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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 745/2024

LALTA PRASAD @ NIKHIL

.....Petitioner

Through: Mr. Banka Bihari Panda, Advocate.
versus

THE STATE

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State
with SI Savita, P.S.: Aman Vihar.
Ms. Nikita Sharma (DHCLSC),
Advocate for R2 with R2 in court.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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23.09.2024

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. 493/2023 dated 17.09.2023 registered under sections 354-A/376 of the Indian Penal Code, 1860 ('IPC') and sections 6/8 of the Protection of Children from Sexual Offence Act, 2012 ('POCSO Act') at P.S.: Aman Vihar, Delhi.

2. Notice on this petition was issued on 29.02.2024. Status report dated 06.08.2024 has been filed. Nominal Roll dated 10.04.2024 has also been received from the Jail Superintendent.
3. The complainant was issued intimation of the pendency of the present matter; and is present in court alongwith the legal-aid counsel assigned to her.
4. Mr. Banka Bihari Panda, learned counsel for the petitioner submits, that from a perusal of complaint dated 13.09.2023 made by the prosecutrix's sister it would be seen that the petitioner/Lalta Prasad @



Nikhil and his wife, who are the complaint's neighbors, had tried to persuade the complainant against having physical relation with the main accused, viz. Vikas @ Vicky; however, the complainant misunderstood the petitioner's intention and took umbrage at such suggestion.

5. Mr. Panda argues that it was in this backdrop that in FIR No. 493/2023 dated 17.09.2023 the complainant made the following allegation against the petitioner :

“... .. विकास मुझे बार-2 मेरे फोटोस viral करने की धमकी देकर मेरे साथ शारीरिक संबंध बनाता था विकास ने मेरे साथ आखिरी बार 11 sept 23 को शारीरिक संबंध बनाए थे जो कि हमारे पड़ोस में रहने वाले Lalta Prasad @Nikhil ने मुझे बोला कि जब तू vikas के साथ थे सब कर सकती है तो मेरे साथ भी कर ले vikas ने मेरे साथ मेरी मर्जी के बिना शारीरिक संबंध बनाए और Lalta Prasad @ Nikhil ने मेरे साथ बतमीजी की इन दोनों के खिलाफ कानूनी कार्यवाही की जाए... ..”

6. Mr. Panda points-out that even in her statement recorded under section 164 Cr.P.C., the complaint has made the same allegation against the petitioner.
7. Mr. Panda submits that it is a matter of record that no photographs or any other offending material has been recovered from the petitioner's cellphone or any other device, nor has any such material been recovered at the petitioner's instance or on his statement. Counsel submits however, that based on vague and unsubstantiated allegations made against him by the complaint, the petitioner was arrested on 18.09.2023 and has been in judicial custody ever since.



8. Mr. Panda further contends that since charges are yet to be framed in the matter, the rigours of section 29 of the POCSO Act are not applicable at this stage.
9. Ms. Shubhi Gupta, learned APP appearing for the State submits, that it is correct that on completion of investigation, the allegation against the petitioner in chargesheet dated 06.11.2023 is limited to what is narrated in the FIR and in the prosecutrix's statement recorded under section 164 Cr.P.C.; and that no recovery has been made from the petitioner's cellphone or at his instance. Learned APP submits however, that it to be borne in mind that the complainant was 'minor' at the time of commission of the offence; and that therefore, as per the chargesheet filed in the matter, the petitioner has been charged with offences under sections 354-A/323/34 IPC and sections 8/21 of the POCSO Act, and faces punishment of upto 05 years for the offence under section 8 of the POCSO Act.
10. Upon being queried, learned APP confirms, that as narrated in status report dated 06.08.2024, the Instagram ID on which the complaint's photos and videos were uploaded relates to the mobile number of a co-accused person and not to the petitioner.
11. Ms. Nikita Sharma, learned legal-aid counsel appearing on behalf of the complainant submits, that the complainant was 'minor' at the time of commission of the offence; and since the FIR also alleges commission of the offence under section 34 IPC, the petitioner would be equally liable for the acts of the other co-accused persons.
12. The nominal roll shows that the petitioner has been in judicial custody since 18.09.2023 and has accordingly spent more than 01 year in



judicial custody as an undertrial. The nominal roll also shows that the petitioner's jail conduct has been 'satisfactory'; and that he has no other criminal involvement.

13. Upon an overall conspectus of the facts and circumstances of the case, and in particular considering the nature of the allegations against the petitioner as seen from the record, and the fact that the petitioner has already spent more than 01 year in judicial custody as an undertrial, this court is persuaded to admit the petitioner – **Lalta Parsad @ Nikhil s/o Dharamdash** – to *regular bail* pending trial, subject to the following conditions :

- 13.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rupees Twenty-five Thousand Only) with 01 surety in the like amount from a family member *other than his wife*, to the satisfaction of the learned trial court;
- 13.2. 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;
- 13.3. 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;
- 13.4. 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; and

13.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.

Since the petitioner is facing trial and would be appearing before the learner trial court from time-to-time, no reporting requirement has been imposed as a condition of bail.

14. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
15. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
16. The petition stands disposed-of.
17. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 23, 2024/ss