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

% Judgment delivered on: 11.07.2023

+ BAIL APPLN. 2241/2022

RAJKUMAR GUPTA

..... Petitioner

versus

STATE (GOVT OF NCT OF DELHI) & ANR Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Vishal Singhal, Advocate

For the Respondent : Mr. Shoaib Haider, APP with Mr. Mohd. Zaid, Advocate and SI Wikhon Pamai, P.S. Malviya Nagar

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. This is a bail application seeking grant of regular bail in FIR No. 383/2020 dated 11.09.2020 under Sections 363/323/342/365/354/354A/376/376D/34 of IPC, 1860 and Sections 6/8 of POCSO Act, registered at Police Station Malviya Nagar.

2. As per the case of the prosecution and submitted by learned counsel for the applicant, on 10.09.2020, the victim was reported missing from her house and on 11.09.2020 an FIR was registered under



Section 363 of IPC.

3. Learned counsel submits that the applicant was not named in the FIR.

4. It is the further submission of learned counsel that the main accused Pooja and her husband Pradip were found with the victim and on the disclosure statement of Pooja, one Rabi Ghosh-accused no.3, was arrested. Learned counsel further submits that it is upon the alleged disclosure statement of Rabi Ghosh-accused no.3, that the present applicant was arrested on 17.09.2020.

5. Learned counsel further submits that from 17.09.2020, the applicant has been continuously in judicial custody.

6. Learned counsel submits that the said Rabi Ghosh-accused no.3 has already been released on bail vide order dated 03.12.2020 passed by the learned Trial Court.

7. Learned counsel submits that the investigation is complete in all respects and charges have already been framed and therefore no further investigation would be required by the Investigating Authorities to keep the applicant in custody.

8. Learned counsel submits on merits that even in the statement under Section 164 Cr.P.C. of the victim, she has not named the applicant nor any allegation of any nature at all has been imputed to the applicant before this Court.

9. Learned counsel has drawn attention of this Court to page 181 of the present bail application, which is the statement of the victim recorded under Section 164 of Cr.P.C. By referring to page 181, learned counsel submits that the victim has not been able to impute any role nor



his name has been disclosed in such statement and therefore there is no way to ascertain as to whether it was the applicant alone who was the correct person against whom any allegation, if at all, has been imputed.

10. Learned counsel also refers to page 320 of the present bail application, which is the part of the regular bail order of accused Rabi Ghosh to submit that those circumstances, which were sufficient for the release of accused no.3 Rabi Ghosh by the learned ASJ, cannot be held to be not enough for the applicant before this Court from having the same entitlement.

11. Leaned counsel also refers to the FSL reports, particularly to page 302 whereby the blood sample of the victim was stated to have been drawn for the purpose of ascertaining as to whether the said blood sample contained any traces of alcohol in blood, keeping in view the version of the prosecution that the victim was forced to take alcohol before the assault had taken place.

12. Learned counsel in contradistinction to Exhibit 12, which was marked to such sample having been drawn, compares the same to the result at page 306 in respect of Exhibit 12, which was now stated to be by the FSL as 'Scalp Hairs'. On that basis, learned counsel submits that even the FSL report seems to be either false or fudged and cannot be relied upon. Learned counsel on the basis of this discrepancy, submits that the DNA fingerprinting could be false or fabricated report, not remotely connecting the applicant to the present offences.

13. Learned counsel also submits that the applicant has been in incarceration since 17.09.2020 and may be released on bail since he is not required by the investigating agencies. Learned counsel also seeks



release of the applicant on parity with Rabi Ghosh-accused no.3 and submits that the applicant is better placed since he was never named or identified by the victim.

14. *Per Contra*, Mr. Shoaib Haider, learned APP for the State submits that the direct evidence insofar as the present applicant is concerned, is the DNA profiling of the blood of the accused which matched with the DNA profile generated from the semen detected on the pillows recovered from the *jhuggi*, where the victim had alleged sexual assault upon her. According to learned APP, this instance itself is enough to show direct relation between the applicant as also the serious and grave allegations made.

15. Moreover, learned APP also submits that since the applicant is not an ordinary resident of Delhi, there is no way or manner in which the Investigating Authorities can be ensured that the applicant would be present during trial.

16. According to learned APP, the victim had correctly identified the applicant during the TIP in Tihar Jail.

17. Learned APP submits that the offences are very serious, grave and heinous in nature and there is no way to ascertain that the applicant would not threaten or intimidate the witnesses, particularly the victim.

18. This Court has considered the submissions of learned counsel for the applicant as also the learned APP for the State.

19. The argument that the name of the applicant was not mentioned either in the FIR or even in the statement under Section 161 Cr.P.C., coupled with the fact that there was no mention of the applicant even in the statement under Section 164 Cr.P.C. of the victim is irrelevant for



the reason that the only person she could identify was, at that stage, the accused persons Pooja and her husband Pradip, primarily since they were neighbours.

20. So far as the applicant is concerned, it is his own case that he is not an ordinary resident of Delhi and had visited Delhi only for the purpose of getting employment and as such, the entering of the name of the applicant either in FIR or in the statements under Sections 161 of 164 of Cr.P.C. of the victim is not tenable. Moreover, this argument of learned counsel also gets controverted by the fact that during the TIP, the victim had correctly identified the applicant, which is more than sufficient for this Court, at this stage of trial, to refuse any enlargement on regular bail.

21. That apart, a very crucial and relevant aspect of the entire gamut would be the DNA profiling, generated from the blood of the applicant which stands matched with the DNA profile generated from the semen detected on the pillows recovered from the place of occurrence, thereby intricately connecting and intertwining the applicant to the offences as alleged by the prosecution.

22. There is no way, atleast as of now, that the applicant can controvert the fact of the DNA profiling matching the blood samples and the DNA profiling generated from the semen detected on the pillows recovered from that particular *jhuggi*.

23. The arguments based on the FSL reports and the alleged contradictions therein would be relevant only for the purposes of the trial and not at the stage of issuance of or denial of bail.

24. This Court is acutely aware about the fact that the present



allegations also involved Sections 6 and 8 of the POCSO Act, which also would automatically entail the presumption available to the prosecution under Section 29 POCSO Act, 2012. No arguments were, to that extent, addressed by learned counsel in respect of such presumption.

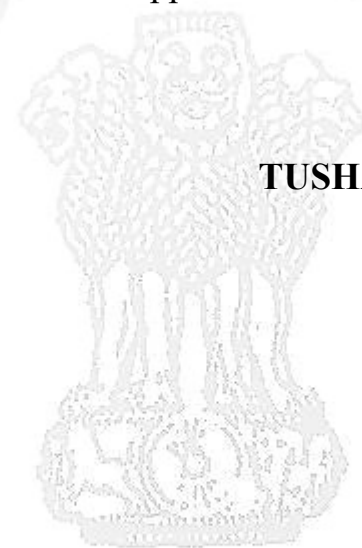
25. As such, this Court is not inclined to grant any bail, keeping in view the serious and heinous offences, which have been alleged against the applicant.

26. As a consequence, the bail application is dismissed.

TUSHAR RAO GEDELA, J.

JULY 11, 2023

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