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

+ **BAIL APPLN. 498/2024**

**JAIDEEP SOLANKI**

..... Petitioner

Through: Mr. Sunil Dalal, Sr. Adv. with Mr. Pradeep Rana, Mr. Mohit Malik, Mrs. Manisha Saroha, Mr. Mahabir Singh, Mr. Nikhil Beniwal and Mr. Navish Bhati, Advs.

versus

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

Through: Mr. Raghuvinder Verma, APP for State with SI Jyoti, PS Sector-23 Dwarka and SI Krishma PS Dwarka South  
Mr. Jitendra Kr. Jha, Adv. for R-2

**CORAM:**

**HON'BLE MR. JUSTICE VIKAS MAHAJAN**

**ORDER**

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**09.05.2024**

1. The present petition has been filed seeking regular bail in connection with FIR No.0324/2019 under Sections 376/376D/328/324/120B/34 IPC and Section 6 POCSO Act registered at P.S. Dwarka, New Delhi.
2. The case of the prosecution is that FIR was registered alleging an incident of 09.07.2019 wherein the accused/petitioner on the pretext of celebrating his birthday asked the child victim to come to Sector-9, Dwarka Metro Station by bunking the school. From there, the child victim along with her friend were taken in a car to a flat at Goyala Dairy. At that time, the friend of the accused/ petitioner was also with them. At the flat, the accused/petitioner had given a cold drink to the child victim and after



consuming the same, the child victim felt dizziness. Thereafter, accused/petitioner forcibly committed penetrative sexual assault upon the child victim, due to which the child victim started bleeding heavily which could not be controlled by medicines and was thereafter admitted in a hospital.

3. Learned senior counsel appearing on behalf of the petitioner invites attention of the Court to the MLC of Mata Roop Rani Maggo and Mahindru Hospital dated 09.07.2019 to contend that the reason of alleged vaginal bleeding was given that it was a case of trauma (accidental) foreign body with some toy. He further submits that it is recorded in the MLC that there is no mark of assault.

4. The learned senior counsel also draws attention of the Court to the testimony of the mother of the child victim, who was examined as PW3, to contend that the mother has also admitted the fact that the petitioner had come to inform her as regards the petitioner being admitted in the Mata Roop Rani Maggo and Mahindru Hospital and the blood stained clothes were handed over by the petitioner to the mother of the victim, however, the mother suspected that as if the petitioner has done something to the victim. The mother of the child victim instead of verifying the fact from the concerned hospital or from the child victim herself, straight away dialed at No.100 making allegations against the present petitioner.

5. He submits that the child victim who was a friend of the petitioner had called petitioner's *Bhabi*, who is a nurse, after the child victim suffered the bleeding. Thereafter, the petitioner and his *Bhabi* had taken the child victim to the hospital.

6. Further referring to the testimony of PW6, the learned senior counsel



submits that the said witness has clearly stated that the victim had suffered from vaginal bleeding on account of use of some foreign body.

7. Further, the contention of the learned senior counsel is that the petitioner is in custody since 10.07.2019 and has been incarcerated for almost 5 years. He submits that the investigation is complete, the chargesheet has been filed, the trial is underway and the testimonies of all the material witnesses have already been recorded, therefore, the custody of the petitioner is no more warranted.

8. He further submits that the petitioner, who is aged about 25 yrs, does not have any criminal record nor the petitioner is a flight risk. He, therefore, urges the Court that the petitioner may be enlarged on bail.

9. *Per contra*, the learned APP has argued on the lines of the status report.

10. Learned counsel appearing on behalf of the complainant submits that an application seeking interim bail is pending before the learned Trial Court and this fact has been concealed by the present petitioner, therefore he is not entitled for bail. He further submits that threats are being extended by the petitioner to the child victim, therefore, there is a possibility that the petitioner may tamper with the evidence if enlarged on bail.

11. He submits that the contention of the petitioner that the petitioner along with his *Bhabhi* had taken the child victim to Mata Roop Rani Maggo and Mahindru Hospital stand falsified from the reading of the MLC itself as it does not mention the name of the petitioner or his *Bhabhi* as the persons who brought the child victim at the hospital, therefore, no reliance can be placed on the MLC.

12. I have heard the learned counsel for the petitioner, learned APP for



State, as well as, learned counsel for the complainant.

13. A bird's eye view of the testimony of the victim's mother who was examined as PW3 supports the contention of the petitioner to an extent that the mother had made a call to the police by dialing No.100 making allegations against the present petitioner without verifying the fact from the child victim or from the hospital where she was admitted.

14. A perusal of the testimony of PW6 also shows that she has not fully supported the case of the prosecution. Though the probative value of the prosecution evidence, the MLC, as well as, the credibility of the witnesses, will be considered by the learned Trial Court during the trial but at this stage it cannot be disregarded that the testimonies of PW3 as well as PW6 have the potential of probalizing the defence of the petitioner to an extent.

15. Even taking the allegations on their face value, it has to be borne in mind that the age of the child victim at the relevant time was 17 years and the petitioner was aged about 21 years and they were known to each other. Further, it is not a case of repeated sexual assault.

16. Apart from the seriousness of the allegations, the other factors cannot be ignored. The petitioner is in custody for past 5 years and the testimonies of all the material witnesses have been recorded. Further, the prosecution has cited as many as 51 witnesses out of which only 10 witnesses have been examined. Needless to say, that the trial in the present case is going to be protracted one. In the facts and circumstances of the present case, the petitioner cannot be kept in custody for indefinite period to await outcome of the trial when at this stage there is presumption of innocence in his favour.

17. On a query posed by the Court, learned APP on instructions from the



IO who is present in Court, fairly states that the petitioner has clean antecedents.

18. The petitioner is a permanent resident of Delhi therefore there is no possibility of the petitioner fleeing in the event he is enlarged on bail.

19. Insofar as the allegation that the petitioner has been threatening the child victim and other witnesses, on a query from the IO who is present in Court, it transpires that no complaint has been made by the victim in the recent past. Any such apprehension can, otherwise, be addressed by imposing appropriate conditions.

20. The aforesaid circumstances when considered in entirety meets the higher threshold that is required to be met at the time of considering the bail application of a person accused of an offence under the POCSO Act after the charge has been framed for such an offence, in view of the impact of Section 29 of the said Act.

21. Considering the aforesaid facts in totality, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs.20,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.



c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the child victim or other witnesses.

22. The petition stands disposed of.

23. It is made clear that nothing stated above is to be construed as an expression of opinion on the merits of the case.

24. The Trial Court is directed to expedite the trial within a period of one year.

25. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

26. Order be uploaded on the website of this Court.

27. Order *dasti* under signatures of the Court Master.

**VIKAS MAHAJAN, J**

**MAY 9, 2024/ns**