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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**Reserved on: 13th March, 2023
Pronounced on: 27th March, 2023**

+ **BAIL APPLN.3604/2021 CRL.M.A. 23562/2022, 25990/2022**
+ **CRL.M.C.1705/2021 & CRL.M.A. 12651/2022, 13600/2022,**
26016-17/2022

MANISH PRASAD

..... Petitioner

Through: Mr.Harshveer Pratap Sharma,
Senior Advocate with Mr.Radhe
Shyam Sharma, Advocate.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Ms.Meenakshi Dahiya, APP for
the State with SI Deepika, PS K M
Pur and SI Snehlata, CAW Cell
Nanakpura.
Mr.Dibyanshu Pandey and
Ms.Soumya Kumar, Advocates for
complainant with mother of
complainant.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. BAIL APPLN.3604/2021 is filed for grant of bail to the petitioner not only on ground of default but otherwise and CRL.M.C.1705/2021 is filed for setting aside the order dated 09.06.2021 passed by learned Additional Session's Judge, Fast Track Court-POCSO, South East District, Delhi whereby the learned Trial Court has dismissed the bail application under Section 167(2) Cr.P.C. on the ground the Investigating Officer has filed the final report after completion of investigation.
2. Firstly, the Crl.M.C.No.1705/2021 is taken up as it pertain to legal

issues and right of petitioner and BA No.3604/2021 be considered thereafter.

3. The brief facts are: on 11.02.2021 the victim was seen by lady staff of EFICOR NGO and Paryas Railway Child Line at New Delhi Railway Station and after interrogation they brought her to Kotla Mubarak police station along with staff of PS New Delhi Railway Station.

4. The statement of victim was recorded in front of both NGOs wherein she alleged to be 16 years old and working as a domestic help at H No. XXX, INA Colony New Delhi. The prosecutrix hail from the State of Bihar and one of her neighbour Pankaj Kumar and his wife Smt. Shail Sahu brought her to Delhi. They made her do house hold work. She further stated when Manish, the brother-in-law of Pankaj visited at H.No.XXX INA Colony, New Delhi he allegedly assaulted and raped her several times about 8-9 months back at the night time and last incident happened two months prior to the registration of the case. She alleged herself to be disturbed and decided to return to her native place Bihar.

5. On 10.02.2021, she hired an auto for Railway Station and booked a Railway ticket from Delhi to Bihar with the help of an auto driver. Due to schedule of train for the next day she came back to INA Colony and spent night at terrace of above said address. Next day early morning she departed for the Railway Station where she was rescued by NGO. Accordingly, the present case was registered. The mother of the victim was informed. On 11.02.2021 accused Manish was arrested and sent to JC. Medical examination of both the prosecutrix and accused Manish were conducted at AIIMS Hospital and all the exhibits collected were

sent to RFSL Chanakya Puri for expert opinion. On 12.02.2021, statement under Section 164 Cr.P.C. of the prosecutrix was recorded before the Court, wherein she supported her allegations. On 15.02.2021, the child was produced before the CWC, during counselling the mother of the victim was also present. After counselling, as per the direction of CWC/Lajpat Nagar the custody of prosecutrix was handed over to Global Family Charitable Trust and child was produced before the SDM and the Labour Commissioner.

6. During investigation school documents of victim were verified from Bihar. On 23.02.2021 the mother of victim also joined the investigation and her statement under Section 161 Cr.P.C. was recorded, in which she stated her daughter used to talk to her everyday through phone but never informed about anything. CDRs of mobile numbers of accused from 01.07.2020 to 11.02.2021 were received and were analysed and per CDR location of accused was found in the surrounding area of INA and CDR of victim's mother was also collected and was found the prosecutrix was in continuous touch with her mother through mobile phone.

7. As per the record of SCRB, the accused has no previous involvement in any other case. The chargesheet has since been filed in the present matter.

8. It is argued by the learned counsel for the petitioner the first chargesheet was filed on 09.04.2021. Supplementary chargesheet was then filed on 05.03.2022. Again a supplementary chargesheet was filed on 23.05.2022. It is the contention of the learned counsel for the petitioner since the police has been filing the supplementary

chargesheets, hence the timeline provided under the POCSO Act for filing the chargesheet has not been adhered to and the accused has been in judicial custody throughout, in the absence of complete chargesheet it becomes a case for default bail. It is alleged the complete chargesheet was never filed within the statutory period.

9. Admittedly the first chargesheet was filed on 09.04.2021 i.e., within 60 days from the date the accused was taken into custody and it is in time. The original chargesheet contain statements of the prosecutrix also under Section 164 Cr.P.C. and it was sufficient to proceed with the case. However, later because of intervention of the petitioner through writ petitions further investigation was carried out *qua* CDRs which led to filing of supplementary chargesheet(s) and hence it cannot be said there was no chargesheet before the learned Trial Court as the supplementary chargesheets were filed only at the instance of accused hence the petitioner in these circumstances would not be entitle to default bail. The order dated 09.06.2021 of the learned Trial Court is thus complete in all respects which is as under:

“The chargesheet was filed on 09.04.2021 while the present bail application u/s 167 (2) CrPC was filed on 03.06.2021. The IO in her reply has mentioned that the notice was sent to the Nodal Officer to provide the CDR and from the CDR, the number of the auto driver will be traced. IO during arguments has submitted that due to the covid situation and lockdown, CDR has not been obtained and same will be filed in the supplementary chargesheet. In the chargesheet, the IO has mentioned that the FSL report and CDR are remaining in the matter and after their receiving, the supplementary chargesheet will be filed. In the chargesheet, the IO has recorded statements of witnesses, collected birth document of the victim, medical report of the victim, statement of the victim u/s 164 CrPC and various other important documents and then came to the conclusion that the accused has committed the offence u/s 376 IPC, 6 POCSO Act, 23/26 JJ Act. If the IO on the basis of various collected documents during investigation came to the conclusion that accused has committed the offence then

how the chargesheet can be incomplete. The FSL report is to be prepared by forensic science laboratory while the CDR is to be given the mobile operator and the IO has duly submitted requisition for CDR and has already sent the exhibits to the FSL and awaiting their reply. The judgment of Hon'ble Delhi High Court titled as Kashish Bindra Vs. State Bail Appl. No. 477/21 decided on 05.04.2021 passed by Hon'ble High Court of Delhi squarely covers the present case also and has also discussed the judgment of Hon'ble Supreme Court as relied upon by the Ld. Counsel for the accused. In the judgment of Kashish Bindra Vs. State, Ball Appl. No. 477/21 decided on 05.04.2021 passed by Hon'ble High Court of Delhi, the supplementary chargesheet was filed later on and then the Hon'ble Delhi High court declined the statutory bail u/s 167 (2) CrPC of accused, therefore, in these facts and circumstances of the case when the charge-sheet has already been filed before filing of bail application u/s 167 (2) CrPC by the accused, then accused does not have any right of default bail u/s 167 (2) CrPC, hence, the bail application of the accused Mahish Prasad u/s 167 (2) CrPC is dismissed Order be sent to the Ld counsel for the accused, Ld. Addl. PP. Ld. Counsel for the victim."

10. I do not intend to defer from the order of the learned Trial Court and as such the CRL.M.C.1705/2021 has no merit and is dismissed.

BAIL APPLN.3604/2021

11. The learned senior counsel for petitioner submitted *per* Section 35 POCSO Act the trial need to be completed within a year and admittedly the charges have not been framed as yet and the accused is in custody for more than two years. It is argued even there are age related issues of the prosecutrix as somewhere her age is stated to be 16 years and to be 12 years on Paytm ticket and as such this issue also need consideration of the learned Trial Court. It is argued speedy trial is a right to accused and where the Act itself postulate the completion of the trial within a year but where the investigation is not complete within two years, of course, it cannot be said the grievance of the petitioner is baseless. Reference is made to *Dilawar vs. State of Haryana and Another* (2018) 16 SCC 521; *Siddharth vs. State of Uttar Pradesh and Another* (2022) 1 SCC 676 and

Ankit vs. The State of Rajasthan in SLP (CRL.)3931/2022 decided on 15.12.2022, where Court granted bail in a similar circumstances under Section 6 POCSO.

12. Thus considering the law discussed; the statement of her mother being in constant touch with the prosecutrix throughout her stay at Delhi and prosecutrix never informed her about sexual abuse; there being delay in reporting of offence; the period of custody of accused, I admit him on bail on his executing a personal bond of Rs.20,000/- with one surety of like amount to the satisfaction of the learned Trial Court. The petitioner shall furnish his contact/address details to the SHO/ Investigating Officer concerned and shall keep his mobile location app open at all time. The petitioner shall not try to contact/threaten/ coerce the prosecutrix in any manner, *lest* it shall be a ground for cancellation of bail.

13. The petitioner is being granted bail irrespective of contentions urged in view of Section 35 of the POSCO Act.

14. Before parting with it is noted nothing opined herein shall be construed as final opinion on the merits of either side since the matter is pending before the learned Trial Court.

15. The petition stands disposed of along with pending application(s).

16. Copy of this order be communicated to the learned Trial Court/ Jail Superintendent for information and compliance.

YOGESH KHANNA, J.

MARCH 27, 2023

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