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

+ BAIL APPLN. 2858/2022, CRL.M.A. 23978/2022

AVDESH

..... Petitioner

Through: Mr.Rajat Katyal and Mr. Mayank
Purnia, Advocates

versus

THE STATE OF (NCT OF DELHI) & ANR. Respondents

Through: Mr.Amit Sahni, APP for the State.
SI Kamal Chaudhary, PS Prem Nagar

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Date of Decision: 01.08.2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

BAIL APPLN. 2858/2022, CRL.M.A. 23978/2022 (for early hearing)

1. An application bearing number CRL.M.A. 23978/2022 has been filed for early hearing of the present bail application. In view of the grounds explained, the bail application has been taken up for hearing.
2. Present application has been filed under Section 439 Cr.P.C. for grant of regular bail in case FIR No.0391 dated 24.05.2022 registered under Section 354 IPC and 8 POCSO Act at PS Prem Nagar.
3. The facts in brief are that on 22.05.2022 at about 11 a.m., when the complainant was on way to her sister-in-law's house, the applicant asked the complainant to come inside and make chapatti for him as he was alone at his home. Allegedly, as soon as the complainant entered

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the house of the applicant, the applicant locked the door, grabbed the complainant in his arms and kissed her on her neck. The applicant also allegedly tried to lift the frock of the complainant. When the complainant shouted for help, applicant tried to cover her mouth with his hands. However, on hearing her daughter's cry, the mother of the complainant rescued her.

4. On the statement of the complainant, the present FIR No. 0391/2022 was lodged. After the investigation, the charge-sheet was filed. It is submitted that the applicant/accused is in custody since 28.07.2022.
5. Learned counsel for the applicant submits that the case of the prosecution is full of inherent contradictions and the completion of trial may take a long time therefore the petitioner may be released on bail.
6. Learned APP has opposed the application for bail and has submitted that it is a case of serious nature.
7. It is a matter of record that the petitioner is in custody since 28.07.2022. It is also a matter of record that the victim and her mother have already been examined. As per nominal roll, the conduct of the petitioner has been satisfactory. The court at the stage of bail cannot meticulously examine the material on record. The court has only to see the *prima facie* case, the gravity of the offence and the possibility of the accused being threatening or intimidating the witnesses.
8. The jurisprudence regarding the grant of bail is very well settled. The detention period during the trial cannot be taken as a punitive measure. The principles regarding the grant of bail in serious offence cases have



been dealt with in ***Kalyan Chandra Sarkar v. Rajesh Ranjan***, 2004 SCC 7 528 it was *inter-alia* held that:

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
- (c) Prima facie satisfaction of the court in support of the charge.”*

9. In the present case, taking into account the period of incarceration and the fact that the victim and her mother have already been examined, the petitioner is admitted to regular bail on his furnishing a personal bail bond of Rs.15,000/- with one surety of the like amount to the satisfaction of the trial court, subject the following conditions:

- a) the Petitioner shall under no circumstances leave India without prior permission of the Court concerned;
- c) the Petitioner shall not directly or indirectly make any inducement, threat or promise to any witness/person acquainted with the facts of the case;



- d) the Petitioner shall provide his mobile number(s) to the Investigating Officer and keep it operational at all times; and
- f) In case of change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
10. The present bail application along with pending application stands disposed of.
11. Copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance.

DINESH KUMAR SHARMA, J

AUGUST 1, 2023

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