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

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Reserved on: 11.01.2024
Pronounced on: 12.01.2024+ **BAIL APPLN. 79/2024**

VARUN WISHWAS

..... Petitioner

Through: Mr. Pramod Kumar, Advocate

versus

STATE NCT OF DELHI AND ANR.

..... Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State with S.I.
Sudhir Rathi, P.S. Burari,
Delhi**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. By way of present application filed under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the applicant herein seeks grant of interim bail for a period of eight weeks on medical grounds, in case arising out of FIR No. 684/2022, registered at Police Station Burari, under Sections 376/506 of Indian Penal Code, 1860 ('IPC') and Section 6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

2. The present FIR was registered on 19.08.2022, on the complaint of victim 'P', aged about 14 years, whereby she had



alleged that in the month of October 2020, the accused Varun Wishwas had called her on her mobile number and had asked the victim to become friends with him. However, when the victim had denied his request, the accused had threatened the victim that if she did not accept his friendship offer, then he would call her father and tell him that his daughter i.e. the victim had told 'I Love You' to him. It is alleged that due to such compulsion, the victim was forced to talk to the accused. It is further alleged that one day, in January, 2021, when the victim was alone at her house, the accused Varun had entered her house and had raped the victim. The accused had also recorded her inappropriate videos and had then started blackmailing her and by extending such threats, he had raped her on several occasions, on the pretext that he will post her inappropriate videos on internet. As alleged, the victim was raped for the last time on 03.04.2022. During the course of investigation, the victim was medically examined on 19.08.2022, and the accused was also arrested on the said day. On 22.08.2022, the statement of victim was recorded under Sections 164 of Cr.P.C., where she had supported her previous statement. The mobile phone recovered from the accused had been sent to FSL for examination and the FSL result is pending. Chargesheet was filed before the Trial Court and charges were framed against the accused/applicant Varun Wishwas.

3. Learned counsel for the applicant/accused argues that the present interim bail application has been filed on medical grounds since as per the report of Jail authorities, the platelet count of the applicant was found on lower side i.e. 36000 and he is suffering from



bleeding per rectum and several other ailments. It is argued that the applicant has visited Safdarjung Hospital, GB Pant Hospital and DDU Hospital several times for the treatment, however, he has not got any relief from these hospital and the health condition of the applicant is very serious and he is suffering from bleeding per rectum, low platelet count, etc., and his health condition has been deteriorating day-by-day and there is no improvement in the same. Thus, it is submitted that applicant wants to get effective and best treatment from a private hospital. It is also stated that the learned Trial Court has accepted *vide* order dated 03.01.2024 that the applicant is not in fit state of health and he is suffering from serious bodily ailments and the hospitals are also not able to diagnose his exact illness till date. It is also submitted that the applicant has been languishing in the judicial custody since 20.08.2022, and considering his medical condition, he be released on interim bail.

4. Learned APP for the State, while opposing the present bail application, argues that the applicant is receiving all the required medical treatment and assistance as he is being treated at the best hospitals of Delhi namely, Safdarjung Hospital, G.B. Pant Hospital and DDU Hospital, and every step and effort in that regard is being taken by the jail authorities as well as by the concerned hospitals and the applicant is regularly being taken to specialized departments of the aforesaid hospitals for regular meetings, check-ups and treatment. It also argued that in view of latest medical report filed by the jail authorities, the applicant does not require to be released on interim bail as he is being provided proper medical assistance. It is further



submitted that the present case involves charges under POCSO Act and the case is at the stage of prosecution evidence and the victim is yet to be examined and as such, there is every possibility that the applicant may abscond if released on bail or may make his illness an excuse for prolonging the trial. Therefore, it is prayed that present application be dismissed.

5. This Court has heard arguments addressed by learned counsel for applicant as well as learned APP for the State, and has also perused the material available on record including the medical status report of the applicant.

6. The applicant herein has sought interim bail for a period of 08 weeks on medical grounds.

7. In the present case, this Court *vide* order dated 04.01.2024 had directed the jail authorities to file a fresh status report *qua* the medical condition of the applicant. The medical report dated 08.01.2024, prepared by the Senior Medical Officer, Dispensary, Central Jail-04, Tihar, New Delhi reads as under:

“Thereafter on 30/12/2023 inmate patent was sent to department of Gastroenterology at GIPH as follow-up case of bleeding per rectum, generalized weakness, for which he was thoroughly examined, prescribed appropriate treatment, sigmoidoscopy and medicine review accordingly.

It is to be further submitted that the date for sigmoidoscopy has been taken from GBPH Hospital as advised by treating Doctor and is scheduled for 10/01/2024.

It is to be further submitted that the date for Fibro Scan has been taken from GBPH Hospital as advised by treating Doctor and is scheduled for 05/02/2024.



It is to be further submitted that the date for USG whole abdomen has been taken from DDU Hospital as advised by treating Doctor and is scheduled for 27/02/2024.

Thereafter on 08/01/2023 inmate patient was sent to department of Medicine at DDU Hospital wherein he gave history of bleeding per rectum, wherein the treating doctor advised urgent repeat CBC and referred the inmate patient to Medicine emergency department.

On same day inmate patient was reviewed by medicine emergency at 01.10 pm wherein he gave complaint of bleeding per rectum for 01 week, fever for 03 days, dizziness and body ache for 03 days and lower abdomen pain, on examination pallor present, soft non tender abdomen, no hepatomegaly, advised CBC and referred to surgery emergency.

On same day inmate patient was reviewed by surgery emergency for the complaint of on and off bleeding per rectum for 01 month, constipation, local examination of per rectum suggestive of no external hemorrhoid/ fissure, normal tone, no active bleeding, fecal staining present, advised appropriate treatment accordingly.

On same day inmate patient was done his CBC test from DDU Hospital and report suggestive of low platelet count (32000).

Further on same day inmate patient was again reviewed by medicine emergency at 02.00 pm for the complaint of bleeding per rectum/ on and off fever, for which he was advised for admission under medicine department but the same was denied by inmate patient and the treating doctor also advised to review with hematology department at higher centre and sent back to CJ-04.

Thereafter return to CJ-01, the inmate patient kept admitted in MI Room CJ-04 Dispensary for round the clock monitoring and care.”

8. A perusal of the aforesaid report reveals that adequate medical treatment is being provided to the applicant by the jail authorities and he is being repeatedly taken to hospitals such as Safdarjung Hospital, G.B. Pant Hospital and DDU Hospital, New Delhi for conducting



sigmoidoscopy, for treatment of his bleeding problems, etc. Further, as per report filed by jail authorities, the applicant's fibro scan and whole abdomen scan is scheduled to be conducted in the month of February, 2024.

9. This Court has also gone through the findings of the learned Trial Court in order dated 03.01.2024 whereby it was argued on behalf of present accused that he be granted interim bail so as to facilitate him to receive treatment from a private polyclinic in Meerut, Uttar Pradesh, however, no documents was placed on record to show that applicant had ever received any treatment from the said polyclinic or that the Hospitals in Delhi such as Safdarjung Hospital, G.B. Pant Hospital and DDU Hospital were less equipped and less competent than the polyclinic situated in Meerut, U.P.

10. This Court is also of the opinion that the medical needs of the applicant need to be balanced with the rights of the prosecutrix, who in the present case is a minor aged about 14 years, whose testimony is yet to be recorded before the learned Trial Court. The allegations against the applicant herein are of sexually assaulting and establishing physical relations with the minor victim and also of recording her inappropriate videos and extending threats to her.

11. Therefore, considering the medical status report of the applicant, in this Court's opinion, the jail authorities are taking care of the medical needs of the applicant and he is being regularly taken to Hospitals for appropriate treatment as per Jail Referral Policy. The Court notes that as per the medical status report, the accused himself had declined to get admitted in DDU Hospital on 08.01.2024. Thus,



no ground for grant of interim bail is made out at this stage.

12. However, considering the fact that blood platelet count of the applicant has reduced over a period of few months, the concerned Jail Superintendent and Senior Medical Officer is directed to ensure that the required treatment and healthcare is provided to the applicant/accused in the Jail premises. In case, the platelet count will decrease further, the accused will be at liberty to move a fresh interim bail application on medical ground.

13. In above terms, the application stands disposed of.

14. Nothing expressed hereinabove shall tantamount to an expression on the merits of the case.

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 12, 2024/ns