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

+ **BAIL APPLN. 976/2024**
SUMIT

.....Petitioner

Through: Mr. Pradeep Kumar, Mr. Sahid Raza
and Mr. H. Rahman, Advs.

versus

THE STATE GOVT. OF NCT OF DELHIRespondent

Through: Mr. Aman Usman, APP for State with
SI Divya, PS Nihal Vihar.
Mr. Amit Sahni, Adv. (DHCLSC)
with Mr. Ankur and Mr. Parth
Sharma, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

19.12.2024

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1. This petition has been filed seeking regular bail in FIR No.864/2023 dated 18th July, 2023 registered at PS Nihal Vihar, under Sections 376 IPC and Section 6 POCSO Act. Chargesheet was filed under Sections 313/376(2)(n)/120B IPC and Sections 6/17 POCSO Act.
2. The case of the prosecution is based on a complaint dated 18th July, 2023 that a 15-year-old girl was pregnant having been raped by her neighbour. During the investigation, the prosecutrix was examined and found UPT positive. Based on the MLC and counselling report, the statement was recorded, and the FIR was registered. In the MLC, it was recorded that she met a boy named Sumit (*petitioner herein*) two years back and they became friends. The petitioner used to come to meet her in the neighbour's house and the prosecutrix used to meet him there.
3. It was alleged that the petitioner used to forcibly establish physical



relationship that the prosecutrix had refused. The last such incident was on 03rd July, 2023. Later, she came to know that she is pregnant.

4. Prosecutrix's statement was recorded under Section 164 Cr.P.C. in SGM Hospital, Mangolpuri by the MM (Mahila Court), Tis Hazari Courts as she was admitted in the hospital due for an abortion. The petitioner was subsequently arrested. Medical termination of the prosecutrix's pregnancy was carried out and the products of conception were preserved for FSL. It has been recorded by this Court in previous orders that the DNA examination of the products of conception was unsuccessful since no profile could be generated due to degradation/inhibition of the sample.

5. The trial has since commenced. The prosecutrix has already been examined on 20th February, 2024.

6. Counsel for the petitioner points out that, even as per the testimony of the prosecutrix, it would bear out that there was a relationship between petitioner and the prosecutrix and the complaint has clearly been lodged on the pregnancy coming to light. There are no material witnesses to be examined. The matter had been kept aside for the cross-examination of the prosecutrix's neighbour (PW-3). PW-3's examination-in-chief was already recorded. However, in two months, the cross-examination has not been completed and is now scheduled for later in January 2025.

7. APP for the State objects to the grant of bail on the ground that the age of the victim is 15 years and, therefore, her consent is immaterial, inconclusive DNA report is not relevant since the DNA could not be generated due to degradation of the sample, and that the DNA report has to be seen in context of the testimony and not as an isolated fact. In the testimony, the prosecutrix has made categorical allegations against the



accused. There is also an allegation of forceful abortion by giving pills to the prosecutrix, which is confirmed by the medical records.

8. Counsel for the petitioner, however, states that in her cross-examination, the prosecutrix stated that the pills were given by one Pooja to the accused.

9. However, considering the contentions of the petitioner and that the petitioner has been in custody for about 1 year and 4 months, there being no previous involvement and jail conduct being satisfactory, the prosecutrix being already examined, the Court is of the view that the petitioner is entitled to bail.

10. 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 prosecutrix's or any member of the prosecutrix's family or friends, or go near the vicinity of her home or her work/study place, or tamper with the evidence of the case.
11. 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.
12. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.
13. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.
14. Counsel nominated by DHCLSC appearing for the prosecutrix states that there was a direction for compensation by the Trial Court to be given to the victim by the Delhi State Legal Services Authority (“**DSL**SA”).
15. Counsel for prosecutrix will be at liberty to bring it to the attention of DSLSA, who shall duly comply with the said order.
16. Order be uploaded on the website of this Court.

ANISH DAYAL, J

DECEMBER 19, 2024/MK/sc