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

Date of Decision: 08.05.2023

+ **BAIL APPLN. 1501/2023**

SABUDDIN @ SABU

..... Petitioner

Through: **Mr. Rajpal Singh, Advocate**

versus

THE STATE GOVT OF NCT DELHI

..... Respondent

Through: **Mr. Manoj Pant, APP for the State**
Mr. Vinit Kumar, Inspector PS
Harsh Vihar

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

CRL.M.A. 12116/2023 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The instant application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of applicant seeking grant of regular bail in case FIR bearing no. 827/2021, registered at Police Station Harsh Vihar, Delhi for the offences punishable under Sections 377/506/34 of the Indian Penal Code, 1860 ('IPC').

4. Briefly stated, the case of prosecution is that the victim boy aged about 06 years old was sexually assaulted by the accused persons on

16.10.2021. It was alleged that when the victim was playing outside his house at around 6 PM, the accused persons namely Sabu and CCL I had come and given him Rs.10 and had asked him to bring some eatables. Thereafter, they had taken the victim to a lonely place, where they had pulled down the shorts of the victim and had committed carnal intercourse with him. When the victim had started crying and weeping, the accused persons had run away from the spot and the victim had returned back to his house with blood oozing from his private parts and his shorts were stained with blood as well. Accordingly, the present FIR was registered. During the course of investigation, statement of victim was recorded under section 164 Cr.P.C. wherein he reiterated his allegations, and his medical examination was conducted.

5. It is stated by learned counsel for accused/applicant that applicant is in judicial custody since 17.10.2021 and since the testimony of victim already stands recorded and the MLC prepared does not support the case of prosecution, therefore, the applicant be granted bail. It is also stated that the mother of victim child has already compromised with the accused and the settlement deed is already on record and that she has no objection if the present applicant is granted bail.

6. Learned APP for the State, on the other hand, has opposed the present bail application and has stated that the applicant has committed a heinous and serious offence. It is stated that applicant had committed sodomy on a child who was only six years of age, and the medical record supports the case of prosecution and even the victim child has also supported the case of the prosecution.

7. I have heard arguments on behalf of both the parties and have gone

through the case file.

8. In the present case, the victim child, who was only six years of age, was taken to a lonely place by the accused persons on 16.10.2021 when he was playing outside his house on the pretext of getting him some eatables and was thereafter sexually assaulted by way of carnal intercourse and he had started bleeding, subsequent to which, present FIR came to be registered on the complaint of the mother of the victim. The statement of the victim recorded under Sections 161 and 164 of Cr.P.C. and in the Court reveals that the victim child has clearly supported the case of prosecution and had identified the accused persons. Though the learned counsel for the applicant has stated that the medical examination report does support the prosecution case, to the contrary, the medical examination report of the victim child supports the case of prosecution and reads as under:



9. As per MLC, the doctor observed in detail as mentioned above. It shows that the child had pain in the anal region and was bleeding per rectum. The doctor observed a 'linear skin laceration 3x1 cm' on the anus area of the victim child and he was referred to surgery department for further evaluation which clearly shows that the sexual assault was committed with force.

10. The child was only six years of age and the mental trauma and physical pain of the child cannot be expressed in words. The gravity of the offence is aggravated even further by the fact that five bail applications of the accused/applicant were rejected, and now they have placed on record a Compromise Deed with the mother of the victim child wherein it is stated that the matter has been settled between the parties upon payment of Rs. 2 lakhs, which in itself speaks volumes about how desperately accused persons have tried to win over the family of the victim child.

11. **This Court notes with a sense of sadness** that the victim child's physical and mental trauma has been weighed in terms of money i.e. Rs. 2 lakhs by the mother of the child victim herself which is unexpected and unacceptable. Such heinous offences cannot be taken lightly nor mercy can be shown. The mother was expected to understand the pain and trauma undergone by her child, who was only six years of age and had been violently sexually assaulted and wounded physically and mentally by two culprits.

12. **The child in these circumstances is voiceless, however, the Court is expected to understand and hear the voiceless.** At times, the stories of cruelty and sexual assault, which are explained in the form of MLC and the statement of the victim child recorded by the learned Trial Court and the

police speaks volumes. While deprecating the attempt of the accused persons and the mother of the victim child to have tried to settle the matter for Rs. 2 lakhs, and appearing in the Court to state that the accused be granted bail, this Court finds no ground to grant bail to the present accused/applicant.

13. Accordingly, the present bail application stands dismissed.

14. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 8, 2023/zp

