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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 875/2024**

VIKRAM

.....Applicant

Through: Adv. Neha Kumari, Adv.
Rahul, Adv. Nikesh, Adv.
Saurabh & Adv. S. Singh.

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State.
IO SI Shivani, PS Bharat
Nagar.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
03.07.2024

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1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') for grant of regular bail in FIR No.806/2023 dated 09.11.2023 under Sections 363 of the Indian Penal Code, 1860 ('IPC') registered at Police Station Bharat Nagar. The chargesheet was subsequently filed under Sections 363/376 of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO').

2. The FIR was registered on a complaint given by the aunt of the victim, who alleged that on 08.11.2023, at around 07:30 p.m., her niece left her house without informing her. It was stated that the victim is 13 years of age. It is alleged that the investigation revealed that the victim had been taken by the applicant.

3. The chargesheet is filed in the present case, however the narration of the facts is not clear. On being asked, it is informed that the victim was brought to the police by the mother of the



applicant.

4. The learned counsel for the applicant submits that the victim had left the custody of her family on her own will. She submits that the victim was harassed by her family members and due to which she had left their custody. She submits that the applicant was arrested on the basis of the alleged statement recorded under Section 161 of the CrPC.

5. She vehemently contends that the statement under Section 161 of the CrPC was recorded at the instance of the family of the victim, whereas in truth, the victim was never sexually assaulted. She further submits that the same is apparent from the statement of the victim recorded under Section 164 of the CrPC.

6. The Investigating Officer is present in Court, who informs that the victim was informed about the proceedings before this Court, however, she has refused to join.

7. The learned Additional Public Prosecutor for the State opposes the grant of bail to the applicant. He submits that the victim at the time of incident was only 13 years of age and the consent of the of the 13 years old child is of no consequences.

8. While considering the application for bail, the Court has to consider the nature of the offence, severity of the punishment and *prima facie*, involvement of the accused. The Court, at this stage, is not required to enter into the detailed analysis of the evidence to establish beyond the reasonable doubt whether the accused has committed the offence. However, the Court is definitely required to examine whether *prima facie* case for bail is made out on the basis of the evidence on record. In the present case, charges have been framed in relation to offence under Section 4 of the POCSO Act. The same attracts the provisions of Section 29 of the POCSO Act which reads as under : -

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“29. Presumption as to certain offences.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.”

9. The Hon'ble Apex Court in ***State of Bihar v. Rajballav Prasad*:2017 (2) SCC 178**, in relation to offences under POCSO, had held that, while considering the application for bail at a post charge stage, the Court also has to consider the provisions of Section 29 of the POCSO Act.

10. After charges have been framed, the provisions of Section 29 of the POCSO Act have to be considered, which raises the threshold of satisfaction required before a bail can be granted. The Court has to evaluate *albeit, prima facie*, the evidence relied upon by the prosecution.

11. Certain considerations that have to be kept in mind while deciding the application in relation to offences under POCSO Act are; the age of the minor victim *vis-à-vis* the age of the accused, the relationship, if any, between the victim and the accused, whether the accused is a repeated offender, the chances of the accused threatening the victim after being enlarged on bail etc.

12. Incorporation of Section 29 of the POCSO Act would, therefore, raise the threshold of satisfaction required before the Court considers an application for grant of bail. The Court, therefore, at the stage of considering the application for bail has to consider the evidence and evaluate whether the same would *prima facie* sustain the guilt of the accused. Factors such as age of the victim; age of the accused, that is, the older the accused the more serious the offence; the age difference between the victim and the



accused so as to consider the element of perversion; conduct of the accused after the offence; whether it is a case of consensual relationship etc., are also to be considered.

13. The present case is solely based on the statement given by the victim under Section 161 of the CrPC, which was recorded in the presence her family members.

14. It is not in doubt that mere testimony of the victim can be sufficient for the purpose of conviction of the accused in relation to offence under Section 376 of IPC. The testimony does not require corroboration as long as same inspires confidence.

15. I have perused the statement made by the victim under Section 164 of the CrPC. The victim states that she is 17 years of age and her family had got the Aadhaar Card made on the basis of false information. She stated that she had come to stay with her aunt in the neighbourhood of the applicant and had known the applicant for two and half months. She further stated that she had asked the applicant to help her since she was being harassed by her family. She further stated that the applicant has not committed any misdeed and he had in fact told her to go back to her family after he was informed that the FIR has been registered by her aunt.

16. The chargesheet in the present case has already been filed. As noted above, the contents of the chargesheet are not very clear. No investigation in regard to Aadhaar Card has also been carried out by the investigating agency. It is also not clear as to why the applicant has been arrested on the same date when the statement was recorded under Section 164 of the CrPC, since the victim in the said statement had not accused the applicant of any offence.

17. Whether the applicant sexually assaulted the victim would be a matter of trial. Also, whether any act, as alleged, was a unilateral act of the applicant so as to make the applicant liable for
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the offence as alleged, would be tested during the course of the trial.

18. It is not disputed that the trial will take a considerable amount of time to conclude. Speedy trial in the present case does not seem to be a possibility. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time.

19. The applicant is a young man who was 22 years old having no criminal antecedents. Prolonged incarceration is bound to cause inexorable harm to the mental well-being of such impressionable young individuals.

20. It is also not denied that the applicant is in custody since 13.11.2023, the investigation in the present is complete and is therefore no longer required for any investigation.

21. In view of the same, this Court is of the opinion that no purpose would be served by keeping the applicant in further custody.

22. Considering the totality of facts and circumstances, and without commenting further on the merits of the case, the present bail application is allowed, and the applicant is directed to be released on bail on furnishing a bail bond for a sum of ₹20,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court/ Duty Metropolitan Magistrate, on the following terms and conditions:

- a. The applicant shall, upon his release, furnish a proof of residence where he shall reside, which should be at least 5



KM far from the locality where the victim resides, subject to the satisfaction of the IO;

- b. The applicant shall upon his release provide his mobile number to the concerned IO / SHO and keep it switched on at all times;
- c. The applicant shall not change his residence without informing the concerned IO / SHO;
- d. The applicant shall not take unwarranted adjournment and attend the Trial Court proceedings on every date;
- e. The applicant shall not contact the victim and tamper with the evidence in any manner whatsoever.

23. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

24. It is clarified that the observations made in the present order are only for the purpose of deciding the bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

JULY 3, 2024

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