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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 1491/2023 & CRL.M.(BAIL) 693/2024
OMBIR Applicant

Through: Mr.Pritish Sabharwal, Adv.

versus

STATE & ANR. Respondents

Through: Mr.Aman Usman, APP with SI
Dharmveer.

Mr.Faraz Maqbool,
Mr.Chandan Kumar,
Ms.Chinmayi Chatterjee, Adv.
for Victim.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

09.05.2024

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1. The Bail APPLN. 1491/2023 has been filed under Section 439 of the Code of Criminal Procedure, 1973, (in short, 'Cr.P.C.') seeking bail in FIR No. 225/2018 registered at Police Station: Chhawla for offence under Sections 363/376 of the Indian Penal Code, 1860 and Section 6 of the Protection of Children from Sexual Offences Act, 2012.
2. During the pendency of the above bail application, the applicant filed CRL.M.(Bail) 693/2024, seeking grant of *interim* bail for a period of 90 days on account of his medical condition.
3. Both the applications are being disposed of by this common order.
4. It is the case of the prosecution that on 16.07.2018, the father of the victim had reported that his daughter aged around 16 years, who



was studying in the 9th class in a Government School, has been missing since 12 p.m.. She could not be traced despite search. He further reported that she has not been keeping well mentally since last 3-4 days and he fears that some unknown person may have taken her away by luring her.

5. It is the further case of the prosecution that later on the victim came back on 19.07.2018. In her medical examination, it was discovered that she was pregnant. Subsequently she stated that it was applicant who had impregnated her. The applicant has been in custody since 20.07.2018.

6. The learned counsel for the applicant submits that the testimonies of the victim and father of the victim already stand recorded. He submits that the victim in her statement has stated that she went from her home out of her own freewill. In her statement recorded under Section 164 of the Cr.P.C., she did not name the applicant as the person who impregnated her. He submits that as far as the father of the victim is concerned, in his statement before the learned Trial Court, he admitted that the victim had not named the applicant as the person who impregnated her. He also stated that the applicant was their neighbour and had vacated the house.

7. He submits that the applicant requires hip surgery. He states that earlier the applicant had been granted *interim* bail for undergoing the said surgery, however, due to lack of funds, he could not get it performed. He, however, surrendered on time. He submits that therefore, the applicant should be enlarged on bail and in case this Court is not inclined to pass the said order, at least, *interim* bail be



granted to him for undergoing surgery.

8. On the other hand, the learned APP and the learned counsel for the victim submit that the applicant had lured the minor victim and made physical relations with her many times while she was still a minor and thereafter, impregnated her. They submit that the consent of the minor in such scenario is immaterial. The applicant was 29 years of age; was married; and had 3 children. They submit that he was known to the family of the victim and that is how he gained proximity to the victim and persuaded her to go with him. He then later threatened the victim.

9. They submit that the trial is at the final stage with the statement of the applicant to be recorded under Section 313 of the Cr.P.C..

10. As far as the *interim* bail is concerned, they submit that the applicant had earlier also availed of the indulgence of being released on *interim* bail on the same ground, however, the surgery could not be performed. They submit that the surgery can now be performed with the applicant being in custody. They submit that there is every likelihood that the applicant may abscond in case he is released on bail.

11. I have considered the submissions made by the learned counsels for the parties.

12. The Supreme Court in ***Anil Kumar Yadav v. State (NCT of Delhi)***, (2018) 12 SCC 129 laid down the principles that must be kept in mind by a Court while considering an application under Section 439 of the Cr.P.C. The same are reproduced hereinunder:-



“17. While granting bail, the relevant considerations are : (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court.

18. While considering the basic requirements for grant of bail, in State of U.P. v. Amarmani Tripathi (2005) 8 SCC 21 , this Court has held as under : (SCC p. 31, para 18)

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [Prahlaad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280] and [Gurcharan Singh v. State (NCT of Delhi), (1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show



that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC] : (SCC pp. 535-36, para 11)

‘11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. [Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598] and [Puran v. Rambilas, (2001) 6 SCC 338]’”

19. *The test to be applied for grant of bail was also considered in [Jayendra Saraswathi*



Swamigal v. State of T.N., (2005) 2 SCC 13] , wherein it was held as under : (SCC pp. 21-22, para 16)

“16. ... The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in [State v. Jagjit Singh, (1962) 3 SCR 622] and [Gurcharan Singh v. State (NCT of Delhi), (1978) 1 SCC 118] and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.”

13. In the present case, though the applicant states that it is the own case of the victim that she had gone out on her freewill, the same is not material as the victim was a minor on the date of the incident. The victim was thereafter pregnant and has named the applicant as the person whose child she bore. The Trial is at the final stage, with the statement of the applicant to be recorded under Section 313 of the Cr.P.C.

14. In the above circumstances, the apprehension of the learned APP and the learned counsel for the victim, that the applicant may flee from the process of the Court, cannot be said to be totally unfounded.

15. I, therefore, do not find it to be a fit case for the applicant to be released on bail.

16. As far as the prayer of the *interim* bail is concerned, as has been submitted by the learned APP and the learned counsel for the victim,



the applicant had earlier also availed of the indulgence of *interim* bail on the same pretext, however, did not have the surgery performed. The surgery in any case can always be conducted while being in custody. The Medical Status Report dated 06.05.2024 states that administrative approval and expenditure sanction has been sought for and is awaited. The concerned Jail Authorities are directed to expedite the same.

17. Keeping in view the above facts, the applicant has not been able to make out a case of release on bail either on regular or the *interim* bail.

18. In view of the above, the applications are dismissed.

19. Needless to state, any observation touching upon 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 the merits of the matter.

NAVIN CHAWLA, J

MAY 9, 2024/Arya/RP

Click here to check corrigendum, if any