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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 877/2023

MOHD ANAMUL

..... Petitioner

Through: Md. Masood Alam and Mr Sheeraj
Nomani, Advocates.

versus

STATE NCT GOVT. OF DELHI AND ORS.

..... Respondents

Through: Mr Aashneet Singh, APP for the State
with SI Bhawna, PS Gandhi Nagar.
Ms Kamna Vohra and Mr Shivam
Tyagi, Advocates for R-2/victim.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

11.01.2024

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1. The present petition has been filed under Section 439 CrPC seeking regular bail in FIR No.0571/2022 under Sections 354/354A/323 IPC and Section 10 POCSO Act registered at Police Station Gandhi Nagar.
2. Learned counsel for the petitioner invites the attention of the Court to the testimony of the victim, to contend that the only allegation against the present petitioner is that he had bitten the cheek of the victim.
3. He submits that the petitioner is already in custody since 18.10.2022 and the charge-sheet having been filed, no further investigation is required to be done and keeping the petitioner in custody will not serve any useful purpose. He also submits that since evidence of all the public witnesses have been recorded, therefore, there is no possibility of petitioner influencing the victim and other witnesses, in the event he is enlarged on bail.



4. He further submits that the petitioner has clean antecedents. He, therefore, urges the Court to enlarge the petitioner on bail.
5. *Per contra*, learned APP for the State has argued on the lines of the status report.
6. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the material on record.
7. This Court is cognizant of the fact that since the charges have been framed by the learned Trial Court, the threshold of satisfaction required would be higher while considering the bail application of the petitioner in view of the impact of Section 29 of the POCSO Act.
8. A coordinate Bench of this Court in “***Dharmander Singh vs. State***”, ***2020 SCC OnLine Del 1267***, while considering the effect of Section 29 of the POCSO Act when an application for bail is to be considered after framing of charges, laid down as under:

*“74. As always, when faced with such dilemma, the court must apply the golden principle of balancing rights. In the opinion of this court therefore, at the stage of considering a bail plea **after charges have been framed, the impact of section 29 would only be to raise the threshold of satisfaction required before a court grants bail.** What this means is that the court would consider the evidence placed by the prosecution along with the charge-sheet, **provided it is admissible in law, more favorably for the prosecution** and evaluate, though without requiring proof of evidence, whether the evidence so placed is credible or whether it *ex facie* appears that the evidence will not sustain the weight of guilt.*

(emphasis supplied)

9. The Court further enumerated certain real life considerations, one or more of which if exists in a particular case, are ought to be considered while



deciding a bail plea at the post-charge stage, in addition to the nature and quality of the evidence before it. The relevant part of the judgment reads as under:-

“77. Though the heinousness of the offence alleged will beget the length of sentence after trial, in order to give due weightage to the intent and purpose of the Legislature in engrafting section 29 in this special statute to protect children from sexual offences, while deciding a bail plea at the post-charge stage, in addition to the nature and quality of the evidence before it, the court would also factor in certain real life considerations, illustrated below, which would tilt the balance against or in favour of the accused:

a. the age of the minor victim : the younger the victim, the more heinous the offence alleged;

b. the age of the accused : the older the accused, the more heinous the offence alleged;

c. the comparative age of the victim and the accused : the more their age difference, the more the element of perversion in the offence alleged;

d. the familial relationship, if any, between the victim and the accused : the closer such relationship, the more odious the offence alleged;

e. whether the offence alleged involved threat, intimidation, violence and/or brutality;

f. the conduct of the accused after the offence, as alleged;

g. whether the offence was repeated against the victim; or whether the accused is a repeat offender under the POCSO Act or otherwise;

h. whether the victim and the accused are so placed that the accused would have easy access to the victim, if enlarged on bail : the more the access, greater the reservation in granting bail;

i. the comparative social standing of the victim and the accused : this would give insight into whether the accused is in



a dominating position to subvert the trial;

j. whether the offence alleged was perpetrated when the victim and the accused were at an age of innocence : an innocent, though unholy, physical alliance may be looked at with less severity;

k. whether it appears there was tacit approval-in-fact, though not consent-in-law, for the offence alleged;

l. whether the offence alleged was committed alone or along with other persons, acting in a group or otherwise;

m. other similar real-life considerations.

The above factors are some cardinal considerations, though far from exhaustive, that would guide the court in assessing the egregiousness of the offence alleged; and in deciding which way the balance would tilt. At the end of the day however, considering the myriad facets and nuances of real-life situations, it is impossible to cast in stone all considerations for grant or refusal of bail in light of section 29. The grant or denial of bail will remain, as always, in the subjective satisfaction of a court; except that in view of section 29, when a bail plea is being considered after charges have been framed, the above additional factors should be considered.”

10. It is not a case where the petitioner has repeatedly committed an offence of sexual assault or aggravated sexual assault on the victim nor there is any allegation that the offence alleged involved threat, intimidation violence and/or brutality. The only allegation is that the petitioner had bitten on the cheek of the victim.

11. On a query put by the Court, learned APP for the State, on instructions from the Investigating Officer, who is present in the Court, submits that the victim along with her mother has shifted out of the colony of which the petitioner is a resident. Further, the victim has already been



examined, therefore, there is no possibility of the petitioner influencing the victim or other witnesses in the event he is enlarged on bail.

12. It is also not the case of the prosecution that the petitioner is in any kind of dominating position to subvert the trial.

13. The petitioner is in custody for the past fifteen months and undisputedly, his custody is not required any further. Further, it is not in dispute that the petitioner does not have criminal record.

14. The nature of allegation and the aforesaid circumstances discussed above meet the higher threshold required for releasing the petitioner on bail. This being the position and regard being had to the long incarceration of the petitioner, I am of the view that the petitioner had made out a case for grant of regular bail. Accordingly, the petitioner is admitted to regular bail subject to his furnishing a Personal Bond in the sum of Rs.10,000/- and one Surety Bond of the like amount to the satisfaction of the learned 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, as well as, his permanent address to the IO concerned. He shall keep his mobile in working condition at all times and 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 victim/complainant or any family members of the victim/complainant.



15. The petition is disposed of.
16. Copy of the order be forwarded to the Jail Superintendent for information and necessary compliance.
17. Order *dasti* under signatures of the Court Master.

JANUARY 11, 2024
MK

VIKAS MAHAJAN, J