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

+ **BAIL APPLN. 482/2024, CRL.M.A. 4154/2024**

MOHD AMAN RANA

.....Petitioner

Through: Appearance not given

versus

THE STATE AND ANR

.....Respondents

Through: Mr. Raghvinder Verma, APP for the
State with SI Pooja, PS New
Usmanpur

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

11.09.2024

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1. The present application has been filed for anticipatory bail in case FIR no. 462/2023 under Section 323/376/174A IPC and Section 6 of the POSCO Act registered at PS New Usmanpur.
2. The facts as alleged by the prosecution are appalling in nature. Briefly stated, that the allegation are that the present complaint was lodged on the complaint of 'R', wife of Md. AR, resident of Delhi and it was alleged that on 13.06.2023 at around 08:30 PM, she sent her daughter / victim 'A', age – 8 years to buy salt from nearby shop. After 10:15 minutes, she heard her daughter's cry from downstairs. The complainant came down and asked her brother-in-law's wife 'N' that why her daughter is crying. On which N told R that A told her that when A was going to buy salt Hayat's mother who lives next to the victim's house to



call her at her house. The victim went to her house. After that her mother went to kitchen and at the same time Namra's husband called 'A' called the victim near her and alleged the accused i.e. Namra's husband first pulled down A's pyjama and started touching her private part and thereafter he took off his pant and made the victim to sit on his lap. Thereafter, the victim started crying on which Hayat's mother came and slapped her. It was alleged that the victim 'A' repeated the same about the incident to her mother. On this, the FIR bearing no. 462/2023 was lodged on 14.06.2023 at 05:50 PM.

3. The prosecution has alleged that on 14.06.2023, another cross FIR bearing no. 463/2023 under Section 354/354(B)/341/452/376/323/PRE34 IPC was registered at PS New Usmanpur on complaint of the mother-in-law of the present petitioner in which also she made serious allegation against certain persons including Aarif, Tariq, Waris and Asif. In the present case, the statement of the victim and her mother of the complainant under Section 164 Cr.P.C. was recorded.
4. During the course of the investigation, the proceedings under Section 82 Cr.P.C. was initiated against the petitioner and on 12.10.2023, the petitioner was declared PO. It has been submitted that the charge-sheet had already been filed.
5. Learned counsel for the petitioner submits that the present case is totally false and frivolous. Learned counsel submits that the alleged incident is of 13.06.2023 around 08:30 PM whereas the FIR was lodged on 14.06.2023 at 05:50 PM. Learned counsel submits that in fact the incident as alleged in FIR no. 463/2023 was of prior time to the present incident, however, the police malafidely did not lodge the FIR on the



complaint made by mother-in-law of the petitioner. Learned counsel submits that the FIR no. 463/2023 was intentionally lodged after ½ hour of the present FIR. Learned counsel for the petitioner further submits that the petitioner who is an advocate has falsely been implicated. Learned counsel for the petitioner has invited the attention of the Court to the transcript of telephonic conversation between the *Devrani* of the complainant and the mother-in-law of the petitioner. Learned counsel submits that the transcript of the same clearly indicates that the present FIR against the petitioner was totally forged and fabricated. Learned counsel for the petitioner has further invited the attention of the Court that in fact the PCR message was done by the wife of the petitioner on 13.06.2023 at 12:57 PM regarding the incident as recorded in FIR no. 463/2023.

6. Learned counsel for the petitioner has further submitted that the accused Arif, in case FIR no. 463/2023 was admitted to bail by the Co-ordinate Bench of this Court in Bail Application no. 3684/2023 titled as *Mohd. Arif vs The State & Another* vide order dated 22.01.2024.
7. Learned counsel submits that since it a false case of implication, the petitioner may be admitted to bail.
8. *Per contra*, Learned APP for the state has vehemently opposed the bail application. Learned APP submits that the allegations in FIR no. 462/2023 are serious in nature where allegedly a minor has been sexually assaulted. Learned APP submits that the petitioner never joined the investigation and was declared a proclaimed offender. It has further been submitted that the custodial interrogation of the petitioner is necessary.
9. The parameters of grant of anticipatory bail is very well settled. The



court is required to take into account the following factors and parameters to be considered while dealing with anticipatory bail:

- a. the nature & gravity of accusation and the exact role of the accused must be properly comprehended before the arrest is made;
- b. the Court before exercising the discretion is required to take into account the antecedents of the applicant;
- c. the possibility of the applicant to flee from justice;
- d. the possibility of the accused's likelihood to repeat similar or other offences;
- e. it is a settled proposition that while considering the prayer for grant of anticipatory bail a balance has to be struck between two facts, namely, no prejudice should be caused to the free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- f. the court is also required to consider reasonable apprehension of tampering of witness or apprehension of threat to the complainant;
- g. it is pertinent to mention that these are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature.

10. Reliance can be placed upon in the matter ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others***, (2011) 1 SCC 694; passed by the Hon'ble Supreme Court while relying upon the Constitution Bench judgment in ***Shri Gurbaksh Singh Sibbia (supra)***.

11. The courts have time and again held that the grant of anticipatory bail is a discretionary in jurisdiction and has to be exercised sparingly. However, at the same time, the Court should and must exercise it where the allegations are only with the purpose of injuring or humiliating the



petitioner.

12. Learned counsel for the petitioner has heavily relied upon the order of the Co-ordinate Bench of this Court in Bail Application no. 3684/2023 dated 22.01.2024, wherein the accused Arif, in case FIR no. 463/2023 has been admitted to bail. Even perusal of that order indicates that the Co-ordinate Bench of this Court had indicated that the present petitioner had absconded. The suspicion was indicated on the registration of FIR no. 463/2023. However, the Court without being influenced by that is simply confining itself with the allegations made in the case. The Court has also found a MOU / settlement deed between the petitioner and the mother of the victim. It also shows that the petitioner, while being enjoying the interim protection, is trying to influence the victim or members of her family. The telephonic conversation as read by the learned counsel for the petitioner also cannot be not taken into account without being verified or confirmed. After taking into the account the facts and circumstances, this Court is of considered view that the petitioner is not entitled to be admitted to anticipatory bail.
13. In view of above, the present bail application and all pending applications stands disposed of.

DINESH KUMAR SHARMA, J

SEPTEMBER 11, 2024
JN/DG