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

+ BAIL APPLN. 1813/2023 & CRL.M.A. 2158/2024 (on record testimony of witness)

PAPPU

..... Petitioner

Through: Mr. Archit Upadhayay & Mr. Akash Mishra, Advocates.

versus

STATE (NCT OF DELHI) AND ANR.

..... Respondents

Through: Mr. Amit Ahlawat, APP for the State with SI Asha Dalal, P.S. Narela.
Mr. Gaurav Sharma, Advocate,
DHCLSC for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

22.05.2024

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1. The present application under Section 439 of the CrPC seeks regular bail in FIR No. 39/2018, under Sections 328/363/342/376/34 and Section 4 of the POCSO Act, registered at P.S Narela.
2. The instant FIR was registered at the instance of the survivor who gave a complaint saying that on 09.07.2017 at around 12:30 PM while she was sitting outside the place where she was working, one Sadhram who used to work with them made her smell something and took her on his bike to sector 5 Bawana where he used to live. It is alleged that when she reached there and regained consciousness, she saw the aforesaid Sadhram's wife, his brother (the present applicant) and one Brijbhan who was his younger son. It is alleged that on the said day at about 4 PM they took her to his village. It is further alleged that when she again regained consciousness she



was at Sadhuraam's house where his parents were also there and they locked her in a room. It is further alleged that thereafter the three brothers used to do wrong act with her and they used to beat her and further threaten her that if she will say anything to anyone they would get her brother killed. It is further alleged that after 4 months the three brothers brought her to Delhi and made her stay in rented accommodation in Najafgarh. It is further alleged that one month thereafter the three brothers again took her to their village and during that time when Sadhuraam had kept his phone for charging and had gone to the bathroom, she called her mother and told her that she is going with Sadhuraam to his village. She further told her to meet her at Panwadi Bus Stand. It is stated that her mother met her at the said bus stand and took her to Delhi and thereafter she went to the concerned police station and filed the present complaint. Post the registration of the FIR, investigation was conducted. The statement of the survivor under Section 161 of the CrPC was recorded and chargesheet was filed.

3. Learned counsel appearing on behalf of the applicant submits that the latter has been falsely implicated in the present case. It is submitted that the aforesaid Sadhuraam is no more. It is further submitted that the case of the survivor is full of contradictions in her testimony before the learned Trial Court. It is pointed out that even the mother of the survivor examined as PW-4 has made several contradictions in her cross-examination. It is submitted that the survivor in her cross-examination has stated that at Sadhuraam's village Panchayat had assembled. It is further submitted that in her examination before the Court she improved upon her version and blamed Sadhuraam for death of her brother while at the same time she admitted that there is no complaint against Sadhuraam for such an act. It is further



submitted that in her cross-examination she further admitted that in Najafgarh they were staying in rented accommodation of one room and the landlord had a shop downstairs. It is pointed out that she admits in her cross-examination that she was there for one and a half months, however, she never told anyone about her being kidnapped by the aforesaid Sadhram. She further admitted in her cross-examination that while staying in Najafgarh she had worked as a baildaar and at the same time other persons were also working with her including one woman but she did not complain to them about the Sadhram. Similarly, it is stated that the mother of the survivor who was examined as PW-4 has admitted in her examination in chief that after 15 days of her daughter's disappearance the survivor called her and told her that Sadhram had forcefully taken her to his village and kept her there. She further stated that on account of her son's death she could not go to Sadhram's village to get her daughter back nor she filed a complaint to the police. It is further submitted that all the material witness, i.e., survivor, mother of the survivor and others have already been examined.

4. It is further pointed out that the applicant has been in custody since 08.02.2018 and has been granted benefits of interim bail and without misusing the same had surrendered before the concerned Jail Superintendent.

5. Per contra, learned APP for the State assisted by learned counsel appearing on behalf of the complainant appointed by Delhi High Court Legal Services Committee, has submitted that in her statement before the Learned Trial Court as PW-1 she has made categorical allegations with respect to the charges against the present applicant of rape. It is submitted that the contradictions pointed out by learned counsel appearing on behalf of



the applicant are minor in nature. It is submitted that the missing report had been lodged by the mother of the survivor immediately after the incident, i.e., on 11.07.2017. It is pointed out that the survivor and her family members were under threat from the family of Sadhuram. It is submitted that no defence has been put forward by the present applicant to the survivor or other witnesses.

6. Heard learned counsel for the parties and perused the record.

7. The contentions of learned counsel for the applicant as noted hereinabove are matter of record. The mother of the survivor, i.e PW-4 in her examination in chief has clearly stated that after a gap of 15 days she was informed by the survivor of the alleged abduction. It is a matter of record that the survivor allegedly went missing on 09.07.2017 and FIR was registered on 17.01.2018. The cross-examination of the survivor also reflects that during the period of her alleged confinement there were several occasions when she met other persons including the panchayat at Sadhuram's village. It is also admitted by her that she had been working as baildaar during the said period in Najafgarh alongwith other co-workers. It is also a matter of record that in the missing report filed by the mother of the survivor has been shown as major. The case of the prosecution that the survivor was minor at that time is also disputed by the applicant. All the relevant witnesses have been examined before the learned Trial Court. As per the nominal roll the applicant has been in custody since 07.02.2018 and has been released on interim bail and has surrendered without misusing the liberty granted to him. The applicant is on interim bail vide order dated 23.04.2024 on medical grounds.

8. In totality of the facts and circumstances of the case, the interim bail



granted to the applicant is confirmed on the same terms and conditions.

9. The present application is allowed and disposed of accordingly.

10. Pending application(s), if any, also stand disposed of.

11. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.

12. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.

13. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

MAY 22, 2024/sn

Click here to check corrigendum, if any