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

+ **BAIL APPLN. 1174/2024**

PRINCE

..... Applicant

Through: Mr. Sunil Kumar & Mr.
Shubham Thakur, Advs.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Pradeep Gahalot, APP
for the State with Mr.
Dhawal Jain, Adv.
SI Subham, PS- Shakrapur,
Delhi

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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04.04.2024

CRL.M.A. 10285/2024 (for exemption)

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

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3. The present bail application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in FIR No. 230/2023 dated 31.03.2023, registered at Police Station Shakrapur, for the offence under Section 377 of the Indian Penal Code, 1860 and Section 6 of the Protection of Children from Sexual Offence Act, 2012.
4. It is pointed out that the bail application filed by the applicant, that is, BAIL APPLN. 3219/2023, was dismissed as withdrawn by this Court by order dated 27.02.2024.



5. The learned counsel for the applicant submits that there has been a change in circumstances since the bail application was withdrawn before this Court.
6. He submits that the applicant had thereafter approached the learned Trial Court by filing a bail application which was dismissed by order dated 15.03.2024.
7. He submits that the present application was filed after the dismissal of the application by the learned Trial Court.
8. He submits that the allegations against the applicant are baseless. He also submits that the applicant has a mental age of merely 7 years and 2 months as per the IQ test of the applicant that was conducted by the Institute of Human Behaviour and Allied Sciences (IHBAS).
9. It is the prosecution's case that the applicant sodomised a six year old child, who was his neighbour. It is alleged that the applicant took the victim home when he was playing on the street and sodomised him. FIR was registered on a complaint by the mother of the victim, after she found out about the incident from the victim when he came home weeping and was unable to sit properly. The allegations in the present case are heinous in nature.
10. It is seen that all the grounds agitated in the present applicant are analogous to the ones that were raised by the applicant earlier. It is pointed out by the learned Additional Public Prosecutor for the State that one of the objections raised in the Status Report of the previous bail application was regarding a Mutual Agreement between the complainant (mother of the victim) and the mother of the applicant whereby the parties had mutually compromised the matter and the complainant had consented for the bail of the applicant. He submits that the



Mutual Agreement between the parties has not been mentioned in the application and the same has not been annexed either.

11. It is not the case of the applicant that there has been any material change in circumstances since the dismissal of the previous application. It is only argued that the bail application of the applicant was again rejected by the learned Trial Court.

12. In the opinion of this Court, the dismissal of another bail application is not a circumstances of such nature which would entitle the applicant to file the bail application again.

13. Though the applicant has the right to file successive bail applications, the same can only be entertained in light of material change in circumstances.

14. The Hon'ble Apex Court in the case of ***Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528*** had observed as under:

"20. Before concluding, we must note that though an accused has a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications."

15. It has been held in a catena of judgments that there must be change in circumstances to warrant fresh consideration of the bail application. The successive bail applications filed without there being any change in circumstances, is strongly discouraged, and is a gross abuse of the process of law.

16. It is pertinent to note that the applicant had withdrawn the previous bail application not even a month back.

17. It is a settled law that dismissal of bail application as



withdrawn should be treated as rejection on merits because as a matter of practice, the counsel withdraws the bail application only if he finds that the Court is not inclined to exercise the discretion in his favour [**Ref: *Rajkumar v. State (NCT of Delhi)* : 128 (2006) DLT 264**].

18. Keeping in view the aforesaid facts, this Court finds no merits in the present application and the same is dismissed.

19. 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.

AMIT MAHAJAN, J

APRIL 4, 2024
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