



\$~89

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

+ **BAIL APPLN. 803/2024, CRL.M.A. 7061/2024 and
CRL.M.A. 7062/2024**

RIZWAN KHAN

..... Petitioner

Through: Mr.Gagan Gupta, Sr. Advocate with
Mr.Vikas Rohtagi, Advocate

versus

STATE GOVT. OF NCT OF DELHI & ANR. & ANR.

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for State
with SI Akash Kumar
Ms.Astha, Advocate (DHCLSC) with Mr.Vivek
Kumar, Advocate for respondent No.2

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

05.03.2024

%

1. The present second application has been filed under Section 438 Cr.P.C. seeking anticipatory bail in FIR No.582/2023 registered under Sections 376/342/506/34 IPC & Section 4 POCSO Act at P.S. Bhajanpura.
2. Pertinently, the applicant had filed an earlier application being BAIL APPLN. 53/2024, which came to be dismissed as withdrawn on 06.02.2024.
3. In the present application, it is averred that the applicant was neither present in court nor was consulted before withdrawal of the previous bail application.



4. Learned APP for the State, on instructions from Investigating Officer as well as Mr. Nawal Kishore Jha, learned APP for State, who had appeared on that day, submits that the matter was argued in detail and thereafter learned counsel for the applicant had sought leave to withdraw the bail application.

5. Irrespective of the aforesaid, the present application is taken up for consideration on merits.

6. Learned counsel for the applicant submits that in the present case, the presence of the victim at the spot is doubtful as in her statement, the victim has stated that she had been abandoned by her parents and that she has been living with her uncle and aunt who don not live near the place of the incident but rather live in Rohini. He further submits that the victim has made improvements in her statement recorded under Section 164 Cr.P.C. inasmuch as, at the time of initial statement, she had stated that the incident has taken place at 2:00 P.M. whereas in her statement under Section 164 Cr.P.C., the time of the incident is stated to be around 2:30 PM. He submits that the aforesaid has occurred due to the fact that the applicant has secured CCTV footage showing the applicant coming back home around 2:15 P.M. He further submits that present complaint is motivated as the applicant had given a complaint against the victim's uncle and aunt with respect to certain money transaction at P.S. Bhajanpura. It is further stated at the time of medical examination, the victim has refused for internal examination.

7. Learned APP for the State, duly assisted by learned counsel for complainant, has opposed the bail application. It is pointed out that the victim is only 15 years of age and her date of birth has already been verified from the school records. It is stated that the victim in her initial statement



has given details of the incident that had taken place in the house of the applicant. It is further submitted that minor variations in time will not prejudice the case of the prosecution as during the investigation, the I.O. has seized the blood-stained clothes of the victim

8. I have gone through statements of the victim recorded under Sections 161 and 164 Cr.P.C., wherein the victim has specifically stated that on the day of the incident, she had gone to the rooftop and while she was coming back, the applicant called her inside his house, which is at the third floor. It is further submitted that though the applicant's wife was at the house however, the applicant not only molested her but also inserted finger into the private part of the victim and committed the offence of rape. The statements recorded under Sections 161 and 164 Cr.P.C. are consistent.

9. In view of the above, I find no ground to entertain the present application. Accordingly, the same is dismissed alongwith the pending applications.

MANOJ KUMAR OHRI, J

MARCH 5, 2024

na