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

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Reserved on: 10.05.2024
Pronounced on: 30.05.2024+ **BAIL APPLN. 727/2024****BHEEMSEN**

..... Petitioner

Through: **Mr. B.S. Randhawa and Ms.
Nisha Siddiqui, Advs.**

Versus

STATE (GOVT. NCT OF DELHI) & ANR. RespondentsThrough: **Mr. Naresh Kumar Chahar,
APP for the State with Mr.
Divyam Rai, Mr. Puneet
Aggarwal and Mr. Lalit Kumar,
Advocates along with SI
Manish Tyagi, P.S. Govind
Puri.****CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), has been filed on behalf of applicant seeking grant of bail in case arising out of FIR bearing no. 88/2014 registered at Police Station Govindpuri, Delhi for offences punishable under Sections 376/506/174A of Indian Penal Code, 1860



(*IPC*) and Section 4/5/6 of Protection of Children from Sexual Offences Act, 2012 (*POCSO Act*).

2. Briefly stated, it is the case of the prosecution that on 21.01.2014 the victim 'X'/prosecutrix aged about 14 years at the time of incident, along with her mother Ms. 'Y' had gone to Police Station Govindpuri, New Delhi and the victim 'X' had given her statement that in the year 2011, victim 'X' along with her mother and brother had been sleeping in a room and her father i.e., the present applicant/accused had been watching TV in the adjacent room. It is alleged by the victim 'X' that she was unable to sleep and was in fear for some reason and the present applicant/accused had asked the victim 'X' to come sleep in the other room along with him, since the victim 'X' was unable to sleep. It is alleged that the victim 'X' was also having pain in the chest and the present applicant/accused had then alleged started rubbing her chest and had undressed her, made forceful physical relationship with her. It is further alleged that the applicant/accused had then extended threats to victim 'X' that if she would disclose the incident to anyone then he would kill her as well as her mother Ms. 'Y'. Thereafter, the victim 'X' had not disclosed the alleged incident to anyone since, she got scared. As per the allegation, the present applicant/accused had continued to sexually assault the victim 'X' on several other occasions. It is also alleged that in December 2012, one day while the victim 'X' was being sexually assaulted by the present applicant/accused her mother Ms. 'Y' had caught the present applicant/accused and both of them had altercations. However, as per the allegation on 23.12.2013 the present



applicant/accused had absconded from the house without informing anyone in the family. It is had been further alleged that victim 'X' had not lodged a complaint earlier out of fear. Based on the said statement the present FIR had been lodged.

3. Learned Counsel appearing on behalf of the applicant submits that the present case is nothing but a false case registered against the applicant to humiliate and torcher him. It is stated that the applicant herein was arrested on 31.05.2022 and after his PC remand he is in Judicial custody since 02.06.2022. It is also stated by learned counsel for the applicant that the wife of the present applicant/accused had also been made an accused in the present case and was also arrested. However, she had been granted bail by the learned Trial Court vide order dated 14.09.2022. It is further stated that there are material discrepancies in the statement of prosecutrix recorded under Section 164 Cr.P.C and that the prosecutrix in her cross examination has turned hostile and has not supported the case of the prosecution. It is fervently argued that the present case had been lodged at the instance of NGO on. 21.01.2014 when the petitioner had left his house under compelling circumstances and financial constraints in December, 2013. It is thus prayed that the petitioner be enlarged on regular bail in the present case.

4. *Per Contra*, learned APP for the State opposes the present bail application and submits that the prosecutrix has supported the case of the prosecution in the examination in chief. It is further argued that the cross examination of the victim 'X' had been conducted after a long gap as the present applicant/accused had been declared



Proclaimed Offender and thus, since the prosecutrix had supported the case in examination in chief. Thus, the present bail application be dismissed.

5. This Court has heard arguments on behalf of the applicant as well as the state and has perused the material placed on record.

6. After hearing both the sides, this Court is of the opinion that the prosecutrix in this case has stated that she had lodged the present complaint at the instance of an NGO against her father i.e., the present applicant/accused. The applicant herein at the time of his arrest was found to be residing with his wife i.e., Ms 'Y' and the victim 'X', who is his daughter. The material witnesses have been examined in this case and the prosecutrix has not supported the prosecution case in her cross-examination.

7. Considering the overall facts and circumstances of the case, this Court is inclined to grant bail to the applicant on furnishing personal bond in the sum of Rs.20,000/- with one surety of like amount to the satisfaction of the Trial Court/Successor Court concerned on the following terms and conditions:

- i) The applicant shall remain available on mobile numbers; shared by him with the Police.
- ii) The applicant shall not leave the country without prior permission of the concerned Court.
- iii) In case of change of residential address/contact details, the petitioner shall promptly inform the same to the concerned I.O/SHO as well as Trial Court
- iv) The applicant shall not indulge in any other similar act.



8. Accordingly, the present application stands disposed of.
9. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 30, 2024/ns