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

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Reserved on: 31.07.2023
Pronounced on: 09.08.2023

+ **BAIL APPLN. 2128/2023**

NABAL THAKUR (IN J.C.) Petitioner

Through: Mr. Sunil Kumar and Mr. Giri
 Raj Singh, Advocates

versus

THE STATE Respondent

Through: Mr. Manoj Pant, APP for State
 with SI Meenu, PS Kirti
 Nagar.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****Index to the Judgment**

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SWARANA KANTA SHARMA, J.

1. The instant application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of applicant seeking regular bail in case FIR bearing no. 472/2020, registered at Police Station Kirti Nagar, Delhi for the offence punishable under Section 363 of the Indian Penal Code, 1860 ('IPC').

FACTS OF THE CASE

2. Briefly stated, the facts of the present case are that the father of prosecutrix had lodged a complaint with the police, whereby he had stated that upon returning home on 24.11.2020 at 1:30 PM, he had found that his daughter had gone missing. Thereafter, about two months later, the father of prosecutrix had produced her daughter i.e. prosecutrix before the investigating officer on 30.01.2021, after which, medical examination of prosecutrix was conducted at DDU Hospital, Hari Nagar. During the medical examination, UPT of prosecutrix was found to be positive and in her MLC, the prosecutrix stated that the present applicant/accused, i.e. Nabal Thakur had established physical relations with her without her consent. The statement of prosecutrix under Section 164 Cr.P.C. was recorded on 03.02.2021 and the present accused/applicant was arrested on 04.02.2021. Thereafter, the counselling of prosecutrix was conducted and she was produced before the Child Welfare Committee (CWC), Hari Nagar, and on 04.02.2021, permission for medical termination of pregnancy of prosecutrix was given by CWC and she was taken to



DDU Hospital, Hari Nagar for carrying out the procedure. After investigation, chargesheet was filed by the police and charges were framed by the learned Trial Court under Sections 363/366/376(2)(n) of IPC.

SUBMISSIONS OF THE APPLICANT AND THE STATE

3. Learned counsel for the accused/applicant states that the applicant has been falsely implicated in the present case and he has been in judicial custody for more than 2 years and 5 months. It is stated that the prosecutrix and her father have already been examined before the learned Trial Court. It is argued that there are material contradictions in the statement of prosecutrix given to the concerned doctor at the time of her medical examination and in her examination-in-chief recorded before the learned Trial Court. It is further stated that the medical examination of the prosecutrix was not conducted properly and hence there is no material evidence which supports the case of the prosecution. It is further submitted that the brother of the present applicant, who is co-accused in the present case, has already been granted bail *vide* order dated 13.01.2022 passed by learned ASJ POCSO-01, Tis Hazari Court, Delhi.

4. *Per contra*, learned APP for the State argues that the allegations against the accused/applicant are serious in nature. It is stated that the medical examination of the prosecutrix supports the case of prosecution. It is further stated that the testimonies of the prosecutrix and her father clearly establishes the involvement of the applicant/accused in the present case.



ANALYSIS AND FINDINGS

5. This Court has heard arguments addressed by both sides and perused the material on record.

6. Succinctly, the case of prosecution is that the present accused/applicant, who used to reside near the house of prosecutrix, had called the prosecutrix to his house on some false pretext on 24.11.2020 and had then told her that he would not let her go till she attains the age of majority. It is alleged by the prosecutrix that she had stayed in the house of applicant/accused for about two months and the applicant had established physical relations with her on several occasions. Thereafter, on 22.01.2021, the brother of present applicant, i.e. co-accused Rajiv Thakur had brought the prosecutrix to her parent's house in Delhi, after which the father of prosecutrix had taken her to the police station.

7. In the present case, a perusal of record reveals that the prosecutrix was only 16 years of age at the time of incident. Further, when her medical examination was conducted, the prosecutrix was found to be pregnant. Further, the prosecutrix had informed the concerned doctor during her medical examination, as recorded in the MLC, that the present applicant had forcibly established physical relations with her. This Court also notes that the testimonies of the material witnesses i.e. the prosecutrix and her father have been recorded and both the witnesses have supported the case of prosecution. As regards the contention raised on behalf of applicant that co-accused Rajiv Thakur has already been granted bail, it can be noted that the role attributed to co-accused is different than that of the



present accused/applicant and thus, bail cannot be granted to the applicant on grounds of parity.

8. Considering the overall facts and circumstances of the case, and the fact that the prosecutrix who was a minor at the time of commission of offence, was repeatedly raped by the present applicant, this Court finds no ground for grant of bail at this stage.

CONCERN OF THE COURT

9. While disposing of this application, this Court notes with dismay that in this case, the prosecutrix, who was aged about 16 years, had conceived allegedly due to sexual assault. During the course of her medical examination after she was recovered, her UTP was found positive and was recorded in her MLC dated 31.01.2021. In the MLC, the doctor mentions the duration of pregnancy as four weeks and five days. She was referred to Department of Obstetrics and Gynaecology (OBG) department for further evaluation and the history of sexual assault was duly mentioned. The concerned doctor of Department of Obstetrics and Gynaecology mentions that she had been produced before the concerned doctor for termination of pregnancy. However, this Court notes that there was no order for termination of pregnancy from CWC till that time. Thus, she was discharged after three days on 02.02.2021 and was asked to visit the hospital again after two weeks for review. However, it is not mentioned in the discharge summary as to why she was discharged without termination of pregnancy and whether she was informed about dangers of losing the fetus.



i. Negligence on the part of Doctor resulting in Loss of Crucial Piece of Evidence

10. Thereafter, the order for termination of pregnancy of the prosecutrix was passed by CWC on 04.02.2021, and she had again visited the hospital on 09.02.2021 for the said purpose, where she remained admitted for four days. In the discharge summary dated 12.02.2021, the period of pregnancy at that point of time is mentioned as six weeks, but it is not mentioned as to why the prosecutrix remained admitted in the hospital for four days but the termination of pregnancy did not take place. She was, thus, again discharged from the hospital and was asked to come back to the hospital after one week when termination of pregnancy will be planned.

11. The prosecutrix again visited the hospital on 19.02.2021 and remained admitted there till 23.02.2021, when she was carrying pregnancy of about seven weeks and three days. She remained admitted in the hospital for five days, however, it is mentioned in the discharge summary dated 23.02.2021 that she had suffered a complete abortion of fetal tissues expelled at home. It is mentioned that due to the same, the sample could not be preserved.

12. As regards the medical records of the case, only discharge summaries are available before this Court. It is not mentioned in the discharge summaries as to what treatment was administered to the prosecutrix when she was admitted in the hospital for the purpose of medical termination of pregnancy. The most crucial admission date is



of 09.02.2021 to 12.02.2021 as the Child Welfare Committee had directed for termination of pregnancy by way of order dated 04.02.2021. However, the prosecutrix had not been produced before the concerned doctor till 09.02.2021. On 09.02.2021, when she was admitted for termination of pregnancy, the medical record does not reveal what transpired during that period and why the pregnancy was not terminated and as to why she was discharged from the hospital though, there were clear directions for preservation of the fetus. It was duty of the doctor concerned to have complied with the order of CWC with care, caution and seriousness as the fetus was one of the most crucial pieces of evidence in a sexual assault case. This evidence has now been lost due to the negligence of the doctor concerned. It was the duty of the doctor to have not discharged the victim till the termination of pregnancy and preservation of the fetus.

13. Needless to say, abortion at home would have posed one of the gravest risks to the life of the victim child as well as the risk of evidence being lost, as in the present case.

ii. Duty of the Doctors to take Precautions in cases of Medical Termination of Pregnancy of Sexual Assault Victims

14. Doctors play a crucial role in such sensitive cases, especially when minors are involved. It is essential for doctors to uphold the highest standards of medical ethics, compassion, and professionalism. In such cases, doctors must prioritize the health and well-being of their patients while being mindful of the legal and ethical complexities surrounding the procedure.



15. When a minor seeks a medical termination of pregnancy, doctors must ensure that the process is conducted in compliance with the prevailing laws and regulations, with utmost sensitivity to the minor's age and maturity level. Such cases must be approached with empathy, ensuring that the minor feels safe and supported throughout the process. Additionally, doctors must maintain confidentiality and privacy to protect the patient's dignity and safeguard them from potential harm or coercion. Doctors also have a duty to communicate effectively with such minor patients, explaining the medical procedures, potential risks, and available alternatives.

16. Post-procedure care and follow-up are critical components of a doctor's responsibility in cases of medical termination of pregnancy. After the procedure, the patient's well-being and recovery must be carefully monitored to ensure they heal physically and emotionally. Doctors should also provide clear instructions on post-operative care, including any necessary medications, activity restrictions, and signs of potential complications.

iii. Directions

17. This Court notes with a sense of disappointment that despite repeated directions, standing orders and several judgments, the Courts are still confronted with instances as the present one. In such circumstances, this Court is constrained to pass directions, while exercising judicial restraint from passing any order against the doctors concerned, which read as under:



- (i) **Circulation of existing guidelines and SOPs:** The Department of Health and Family Welfare, Government of NCT of Delhi and Ministry of Health and Family Welfare, Government of India is directed to ensure that the existing guidelines/Standard Operating Procedure for conducting examination of the victims of sexual assault are circulated in all the hospitals in Delhi;
- (ii) **Regarding additional directions issued vide this judgment:** The abovesaid Ministries are also directed to circulate the additional directions contained in the present judgment which be added to the existing SOPs, that in case the victim is pregnant and there are orders for medical termination of pregnancy including for preservation of fetus, the investigating officer will place such order before the Superintendent of the hospital concerned, who will ensure that the doctor concerned who is assigned the duty of medical termination of pregnancy conducts the same with utmost caution;
- (iii) **Producing the victim within 24 hours of order of competent authority before the hospital even in pregnancy of less than 20 weeks:** The investigating officer concerned will produce the victim for the purpose of medical termination of pregnancy within 24 hours of passing of such order before the Superintendent of the concerned hospital, even in cases where the gestation



period of the pregnancy is less than 20 weeks as in the present case;

- (iv) **Preservation of fetus:** It is directed that the doctor concerned will ensure that the fetus is preserved and the victim is not discharged in a hurry, resulting in putting the life of the victim in danger and loss of evidence in a sexual assault case;
- (v) **Recording of reasons for discharge without termination of pregnancy:** The doctor concerned will also mention, in case the victim is discharged without termination of pregnancy, the reasons for the same so that the crucial evidence in the form of fetus is not lost;
- (vi) **Recording of details of treatment for medical termination of pregnancy:** It shall be duty of the doctor concerned also to mention in detail, the treatment given to the victim of sexual assault including any medicines given or procedure carried out for the purpose of termination of pregnancy;
- (vii) **Difficulty faced by the Courts in reading MLCs and need to file typed MLC in sexual assault cases:** The Courts experience difficulty in reading or making out the observations in the MLCs or discharge summaries as they may not be comprehensible due to illegibility of the handwriting of the concerned doctor, medical abbreviations



and terminology used, etc. This Court remains aware of the fact that when the MLC is being prepared by the doctor, due to various constraints and reasons of privacy etc., it has to be handwritten.

Therefore, it is directed that in cases where medical examination of a victim of sexual assault is conducted, all the hospitals concerned will ensure that alongwith the original MLC as well as discharge summary of such victim, a **typed copy** of the same is also prepared by the concerned hospital and provided to the investigating officer within a period of one week.

It is essential to do so since though at the time of recording of evidence and trial, the doctor concerned may appear, read and depose about the contents of MLC, when the Court has to read and appreciate it at the stage of consideration of **bail** or framing of **charge**, it poses difficulty to the Court;

- (viii) **Typed copy of MLC may be sent by electronic mode to the IO:** The typed MLC can also be sent to the investigating officer through electronic means to save the time of the investigating officer and the concerned hospital;

18. These guidelines will be read in addition to the guidelines issued by this Court in *Minor R Thr Mother H v. State NCT of Delhi*, W.P. (CRL.)221/2023 decided on 25.01.2023.



19. The aforesaid directions of this Court be circulated, within 15 days of issuance of this order and its receipt by the Ministry of Health and Family Welfare, Government of India, and Department of Health and Family Welfare, Government of NCT of Delhi in all the hospitals in Delhi. Compliance report be filed within 2 months before this Court.

20. In view of the above, the present application stands disposed of.

21. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

22. A copy of this judgment be forwarded by the Registry to (i) Ministry of Health and Family Welfare, Government of India, (ii) Department of Health and Family Welfare, Government of NCT of Delhi, (iii) Commissioner of Police, Delhi, for information and compliance.

23. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 9, 2023/ns