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

+ **BAIL APPLN. 519/2024**

GULAM MUSTAFA @ PAPPU

.....Petitioner

Through: Mr. Amit Tiwari, Mr. Shrey Sharawat, Mr. Mayank Punia, Mr. Nitish Ojha, Ms. Ishita Misra, Mr. Ayush Tanwar and Mr. Rahul Bhaskar, Advocates.

versus

STATE NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Utkarsh, APP for the State.
SI Anupam, P.S.: Jama Masjid.
Ms. Sunita Arora, Advocate
(DHCLSC) for the victim.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

23.10.2024

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By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No. 0060/2019 dated 29.04.2019 registered under section 304 of the Indian Penal Code, 1860 ('IPC') and sections 4/8/10 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') at P.S.: Jama Masjid, New Delhi. Consequent upon completion of investigation, the offences under sections 354/354-A/376(2) of the IPC and section 6 of POCSO Act have been added *vide* chargesheet dated 10.06.2019.

2. Notice on this petition was issued on 13.02.2024; pursuant to which Status Report dated 12.05.2024 has been filed on behalf of the State.



3. Nominal Roll dated 07.03.2024 has also been received from the Jail Superintendent.
4. The court has heard Mr. Amit Tiwari, learned counsel appearing for the petitioner; Mr. Utkarsh, learned APP appearing for the State; as well as Ms. Sunita Arora, learned legal-aid counsel appearing for the victim at length.
5. Mr. Tiwari submits, that the General Diary ('GD') Entry bearing GD No. 004A dated 29.04.2019 recorded at 04:29 a.m. only narrates that a man had fallen-off a roof-top from the property where he used to reside. It is pointed-out that subsequently, Police Control Room ('PCR') Form dated 29.04.2019 recorded at 04:37 a.m. refers to the version given by the wife of the deceased, and again only records that her husband was in a *state of intoxication* and that he had *locked himself out* on the roof-top and had then fallen-off the roof-top.
6. Learned counsel submits however, that in the subject FIR that was registered at 05:30 p.m. on 29.04.2019 *i.e.* some 12-hours after the time of the alleged incident, a whole new narrative has been cast, to allege that since earlier the petitioner had committed an offence against the minor daughter of the deceased, the deceased called the petitioner to his house *at about 04:15 a.m.* on 29.04.2019, whereupon the two of them had a scuffle on the roof-top of the house and the petitioner pushed the deceased off the roof.
7. It is pointed-out that the subject FIR further goes on to record, that the scuffle between the petitioner and the deceased took place in the presence of the wife of the deceased; that during the scuffle, some



bangles worn by the wife broke; and that it was during the scuffle that the petitioner pushed the deceased off the roof-top.

8. Mr. Tiwari submits therefore, that the narrative contained in the subject FIR is vastly different from what was recorded in the GD Entry as well as in the PCR Form, and it is evident that substantial improvements have been made at the time of registration of the subject FIR.
9. Counsel however argues, that the allegations in the subject FIR must be *prima-facie* appreciated on the basis of the fact that the post-mortem report of the deceased records the presence of alcohol in his blood; that no broken bangles were found by the crime team, which was the first to reach the spot (though the prosecution says that broken bangles were recovered by them from the spot subsequently); and that the sole eye-witness to the alleged offence, namely the wife of the deceased, who has deposed as PW-3 at the trial, has turned hostile.
10. Mr. Tiwari submits, that it has also been alleged that certain CCTV footage of the area collected by the Investigating Officer ('I.O.') shows the petitioner having come to the house of the deceased at about 04:15 a.m. on the fateful day; but the DVR seized was found to contain no such CCTV footage and has now been sent to FSL for further examination.
11. Learned counsel submits, that initially the subject FIR was registered *inter-alia* under section 304 of the IPC; and even the chargesheet was filed under that provision; but at the stage of framing of charge, the court has also framed charge against the petitioner under section 302



of the IPC, which has been the ground for the petitioner being denied bail.

12. Learned counsel further submits, that of the 27 witnesses which were cited by the prosecution to begin with, 17 witnesses were dropped after proceedings under section 294 of the Cr.P.C.; and of the 10 remaining witnesses, 8 have already been examined; and only the I.O. and the owner of the premises where the DVR was installed, remain to be examined before the learned trial court.
13. In the meantime however, the petitioner has already suffered about 03 years and 08 months of judicial custody as an undertrial, without any other criminal involvements; nor any adverse report in relation to his conduct in jail.
14. In view of the above submissions, Mr. Tiwari prays that the petitioner be enlarged on regular bail.
15. On the other hand, opposing the grant of bail, learned APP submits, that quite apart from the fact that the petitioner is facing trial for the offence under section 302 of the IPC, it must not be ignored that the petitioner has also been charged under section 10 of the POCSO Act in relation to a minor, who was less than 12 years of age at the time of the commission of the alleged offence. Learned APP points-out, that in her testimony recorded under section 164 of the Cr.P.C., as well as in her court deposition, the minor victim has re-affirmed the allegations against the petitioner and supported the case of the prosecution.



16. Other things apart, Mr. Utkarsh argues, that now that the trial is almost at the point of conclusion, the petitioner must await the completion of the entire proceedings.
17. Ms. Arora appearing for the victim submits, that the offence under section 10 of the POCSO Act is punishable with a minimum imprisonment of 05 years; that in view of section 29 of the POCSO Act, there is a presumption as to the petitioner having committed the offence unless the contrary is proved; and that therefore the petitioner does not deserve to be enlarged on bail.
18. Upon an conspectus of the facts and circumstances of the case and submissions made at the Bar, what weighs with the court, at this stage are the following considerations :
 - 18.1. There are evident discrepancies between what was recorded in the GD Entry and the PCR Form on the one hand *and* what has been narrated in the subject FIR on the other hand, which FIR was recorded some 12 hours after the time of the alleged incident. If, as alleged in the subject FIR, the wife of the deceased was indeed present at the time when the alleged scuffle took place and the deceased was pushed-off the roof-top by the petitioner in the wife's presence, it needs to be considered at the trial as to why that essential allegation (namely that a man has been pushed-off the roof-top) not narrated in the GD Entry or in the PCR Form;
 - 18.2. The post-mortem report of the deceased has shown the presence of alcohol in the blood, which aligns with what was recorded in the PCR Form, namely that the man was in a state



of intoxication, but a different narrative is contained in the subject FIR;

- 18.3. No CCTV footage has been found so far from the DVR seized from the spot, to show that the petitioner had at all come to the house of the deceased at 04:15 a.m. on 29.04.2019. Whether or not the petitioner was at all present at the spot at the time of the alleged incident, and therefore whether he had anything to do with the incident, also needs to be considered in the course of the trial;
- 18.4. No other forensic evidence showing the petitioner's presence at the scene of the incident has come on record in the course of trial so far;
- 18.5. The wife of the deceased, who claims to be the only eye-witness of the incident, and who has deposed as PW-3 at the trial, has turned hostile;
- 18.6. The petitioner has already suffered judicial custody for almost 03 years and 08 months as an under-trial; and as confirmed by the nominal roll his jail conduct has been 'satisfactory' and he has no other criminal involvements;
- 18.7. The prosecution had cited 27 witnesses to begin with; after the proceedings under section 294 Cr.P.C., 17 witnesses were dropped; and of the 10 remaining witnesses, 08 have been examined, leaving only the I.O. and the owner of the premises where the DVR was installed, to be examined before the learned trial court;



- 18.8. Though there is no doubt that the petitioner is also facing trial for the offence under section 10 of the POCSO Act, and the threshold punishment for that offence is for a term of 05 years, the position today is that the petitioner has already undergone about 03 years and 08 months of judicial custody as an undertrial.
19. Upon an overall consideration of the foregoing, this court is persuaded to allow the present petition, thereby admitting the petitioner - **Gulam Mustafa @ Pappu s/o Md. Sadiq** - to regular bail pending trial, subject to the following conditions :
- 19.1. The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Rs. Twenty-five Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;
- 19.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 19.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 19.4. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing;
- 19.5. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case.



The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial. More specifically, the petitioner shall neither contact nor interact, whether directly or indirectly, with the complainant or her family, in any manner whatsoever. The petitioner shall also not visit the locality in which the complainant stays; and

- 19.6. Since the petitioner is facing trial, and would therefore be appearing before the learned trial court from time-to-time, no reporting requirement has been imposed as a condition of bail.
20. Nothing in this order shall be construed as an expression of opinion on the merits of the pending trial.
21. A copy of this order be sent to the concerned Jail Superintendent *forthwith* for information and compliance.
22. The petition stands disposed-of in the above terms.
23. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 23, 2024/ak