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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Pronounced on: 01.07.2024*+ **BAIL APPLN. 1159/2023 & CRL.M.(BAIL) 784/2023**

SANTOSHANAND @ KAVITENDER KUMAR Petitioner
Through: Shri. Matrugupta Mishra, Shri.
Dushyant Mudgil and Smt. Akanksha
V. Ingole, Advs.

STATE OF NCT OF DELHI AND ANR. Respondent
Through: Mr. Ritesh Kumar Bahri, APP for the
State with SI Mohd. Intzar, P.S. IP
Estate.
Mr. Hemant Singh and Mr. Uday
Chauhan, DHCLSC, Advocates for
the Victim.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Section 439 CrPC seeking regular bail in FIR No. 10/2017 under Sections 377/506/34 IPC registered at PS I.P. Estate.
2. *Vide* order dated 12.04.2023, notice was issued in the present petition and the State was directed to file a status report. The State has filed the status report dated 15.01.2017 which forms part of the record.
3. The case of the prosecution as borne out from the status report is that on 15.01.2017, a PCR call *vide* DD No. 27A regarding sexual abuse of a



male child at Harihar Yoga Ashram, Rajghat was received at PS I.P. Estate and the same was assigned to SI Sandeep Singh, who upon reaching the spot met with the caller, namely, Ram Manohar Sharma alongwith Santosh Anand (the present petitioner) and they produced a child namely, “S” aged about 6 years. They stated that the child “S” was residing with them in the ashram and that they have found the boy scared and weeping in the evening of 14.01.2017. Thereafter, they inquired from child victim as to why he was weeping and after some persistence on their part the child / victim revealed that Amarjeet had lured him with candy and took him to a room where one person namely, Chandan Pandey was already present. They further stated that the child victim revealed that Chandan Pandey showed the child some naked pictures and thereafter he was sexually abused by Amarjeet, Chandan Pandey and Mangal Pandey.

4. Accordingly, the child was medically examined and was counseled by a female counselor from the Delhi Commission for Women and it is in this backdrop that the present FIR came to be registered. It is also mentioned in the status report that in the statement recorded under Section 164 CrPC, the child victim revealed that he was regularly sexually abused by Amarjeet, Chandan Pandey and Mangal Pandey.

5. During the course of investigation accused Amarjeet Pandey was arrested on 16.01.2017 and sent to judicial custody. However, accused Chandan Pandey and Mangal Pandey managed to flee from the place of incident and PO proceedings against them were initiated.

6. During this time, the child was produced before the CWC, Mayur vihar from where he was sent to Matri Chaya Protection Home, Paharganj, because his so called guardian Santosh Anand (the petitioner) failed to



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produce any legal document of his guardianship. At the time of his stay at Matri Chaya Protection Home, the child victim revealed before the CWC that during his stay at the ashram, he was subjected to un-natural sex by Swami Santosh Anand / petitioner.

7. On receipt of such information the statement of the child victim was again recorded under Section 164 CrPC on 09.06.2017 in which he revealed that the petitioner committed un-natural and oral sex with him and threatened him to implicate co-accused Amarjeet, Chandan Pandey and Mangal Pandey.

8. It is in this backdrop that the present petitioner was arrested on 04.07.2017 and sent to judicial custody. A supplementary chargesheet was also filed against the present petitioner on 25.08.2017.

9. The learned counsel for the petitioner at the outset has drawn the attention of the court to the nominal roll dated 22.06.2023 to contend that as on that day the petitioner had spent about four years one month and 13 days in custody. He further submits that the petitioner has, as on date, spent more than five years in custody and he cannot be incarcerated till the conclusion of trial.

10. He further submits that in the present case the FIR was registered at the instance of the complainant, namely, Ram Manohar Sharma who stated that the child victim had disclosed that the offences against him were committed by Amarjeet, Chandan Pandey and Mangal Pandey. This version has been affirmed by the child victim in his statement recorded under Section 164 Cr.P.C.

11. He has also contended that there are major inconsistencies and differences in the testimony of the child victim which creates a doubt on the



veracity of the prosecution case. To buttress his submission, the learned counsel referred to the FIR wherein it has been recorded that the offences were committed by Amarjeet, Chandan Pandey and Mangal Pandey, whereas after the child victim was placed in the protection home, he has changed his entire version to submit that the offence has been committed by the present petitioner and he threatened the child victim to implicate Amarjeet, Chandan Pandey and Mangal Pandey.

12. He contends that Renu Sharma, the person before whom the victim had allegedly changed his statement on 11.04.2017 in CWC, has not been made a witness by the prosecution.

13. He also submits that the statement made by co-accused, namely, Chandan Pandey (now deceased) U/S 161 Cr.P.C. is also in complete alignment with the contents of FIR 10/2017, the original statement of victim recorded U/S 164 Cr.P.C., 1973. Accordingly, it is submitted that the said statement is an admission by co-accused Chandan Pandey of the offences committed by him along with the co-accused Mangal Pandey and Amarjeet Pandey.

14. *Per contra*, Mr. Ritesh Kumar Bahri, the learned APP appearing for the State had argued on the lines of the status report. He submits that the present petitioner has been accused of a grave and serious offence, therefore, he may not be enlarged on bail. It is further submitted by the learned APP that interim bail was granted to the present petitioner on medical grounds *vide* order dated 16.06.2020 but the accused did not surrender on time and proceedings against the petitioner under Section 82 CrPC were initiated. It is however, clarified that the petitioner surrendered on 25.04.2022, when he was arrested and produced before the learned ASJ.



15. He further submits that the antecedents of the petitioner are not clean in as much as he has been arrayed as an accused in various FIRs viz. FIR No. 30/2017 U/s 354/351/342/376/509/511 IPC registered as PS IP Estate; FIR No. 198/2020 U/S 354/509 IPC registered as PS IP Estate and FIR No. 11/2017 U/S 323/341/34 IPC registered as PS IP Estate.

16. In rejoinder, it is submitted by the learned counsel for the petitioner that mere pendency of multiple cases cannot be the sole ground to reject the plea of the petitioner.

17. I have heard the learned counsel for the petitioner as well as the learned APP for the State and have perused the record.

18. This court is cognizant of the fact that since the charges have been framed by the learned Trial Court, the threshold of satisfaction required would be higher while considering the bail application of the petitioner in view of the impact of Section 29 of the POCSO Act.

19. A co-ordinate bench of this court in ***Dharmander Singh v. State, 2020 SCC OnLine Del 1267***, while considering the effect of Section 29 of the POCSO Act, when an application for bail is to be considered after framing of charges, laid down as under:

“74. As always, when faced with such dilemma, the court must apply the golden principle of balancing rights. In the opinion of this court therefore, at the stage of considering a bail plea after charges have been framed, the impact of section 29 would only be to raise the threshold of satisfaction required before a court grants bail. What this means is that the court would consider the evidence placed by the prosecution along with the charge-sheet, provided it is admissible in law, more favorably for the prosecution and evaluate, though without requiring proof of evidence, whether the evidence so placed is credible or whether it ex



facie appears that the evidence will not sustain the weight of guilt.

20. The Court further enumerated certain real life considerations, any one or more of which if exists in a particular case, are ought to be considered while deciding a bail plea at the post-charge stage, in addition to the nature and quality of the evidence before it. The relevant part of the judgment reads as under:

*“77. Though the heinousness of the offence alleged will beget the length of sentence after trial, in order to give due weightage to the intent and purpose of the Legislature in engrafting section 29 in this special statute to protect children from sexual offences, while deciding a bail plea at the post-charge stage, in addition to the nature and quality of the evidence before it, **the court would also factor in certain real life considerations**, illustrated below, which **would tilt the balance against or in favour of the accused**:*

a. the age of the minor victim: the younger the victim, the more heinous the offence alleged;

b. the age of the accused: the older the accused, the more heinous the offence alleged;

c. the comparative age of the victim and the accused: the more their age difference, the more the element of perversion in the offence alleged;

d. the familial relationship, if any, between the victim and the accused: the closer such relationship, the more odious the offence alleged;

e. whether the offence alleged involved threat, intimidation, violence and/or brutality;

f. the conduct of the accused after the offence, as alleged;



g. whether the offence was repeated against the victim; or whether the accused is a repeat offender under the POCSO Act or otherwise;

h. whether the victim and the accused are so placed that the accused would have easy access to the victim, if enlarged on bail: the more the access, greater the reservation in granting bail;

i. the comparative social standing of the victim and the accused: this would give insight into whether the accused is in a dominating position to subvert the trial;

j. whether the offence alleged was perpetrated when the victim and the accused were at an age of innocence: an innocent, though unholy, physical alliance may be looked at with less severity;

k. whether it appears there was tacit approval-in-fact, though not consent-in-law, for the offence alleged;

l. whether the offence alleged was committed alone or along with other persons, acting in a group or otherwise;

m. other similar real-life considerations.

78. The above factors are some cardinal considerations, though far from exhaustive, that would guide the court in assessing the egregiousness of the offence alleged; and in deciding which way the balance would tilt. At the end of the day however, considering the myriad facets and nuances of real-life situations, it is impossible to cast in stone all considerations for grant or refusal of bail in light of section 29. The grant or denial of bail will remain, as always, in the subjective satisfaction of a court; except that in view of section 29, when a bail plea is being considered after charges have been framed, the above additional factors should be considered.”



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21. Now coming to the facts of the present case, the gravamen of allegations against the petitioner is that he has committed sexual offences upon the child victim who was staying in the Ashram with him. However, it is also imperative to note that the petitioner was not arrayed as an accused in the original charge-sheet but he has been named as an accused in the supplementary charge-sheet on the basis of the second statement of the child victim recorded U/S 164 Cr.P.C. Further, it cannot be ignored that the change of statement by the victim happened before Child Welfare Committee (CWC) after almost 4 months of the incident when he was residing at Protection Home and the second statement U/S 164 CrPC on the basis of changed statement was recorded after a lapse of almost 2 months from the date of such changed statement. In such a scenario, it cannot be ruled out that the child victim has been tutored and the petitioner has been falsely implicated. In this regard, this court while granting bail to the petitioner in the case of *[Varun Arya Vs. State of NCT of Delhi]*¹ held that in a case where the false implication of the petitioner cannot be ruled out, such a factor shall enure to the benefit of the petitioner, the relevant paragraph of the judgment reads as under:

“25.Undisputedly, the allegations are serious, but this court cannot shut its eyes to the fact that there is a matrimonial dispute pending between the victim’s parents; there are cross FIRs/complaints lodged both from the complainant’s as well as from petitioner’s side; there is also an inordinate delay in the registration of present FIR; in the two FIRs lodged earlier by the complainant, there is no reference to the alleged three incidents; and the victim is residing with the complainant (mother) for the past more than 4 years. In this factual backdrop, false implication of the petitioner by

¹ BAIL APPLN. 1957/2023



the complainant by tutoring the minor girl child who is in complainant's custody, cannot be ruled out.

26. I am prima facie of the view that the above factors have the potential of creating dent in the case of the prosecution. However, the probative value of these factors shall be considered by the learned Trial Court during the trial, but at this stage whilst considering the bail plea of the petitioner, I am of the opinion that facts of the case meet the requirement of higher threshold of satisfaction required in view of the provisions of Section 29 of the POCSO Act."

(emphasis supplied)

22. It is also not in dispute that the statement made by Chandan Pandey (now deceased) U/S 161 Cr.P.C. is also in tune with the contents of the FIR 10/2017 as well as the first statement of the victim recorded U/S 164 Cr.P.C., 1973.

23. As enumerated above, there is no doubt that the allegations against the petitioner are serious, however, this court cannot brush aside the fact that the petitioner has been implicated in the present case on the changed version of the child victim recorded almost after four months from his first version. *Prima facie*, this fact has the potential of creating dent in the case of the prosecution. However, the probative value of these factors shall be considered by the learned Trial Court during the trial, but at this stage the benefit of same shall enure to the petitioner. Further, the aforesaid factors meet the requirement of higher threshold of satisfaction required in view of the provisions of Section 29 of the POCSO Act.

24. Further, this court cannot be unmindful of the fact that as on 22.06.2023, the petitioner had spent about four year one month and 13 days in custody and thus it can safely be safely presumed that as on date the



petitioner has spent more than five years in custody. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be awarded. Detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof is not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time.²

25. The investigation is complete, the charge-sheet along with the supplementary charge-sheet has been filed, therefore, there is no possibility of the petitioner hampering the investigation. In the given circumstances, no useful purpose will be served in keeping the petitioner behind bars.

26. Further, the petitioner is permanent resident of Delhi, therefore, the petitioner is not a flight risk. As far as the contention of the learned APP that the petitioner cannot be granted the concession of bail in view of his criminal record is concerned, suffice it to say that the petitioner has already been granted bail in all the aforementioned cases. Further, the Supreme Court ***Prabhakar Tiwari (supra)*** has observed that mere pendency of several criminal cases against the accused cannot by itself be the basis for refusal of bail. The same can be a factor, but cannot be the sole basis for refusal of grant of bail, the relevant paragraph of which reads as under:-

“73.The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused Vikram Singh

² Vinod Bhandari v. State of Madhya Pradesh, (2015) 11 SCC 502.



upon considering relevant materials. No ex facie error in the order has been shown by the appellant which would establish exercise of such discretion to be improper. We accordingly sustain the order [Vikram Singh v. State of U.P., 2019 SCC OnLine All 5566] of the High Court granting bail. This appeal is dismissed.”

(emphasis supplied)

27. Considering the aforesaid circumstances in entirety, this Court is of the opinion that the present petitioner has made out a *prima facie* case for grant of regular bail. Accordingly, the petitioner is enlarged on regular bail subject to his furnishing a Personal Bond in the sum of Rs.50,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- b) The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to the complainant or any of the prosecution witnesses or other persons acquainted with the facts of the 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.
- c) He shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/SHO;
- d) He shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

29. The petition alongwith pending application is disposed of.



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30. It is clarified that any observation made herein-in-above is only for the purpose of deciding the present bail application and same shall not be construed as an expression of opinion on the merits of the case.
31. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
32. Order *dasti* under signatures of the Court Master.
33. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J.

JULY 1, 2024
N.S. ASWAL