



2024:DHC:4858



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 01st July, 2024

+ **BAIL APPLN. 1006/2024**

SATTAR

..... Applicant

versus

STATE GOVT. OF NCT DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Bipin Kumar Jha, Mr. D. K. Singh & Ms. Komal Jha, Advs.

For the Respondent : Mr. Satinder Singh Bawa, APP for the State.
SI Manish Tyagi, PS Govind Puri.
Ms. Tanya Agarwal, Ms. Renu & Mr. Kamlesh Kumar Mishra, Advs. for prosecutrix.Father of the victim.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under section 439 of Code of Criminal Procedure, 1973 (**CrPC**) seeking grant of regular bail in FIR No.388/2019 dated 18.12.2019, under Section 363 of the Indian Penal Code,1860 (**'IPC'**) registered at Police Station Govind Puri. The chargesheet was subsequently filed under Sections 363/376/342/328/368/109 of the IPC and Section 6 of The Protection

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of Children from Sexual Offences Act, 2012 ('POCSO'). The FIR was registered on a complaint given by the father of the prosecutrix alleging that his daughter has been kidnapped and he suspected the applicant, who used to live in their neighbourhood. During the course of investigation, the search of victim and the applicant was made and it is alleged that the victim was found abandoned at road side near Mohana Road, Madhubani, Bihar.

2. The statement of the victim was recorded and she stated that on 18.12.2019, applicant called her on telephone and asked her to meet at park near her house. The victim was also told to bring some money. Pursuant to the inducement, the victim stated that she took ₹80,000/- from her house and met the applicant. It is alleged that the applicant then gave her some water to drink, pursuant to which she became unconscious and on gaining the consciousness, she found herself in Mumbai from where the applicant took her to Nepal boarder.

3. She also alleged that the applicant made physical relations with her without her consent. The victim alleged that while in Mumbai she was made to eat food which made her unconscious again and she regained her consciousness in Bihar. She claimed that during the entire period even though she was able to move around but was not in a fit state of mind.

4. In her statement under Section 164 CrPC, she stated that whenever she used to get up on morning, she used to feel as if the applicant had established sexual relations since her body used to pain. On 04.01.2020, the uncle and aunty of the applicant took her near the Nepal boarder where she met her father. The applicant was arrested on 26.02.2020.

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5. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. He submitted that the victim at the time of incident was admittedly almost 18 years of age. He submitted that the victim was in relationship with the applicant and had left the custody of her parents on her own wish. He submitted that the statements under Section 161 and under Section 164 of the CrPC were recorded by the victim only on pressure from the parents. She had admittedly gone to meet the applicant at park on her own.

6. He further submitted that there are material contradictions in the statements given by the victim. He lastly contends that the victim and her father have already been examined and there is no apprehension of influencing the witnesses. Only three out of fourteen witnesses have been examined and the trial is likely to take considerable period of time.

7. The learned Additional Public Prosecutor for the State submitted that the victim in her statement under Section 164 of the CrPC has supported the case of the prosecution. He further submitted that allegations made against the applicant are serious in nature and he ought not to be released on bail.

Analysis

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



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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 6 of the POCSO Act. The same attracts the provisions of Section 29 of the POCSO Act which reads as under : -

“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.



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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. The Court while considering the application for bail in relation to offences under POCSO Act ought to consider the 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.

13. The present case is based on the statement given by the victim that she was taken to Mumbai and from there to Bihar without her will and the applicant had established sexual relations with her.

14. It is not in doubt that mere testimony of the prosecutrix 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. It is an admitted case of the prosecutrix that she had gone to meet the applicant on her own. It is alleged that some drink was given to the prosecutrix by the applicant, pursuant to which she became unconscious and found herself in Mumbai on regaining the consciousness. It is alleged that in Mumbai, she was given something to eat which made her unconscious and then she regained her consciousness in Bihar.

15. No efforts have been made by the prosecution to investigate as to in what manner the victim was taken first to Mumbai and then to

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Bihar. The victim is a grown up girl who had almost attained the age of majority at the time of incident. The victim was allegedly kept in captivity for a long period of time. It is though alleged that due to unconscious state of mind during the said period, no hue and cry was made, no medical examination is carried out to find out as to what was consumed by the victim which made her unconscious.

16. The applicant at the relevant time was a young man of 22 years of age. It is not the case of the prosecution that he was helped by his family members or any other co-accused person for the purpose of taking the victim firstly to Mumbai and then to Bihar. No investigation seems to have been carried out in that regard.

17. The case of the prosecution, thus, is solely based on the statement given by the prosecutrix. The victim also in her statement under Section 164 of the CrPC had stated that when she used to get up in the morning, she used to feel that she has been sexually exploited since her body used to pain. Thus, it was not alleged that she had in fact been sexually assaulted. Whereas in her testimony before the Court she deposed that she was sexually assaulted by the applicant. There is, thus, improvement in her statement the relevance of which would be considered at the time of final arguments and ought not to be commented upon at this stage. Therefore, whether the applicant sexually assaulted the victim would be subject matter of trial and would be considered at the time of final arguments. The statement given by the victim in the absence of any corroborative evidence, at this stage, does not inspire confidence.

18. The applicant is in custody since 26.02.2020 and only three out of fourteen witnesses have been examined till date. The trial is, thus, **BAIL APPLN. 1006/2024**

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likely to take considerable period of time. The applicant at the moment is only 26 years of age. Keeping a young man of 26 years of age having no antecedents would do more harm than any good. The victim and the complainant, that is, victim's father have already been examined and there is no apprehension that the applicant if released on bail would threaten the witnesses or would hamper further investigation, if any. It is also not alleged that the applicant is a flight risk. Moreover, any apprehension of prosecution in the aforesaid regard can be taken care of by putting appropriate conditions.

19. In view of the above, the applicant has established a *prima facie* case for grant of bail.

20. 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 ₹25,000/- with one surety of the like amount to the satisfaction of the learned Trial Court/ Duty Metropolitan Magistrate, subject to the following terms and conditions:

- I. 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;
- II. The applicant shall upon his release provide his mobile number to the concerned IO / SHO and keep it switched on at all times;
- III. The applicant shall, upon his release, provide his address details, where he shall be residing after his



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release to the concerned IO / SHO and shall not change it without informing the concerned IO / SHO;

IV. The applicant shall not take unwarranted adjournment and attend the Trial Court proceedings on every date;

V. The applicant shall not contact the victim and tamper with the evidence in any manner whatsoever.

21. 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.

22. 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.

23. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

JULY 01, 2024
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