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

+ **BAIL APPLN. 959/2024**

CHOTE LAL

.....Petitioner

Through: Mr. Atul Verma, Mr. Bibhash Kumar,
Mr. Nagender Singh, Mr. Surender
Singh, Advocates.

versus

**STATE (GOVT. OF NCT OF DELHI THROUGH SHO PS. PUNJABI
BAGH POLICE STATION & ANR.Respondents**

Through: Mr. Amit Ahlawat, APP for State with
SI Richa Sharma, SI Manisha, PS:
Punjabi Bagh.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **12.09.2024**

1. This petition has been filed seeking regular bail in FIR no. 498/2018 registered at Punjabi Bagh, Police Station under Sections 376/506 of IPC & 4 of POCSO Act.
2. As per the case of the prosecution, the FIR was registered on the complaint by the prosecutrix who stated that she was 19 years of age and was living along with her husband and her in-laws. She further stated that her marriage was solemnized 6 months prior to the date of registration of the FIR, 11th September, 2018.
3. On 08th September, 2018, she along with her husband took a train from Aligarh to Delhi/Noida in search for a job and the man who was travelling



with them spoke to her husband and made friends with her husband and stated that he shall get a job in Ghaziabad. When they reached Ghaziabad, she alleged that the man took her to a rented accommodation and they stayed there for the night. At about 8 a.m. the next morning, the said man took the husband out for getting a job and she stayed at home. At about 10 a.m. the person came back and told her that the husband is getting a job further away from her and he will get her a room. Later he got a room, closed the door, and committed sexual assault on her.

4. Post the registration of the FIR, the investigation ensued and the petitioner was subsequently apprehended from Nangloi.

5. Counsel for petitioner has contended that the petitioner has been in custody for about 5 years and 11 months, has no previous involvement and has not sought interim bail in the meantime.

6. Further all material witnesses have been examined, only official witnesses were left to be examined.

7. He further points out that the FIR is of year 2018 and the supplementary charge sheet has not been taken on record as yet, regarding the age determination of the victim and the CDR records. Statement had been made by the APP that the supplementary charge sheet has been filed on 24th July, 2024, however, counsel for petitioner presented the order sheets of 26th July, 2024 of the Trial Court where it is stated that the supplementary charge sheet though filed, was not taken on record,

8. Moreover, along with the supplementary charge sheet, age record from the *Vivekanand Junior High School* was taken under cover of letter dated 22nd July, 2024, where it is stated that complainant had entered standard 1 in 2012, there was no birth record but her date of birth has been recorded in the register



as 09th December, 2006.

9. Counsel for petitioner points out that as per the charge sheet, the I Card which had been presented by complainant was of *Unique Public School* which was of academic year 2017-2018 showing that the complainant was in 7th standard and her date of birth as 9th December, 2004.

10. It is further stated that the mention of Vivekanand Junior High School never came up during the investigation and there is absolutely no statement on record by the prosecutors or otherwise of mentioning the said school and therefore, the admissibility of the said document *per se*, will be in question.

11. Further, an Aadhaar card of the complainant shows her date of birth as 1st January, 2002.

12. Accordingly, the petitioner counsel contends that there is serious discrepancy relating to the age of the complainant, and therefore, the prosecution's story cannot be relied upon.

13. He relies upon the decision of a co-ordinate Bench of this Court in ***Hanzla Iqbal v. The State & Anr.***, bail application No. 1926/2022, decision dated 24th August, 2022, where the Court has noted the varying dates of birth given by prosecution in para 11 of the said judgment, and bail was granted.

14. As regards the FSL report which the prosecution contends, showed the presence of semen stains of the accused on the *pyjama* of the prosecutrix, counsel for the petitioner points out that the FIR was registered on 11th September, 2018 and he was arrested on 19th September 2018, but the materials were sent to FSL only in January 2019, thereby creating a serious doubt on the presence of the accused semen stains on the *pyjama*.

15. Counsel for petitioner, in support of bail petition, states that PW-3, the landlady of the place where the prosecutrix had been taken by accused stated



that she could not identify the accused, as also that accused had come with one lady who was stated to be his wife, but she was not looking scared. Further he states that the victim in her complaint had stated that she is 19 years of age and was going from Aligarh, whereas in her statement recorded under Section 164 Cr.P.C., she states that she was 16 years of age and got married in Delhi and was on a train to Ghaziabad, on the day of incident.

16. Considering the above contention on behalf of petitioner and that as per Nominal Roll, the petitioner has no previous involvements, jail conduct has been satisfactory and the petitioner has been in custody for about 5 years and 11 months, with no interim bail sought in the meantime, and the material witnesses have already been examined, the petitioner is entitled to bail.

17. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the



IO concerned.

- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times, and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family, or tamper with the evidence of the case.

18. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

19. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

20. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

21. Order be uploaded on the website of this Court.

ANISH DAYAL, J

SEPTEMBER 12, 2024/RK