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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**BAIL APPLN. 971/2024**

ANUJ GUPTA

..... Applicant

Through: Mr. Alok Bhachawat, Mr.  
Yash Singhania and Mr.  
Anmol Gupta, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Hitesh Vali, APP for  
the State with SI Manish  
Tyagi, PS Govindpuri.  
Mr. Inderjeet Basoya,  
Adv. for the victim.  
Mother of the victim in  
person.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**ORDER**

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**18.03.2024**

**CRL.M.A. 8437/2024 (exemption from filing certified copy of some annexures)**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

**BAIL APPLN. 971/2024 & CRL.M.A. 8438/2024 (Stay)**

3. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 (**CrPC**) read with Section 482 of the CrPC seeking pre-arrest bail in FIR No. 773/2023 dated 21.12.2023, registered at Police Station Govindpuri, for offences under Sections 354/354A of the Indian Penal Code, 1860 (**IPC**) and Section 10 of the Protection of Children from Sexual Offences Act, 2012 (**POCSO Act**).



4. The complainant / victim is the daughter of the applicant. The FIR was registered on a complaint given by the victim, alleging sexual assault by the applicant. It is alleged that the incident of assault happened in the month of September 2022 and thereafter in the month of April 2023.
5. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case.
6. He submits that the complaint has been given by the victim on being instigated by her mother.
7. He submits that the applicant and his wife have been engaged in number of litigations. He submits that an FIR under Section 498A of the IPC has also been registered at the instance of the wife of the applicant.
8. He further submits that even though the alleged incident took place in the month of September 2022 and in the month of April 2023, the complaint was given belatedly in the month of December 2023. He submits that no reason has been mentioned for giving the complaint at such belated stage.
9. The mother of the victim is present in person along with Mr. Inderjeet Basoya, learned counsel, on behalf of the victim.
10. The learned Additional Public Prosecutor for the State submits that the allegations in present case are heinous in nature.
11. He submits that the applicant has also not been cooperating with the investigation, which has led to issuance of non-bailable warrants.
12. I have heard the learned counsel for the parties.
13. It is not disputed that the alleged incident took place in September 2022 and April 2023.
14. It is also pointed out by the learned counsel for the applicant that since the month of June 2023, the applicant has



been staying separately from the wife and the victim due to the matrimonial dispute with the wife.

15. Admittedly, the applicant has not contacted the victim after leaving the house.

16. The learned counsel for the applicant has also pointed out towards the snapshots of the Facebook posts and the copy of the Railway tickets in order to show that the parties have been going for vacation and have been living happily up till April 2023.

17. It is pointed out that the applicant had made a complaint against the mother of the complainant with respect to her illicit relationship with another man. In the complaint the applicant has categorically mentioned about the extended threats being made by the mother of the complainant of implicating him in false cases.

18. 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 family 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.

19. It has to be kept in mind that in cases where the victim is a child, her statement has to be scrutinized with great care and caution as children can be easily swayed away and are prone to tutoring. It can also be a possibility that the statement is made at the behest of one of the parents. It is the duty of the Court to also examine and analyze other corroborative evidence and circumstances which are important to the case (Ref.: **Atender Yadav v State NCT of Delhi : 2013 SCC OnLine Del 4322**).

20. The allegations of such nature puts the accused, especially



if he happens to be a father in such situation where he is looked down upon by society and has far reaching social consequences. The possibility of getting such complaint lodged, especially when the parents have history of matrimonial discord, cannot be ruled out. In the present case, as noted above, the parents of the victim have been at loggerheads and have filed multiple complaints against each other. The last incident happened on 21.04.2023, and the complaint with respect to the present FIR was admittedly given on 21.12.2023. Before the present FIR being registered the applicant already had given a complaint dated 20.07.2023 against his wife, that is, mother of the complainant. FIR under Section 498A of IPC was also registered on 22.12.2023 at the behest of the mother of the victim.

21. No explanation has been given as to why the complaint for such a serious allegation was not made for such a long time. Merely, because Section 29 of the Act provides for a statutory presumption, the same does not bind the Courts to accept the prosecution version as gospel truth and the discretion in relation to grant of bail is still to be exercised considering the facts of the case.

22. The delay between the alleged incident and the filing of the complaint, and the fact that the mother of the victim and the applicant who also happens to be father of the victim, are litigating against each other due to matrimonial acrimony cannot be ignored by the Court while deciding the application for bail.

23. It is not alleged that the applicant has been contacting the prosecutrix since the time he has been staying separately.

24. The consequences of pre-trial detention are grave, and the burden of such incarceration also causes a severe effect.



25. The apprehension of the applicant fleeing from justice or tampering with evidence, can be taken care of by putting appropriate conditions.

26. The purpose of custodial interrogation is to aid the investigation and is not punitive.

27. In view of the above, it is directed that the applicant, in the event of arrest, be released on bail on furnishing a bail bond for a sum of ₹50,000/- with one surety of the like amount subject to the satisfaction of the concerned SHO, on the following conditions:

- i. The applicant shall join and cooperate with investigation as and when directed by the Investigating Officer;
- ii. The applicant shall not leave the city without informing the IO/ SHO concerned;
- iii. The applicant shall not leave the country without the permission of the learned Trial Court;
- iv. The applicant shall not contact the complainant or tamper with the evidence in any manner;
- v. The applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;

28. 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.

29. It is clarified that any observations made in the present order are for the purpose of deciding the present 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.



30. The bail application allowed in the aforementioned terms.

**AMIT MAHAJAN, J**

**MARCH 18, 2024**

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