel Sebastian, Advocate for
the Prosecutrix.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present writ petition has been filed seeking the following reliefs:

“A. Allow the present petition and pass an appropriate writ in the nature of mandamus or certiorari directing that the proceeding arising out of FIR 199 OF 2022 registered at PS: Shaheen Bagh registered U/S: Section 354D/506/363/328 of IPC & Section 12 of POCSO Act be transferred to Juvenile Justice Board for inquiry as per provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, and/or pass an order/appropriate writ directing the Ld. ASJ-01, Special Court, POCSO, South East, Saket Courts, Delhi

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W.P.(CRL) 817/2023

Page 1 of 5



to frame separate charge for separate offence and conduct separate trial of the offence alleged keeping in view the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015,

B. Pass an order/ appropriate writ quashing the memorandum of charge dated 28.09.2022 framed by Ld. ASJ-01, Special Court, POCSO, South East, Saket Courts, Delhi in Sessions Case No 474 of 2022.”

2. Learned APP for the State submits that the Status Report filed by the State in Bail Application No.379/2023 may be read as the Status Report in the present case as well.
3. In the present case, a complaint was filed against the petitioner alleging that the petitioner used to follow the prosecutrix and one day in December 2019, forced her to drink something on gun point, post which the prosecutrix lost consciousness and does not remember what happened to her.
4. According to the complaint, after the alleged incident, the petitioner kept on regularly harassing and threatening the prosecutrix and her family members. The petitioner messaged her on social media sites like Instagram and blackmailed her that if she does not meet him, or take pictures with him, he will kill her family. The petitioner started to upload her pictures on social media and uploaded a fake nikahnama on Instagram. Additionally, the petitioner used to stand near her house and threaten her with acid attack.
5. The petitioner can be seen stalking and harassing the family members of the prosecutrix in the WhatsApp chats dated 4th July 2021 and 5th July 2021, copy of which have been attached as Annexure 6 of the Status Report.
6. The FIR was registered on 27th May, 2022 and the petitioner joined investigation on 31st May, 2022, on which date, he was arrested. The charges



were framed against the petitioner by the Trial Court on 28th September, 2022.

7. The counsel for the petitioner submits that he was a minor on the date of commission of the offence and he should have been referred to the Juvenile Justice Board for making an appropriate inquiry into the fact that whether the petitioner is a minor or not.

8. Vide order dated 1st March, 2023, the aforesaid submission of the petitioner has been rejected by the Trial Court by holding as under:

*“The arguments raised on behalf of defence that accused was minor when the incident of December, 2019 had occurred and that charge was even framed for the said incident is not correct. The argument is based on the wrong premise. Perusal of the record reveals that as per the prosecution case, **the accused was involved in the incidents of stalking/following the victim from December 2019 till the registration of the FIR on 27.05.2022. The accused was involved in commission of offences during the aforesaid period i.e. between December, 2019 till 27.05.2022 and during this period accused attained the age of majority.** In other words, during the period when accused became major from minor, he continued to commit offences and hence, there is no law as per which the accused can be separately tried as an adult and as a juvenile (child in conflict with law).*

Therefore, in view of the above discussion, the application holds no merit and is accordingly stands dismissed.”

9. In this regard, a reference may be made to Section 472 of the Criminal Procedure Code, 1973 (CrPC) which is set out below for ease of reference:

“472. Continuing offence.—*In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.”*



10. Learned ASC appearing on behalf of the respondent relies upon the judgement of the Supreme Court in **Vikas Chaudhary v. State (NCT of Delhi)**, (2010) 8 SCC 508 to submit that the offence of the petitioner is a continuing offence in accordance with Section 472 of the CrPC. Relevant observations from the said judgment are set out below:

“23. There is little doubt that the main object of the offence committed by the accused was to extort money from the parents of the deceased victim by way of ransom even after the death of the victim, as will be evident from the subsequent phone calls made right up to 11-3-2003, asking for ransom. The offence under Section 364-A IPC did not come to an end only on account of the death of the victim since ransom calls had been made even though the victim had been killed.

24. It is no doubt true that if the initial date of abduction, namely, 18-1-2003, is taken to be the date on which the offence under Section 364-A IPC had been committed, as an isolated event, the petitioner would have been a minor within the meaning of the Juvenile Justice Act, 2000. However, if 11-3-2003, being the date on which the last ransom call was made, is taken as the date on which the aforesaid offence was committed, then the petitioner would have ceased to be a minor and the abovementioned Act would not apply to him.

25. Section 472 CrPC supports the submissions made both by Mr Mohan Jain, learned Additional Solicitor General and Mr Sushil Kumar. We are unable to accept Mr Sinha's submission that the offence under Section 364-A IPC stood abrogated upon the death of the victim. On the other hand, the continuation of ransom calls being made, even after the death of the victim, converts the offence into a continuing offence within the meaning of Section 472 CrPC.”



11. In the present case, I have perused the FIR filed on behalf of the respondent. A reading of the FIR clearly suggests that the petitioner was stalking/ following the victim from December, 2019 on a continuous basis till the registration of the FIR. Additionally, the Status Report filed by the State states that the petitioner continued committing the offence, which is evident from the WhatsApp chats dated 4th July 2021 and 5th July 2021 in Annexure 6 of the Status Report, even after he became a major on 22nd May 2020. Therefore, this would constitute a continuing offence.

12. In view thereof, I do not find any infirmity in the order passed by the Trial Court and the matter was not required to be referred to the Juvenile Justice Board.

13. Accordingly, the petition is dismissed.

14. All pending applications are disposed of.

AMIT BANSAL, J

JULY 20, 2023

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