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

Reserved on: 04.03.2024

Pronounced on: 12.03.2024

+ **BAIL APPLN. 136/2023**

RISHAB DWAR

..... Petitioner

Through: Mr. Pradeep Kumar Arya, Mr.
Kamal Kant Chhabra, Mr.
Gaurav Chaudhary, Mr. Arpit
Bamal, Mr. Pulkit Chadha and
Ms. Deepika Narwal,
Advocates

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State with W/ASI
Sarita, P.S. Sector-23, Dwarka.
Mr. Archit Upadhyay
(DHCLSC) with Ms. Suyesha
Saini and Ms. Deepti Jha,
Advocates for victim.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant application under Section 438 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of applicant/accused seeking grant of anticipatory bail in case FIR No.

334/2022, registered at Police Station Sector-23 Dwarka, Delhi for the offences punishable under Section 4 of Protection of Children from Sexual Offences Act, 2012 (*'POCSO Act'*).

2. Briefly stated, it is the case of the prosecution that on 29.07.2022, a compliant was registered by one Smt. 'SR' in which she had alleged that the present applicant/accused had raped her daughter/victim i.e. Ms. 'KR' at her residence on 19.07.2022. Thereafter, the present FIR had been registered. During investigation, statement under Section 161 of Cr.P.C. of the victim was recorded in which she had alleged that she was 17 years of age at the time of incident and was studying in 'X' School. It was further stated by the victim that both of her parents were working i.e. her father was posted in Lucknow, Uttar Pradesh and her mother was posted in Noida, Uttar Pradesh. It was also stated by the victim that she lived with her elder brother and that her mother used to leave for office at 6.30 AM in the morning and used to come back by 5-6 PM. It was also alleged that victim's friend 'Y', who lived next to her house had a boyfriend i.e. the present applicant Rishabh Dwar, who the victim also knew for a couple of months. It was alleged by the victim that the present applicant had called her on 19.07.2022 at about 12.30 AM and had told her that he wants to surprise her best friend 'Y' and thus had requested the victim to meet him outside her home. Thereafter, the present applicant had reached victim's house at around 7:00 AM on 19.07.2022 when she was alone at her house as her mother had left for work and her elder sibling had gone to her hometown for a couple of days. It was further alleged by the victim that the applicant

had forcibly developed physical relationship with her against her consent. She also informed the police that she had kept on resisting, however, the applicant had got aggressive. Thereafter, when the victim's friend 'Y' had arrived, both the applicant and her friend 'Y' had left her house. It was further stated by the victim that since she was scared, she did not tell her parents about the incident on that very day. However, the victim had informed her parents about the incident on 23.07.2023. Thereafter, the victim was medically examined wherein she had given history of forced sexual assaults against her consent. During investigation, her statement under Section 164 of Cr.P.C. was also recorded.

3. Learned counsel appearing on behalf of the present accused/applicant argues that the applicant has been falsely implicated in the present case. It is contended that in the contents of the FIR itself, the complainant had disclosed that her daughter/victim had run away from home on 27.07.2022 at night. Thereafter, the victim was handed over to the complainant by a PCR van on an undertaking that the victim would give her mobile to the complainant i.e. her mother and that it is further mentioned in the FIR by the complainant herself that her daughter/victim is threatening to commit suicide and to falsely implicate her mother. It is argued that it can be easily construed that the victim is fully aware of the consequences of her actions and she has the tendency to falsely implicate any person including her mother if her wishes are not fulfilled. It is further submitted that there is a considerable delay of about 10 days in registration of the present FIR and the said delay has not been explained. It is also argued by the

learned counsel for the applicant that the residential society in which the victim resides is entirely covered by CCTV cameras and whenever someone enters or exists the society, a register for the same is also maintained by the society guards and as per the said register, the present applicant had not visited the said society on the day of incident. It is further submitted that the applicant is cooperating with the investigation and has already given each and every detail asked by the Investigating Officer ('IO') and is further ready to abide by any stringent condition imposed by this Court. Therefore, it is prayed that the present applicant/accused be enlarged on anticipatory bail.

4. *Per contra*, learned APP for the State opposes the present anticipatory bail application and states that this Court *vide* order dated 18.01.2023 had directed the applicant to join investigation on 19.01.2023 at 4:30 PM and that he shall continue to join the investigation. Further, this Court *vide* order dated 13.02.2023 had directed the present applicant to handover his mobile phone to the IO and the interim protection granted to the applicant was extended. Thereafter, *vide* order dated 20.12.2023, the present applicant had stated before this Court that his mobile phone was lost on 04.08.2022 and that the missing report of the same was lodged on 04.03.2023. In this regard, learned APP vehemently argues that the present applicant has not only lied to the IO but has also given false statement before this Court on 20.12.2023 by stating that his mobile phone was lost. It is submitted that the IO has prepared a detailed analysis of the mobile phone, obtained from the service provider, with respect to IMEI number of applicant's mobile and its Call Detail Records ('CDRs')

between the period 05.08.2022 to 28.02.2024. It is argued that this analysis reveals that the mobile phone number belonging to the applicant was active between 09.02.2023 to 13.02.2023 and the IMEI details of the mobile phone revealed that the SIM being used in the said mobile phone was registered in the name of applicant's mother and interestingly, his mobile phone location reveals that the present applicant was carrying the said mobile phone in question to the Delhi High Court. Learned APP for the State submits that this conduct of the applicant is questionable as he has not only misguided the investigating agency but this Court also on two various occasions i.e., 13.02.2023 and 20.12.2023. It is therefore, prayed that considering the conduct of the applicant and his evasive behavior towards this Court and the investigating agency, the application for grant of anticipatory bail be dismissed.

5. This Court has heard arguments addressed on behalf of both the parties and has perused the material placed on record.

6. Before dwelling into the merits of the case, this Court deems it necessary to first take note of previous orders passed in the present case. The order dated 13.02.2023 passed by this Court is reproduced as under:

“1. Learned counsel for petitioner states that the petitioner has joined investigation.

2. Learned APP for the State states that the chargesheet has already been filed. He further states that petitioner has not handed over his mobile phone to the investigating officer. Let mobile phone of petitioner be traced and handed over to the investigation officer as early as possible.

3. Re-notify on 27.04.2023.

4. In the meanwhile, interim relief granted to petitioner is extended till the next date of hearing...”

7. Further, the order dated 20.12.2023 passed by this Court is extracted hereunder:

“1. IO states that the applicant herein has not co-operated in the investigation and instead of handing over the mobile phone which contains the messages exchanged between the prosecutrix and the applicant herein, he has now taken a plea that he had lost the phone in the year 2022 though no such plea was earlier taken.

2. This Court also has taken note of order dated 13.02.2023 vide which the mobile phone of the petitioner was to be handed over to the investigating officer. It is stated that instead of handing over the mobile phone, the petitioner has taken a plea that this phone was lost on 04.08.2022. The missing report was, however, lodged in this case, on 04.03.2023.

3. Copy of chargesheet and supplementary chargesheet be filed before next date of hearing.

4. List on 06.03.2024.

5. Interim order(s), if any, to continue.

6. The order be uploaded on the website forthwith.”

8. This Court notes that during investigation in the present case, serious efforts had been made by the IO to trace the present applicant, however, he was absconding. Thereafter, the learned Trial Court had issued Non-Bailable Warrants against the applicant on 04.08.2022. On 08.08.2022, proceedings under Section 82 of Cr.P.C had been initiated against the applicant. It is further noted that the present

applicant was then declared Proclaimed Offender on 26.09.2022 by the learned Trial Court.

9. As regards the CDR analysis conducted in the present case, the location of the applicant's mobile phone had matched with the CDR of victim's mobile phone. As per CDR analysis, a phone call to the victim was also made at 12:07 AM on 19.07.2022 from the mobile number of the present applicant. Furthermore, on 19.07.2022, the location of applicant's mobile phone from 6:44 AM to 8:48 AM was found at the address of the victim, which corroborates the version given by the victim.

10. In the proceedings before this Court, the applicant had joined investigation as per order dated 18.01.2023, however, he had not hand over his mobile phone as requested by the IO, which he had allegedly used at the time of offence. Further, the applicant had first made a statement before this Court on 13.02.2023 that he will hand over the said mobile phone to the I.O., however, on the next date of hearing i.e. 20.12.2023, he had stated before this Court that his phone had been stolen and he had shown a missing report regarding the same dated 04.03.2023 wherein it was mentioned that his mobile phone was lost on 04.08.2022 at ISBT, Kashmiri Gate, Delhi.

11. However, during the course of arguments, learned APP for the State had informed this Court that supplementary chargesheet regarding the CDR and location chart analysis pertaining to the alleged lost mobile phone of the accused had been filed by the I.O. As submitted before this Court by learned APP, it has been found that the applicant had misguided this Court as well as the investigating

agency since the report received from the service provider of the applicant's mobile with respect to the IMEI number and CDR, between the periods 05.08.2022 to 28.02.2024, revealed that the mobile phone belonging to the present applicant was active between 09.02.2023 to 13.02.2023 and the SIM details revealed that the said mobile i.e. same IMEI number, was now registered under the name of mother of the applicant. The location chart analysis further reveals that the said mobile phone of the applicant was in Delhi High Court itself on 13.02.2023 i.e. when this matter had been taken up by this Court. Thus, from the above facts, it can be concluded that the applicant was in possession of his mobile phone even after 04.08.2022 i.e., when the present applicant/accused claims to have lost his mobile phone, for which he had allegedly lodged a complaint after many months. Further, when he had appeared in the Court, the location chart analysis of the mobile phone in questions shows that the said mobile phone was in Delhi High Court itself.

12. Therefore, after going through the case records, this Court is of the opinion that the applicant in this case was declared proclaimed offender and had not joined investigation initially. He joined investigation at the direction of this Court and on the undertaking that he will hand over the mobile phone to the investigating agency. Instead of handing over the phone to the I.O., he had informed the I.O. and this Court also that the alleged mobile phone had been lost and he had also produced on record the missing report regarding the alleged mobile phone having been lost on 04.08.2022. However, during investigation, the I.O. has found that that the phone in

question was being used by the present applicant and his family members and the location of that very phone was in the Delhi High Court itself on the date of hearing before this Court on 13.02.2023. As per the prosecution, the alleged phone in question was of the utmost important as the same contained some digital evidences.

13. Considering the overall facts and circumstances of the case and the fact that the present applicant/accused has deliberately tried to mislead this Court and the investigating agency and also the fact that the present applicant/accused was declared a proclaimed offender, no ground for grant of anticipatory bail is made out.

14. Accordingly, the present application stands dismissed.

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

16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 12, 2024/zp