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

+ **BAIL APPLN. 818/2024, CRL.M.A. 7167/2024**

SUBHASH CHANDER

.....Petitioner

Through: Mr. Gurbaksh Singh and Mr. Arjun
D., Advs.

versus

THE STATE(NCT OF DELHI)

.....Respondent

Through: Mr. Raghvinder Verma, APP for the
State with SI Kirti, PS Amar Colony
Mother of prosecutrix/victim through
VC

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

18.09.2024

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1. The present petition has been under Section 439 Cr.P.C. for grant of regular bail to the applicant in case FIR no. 230/2023 registered under Section 354A/503 IPC and 10/12 POCSO Act at PS Amar Colony.
2. Learned counsel for the petitioner submits that the petitioner is in judicial custody since 04.06.2023. Learned counsel submits that the testimony of the prosecutrix / victim has already been recorded. Learned counsel submits that even if the testimony of the prosecutrix/victim is reviewed, the offence against the petitioner does not appear to have been established as alleged by the prosecution. Learned counsel also notes that the petitioner was on bail for approximately three months, during which time he did not misuse the



bail conditions.

3. Learned APP for the State has opposed the bail application on the ground that the accused allegedly sexually assaulted the minor victim under the influence of alcohol. Learned APP also submits that, according to the instructions of the Investigation Officer (IO), the majority of the community belongs to the accused, and if he is released on bail, he may harass the victim and her family members. Learned APP, furthermore, submits that bail should not be granted.
4. I have gone through the testimony of the prosecutrix / victim recorded in the court. In the testimony, the prosecutrix had stated that the accused called her by indication and there was a bad touch as well as touching of the private parts of the prosecutrix. The prosecutrix has also stated that foul smell was coming from the mouth of the accused. It is pertinent to mention here that the incident alleged has taken place in the public street.
5. As per nominal roll dated 30.04.2024, the petitioner is of 52 years of age and he has already been in custody for more than one year. The trial may take a long time.
6. In the case of *State of Rajasthan, Jaipur v. Balchand @ Baliay* 1978 SCR (1) 535, the Supreme Court inter alia held that the basic rule is bail, not jail, except where circumstances suggest the accused may flee from justice, obstruct the course of justice, or create other troubles, such as repeating offenses or intimidating witnesses. These factors must be considered by the court when deciding on a bail application. The gravity of the offense involved and the heinousness of the crime are critical elements that may induce the petitioner to



avoid the course of justice. Therefore, these considerations must weigh heavily with the court. Ultimately, the decision to grant bail hinges on a careful assessment of these potential risks.

7. In view of the peculiar facts and circumstances, the petitioner is admitted to regular bail upon furnishing a personal bond of Rs. 10,000/- with one surety of the like amount to the satisfaction of the concerned learned trial court, subject to the appellant providing his mobile number at the time of furnishing the bail bond, and subject to the following further conditions:
- a) the petitioner shall attend the trial regularly and shall not threat, intimidate or tamper with the prosecutrix / victim, her family and any other prosecution witness;
 - b) the petitioner shall remain available on the address, to be provided to the IO and shall not leave NCT of Delhi without the permission of the learned Trial Court;
 - c) the petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the complainant/victim or any member of the complainant/victim's family in any manner or temper with the evidence of the case;
 - d) the petitioner shall report to the concerned Investigating Officer twice, on second and fourth Friday of every month;
 - e) In case of change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
8. In case, the prosecution receives any complaint from the family of the prosecutrix / victim regarding threatening or intimidating, they shall



be at liberty to move an appropriate application for cancellation of the bail.

9. Copy of the order be sent to the concerned Jail Superintendent for information and compliance.

10. In view of the above, the present application stands disposed of.

DINESH KUMAR SHARMA, J

SEPTEMBER 18, 2024

JN/NA..