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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 3971/2023

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.....Petitioner

Through: Ms. Nandita Rao, Mr. Jai Shankar,
Ms. Archana Gaur, Ms. Nandini Rao,
Mr. Amit Kumar Dubey, Mr. Manoj
Kumar Makhija, Mr. Mayank Basoya
and Mr. Aashish Kumar, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Laksh Khanna, APP for State
Ms. Jyoti Khatana, Mr. Dinesh
Kumar Sharma, Mr. Kawalpreet
Singh, Mr. Vikas Saini, Mr. Sonu Jha,
Mr. Krishan Shokeen, Mr. Manish
Malik, Mr. Ashish Balyan, Mr.
Mehtab Singh, Mr. Shubham Mishra,
Mr. Dinesh Kumar Madesiya and Mr.
Jai Subhash Thakur and Mr. Shamim
Ahmad Khan Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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29.08.2024

1. The present petition is filed on behalf of the father of the child victim seeking cancellation of bail granted vide order dated 03.05.2023 passed by the Additional Sessions Judge, Karkardooma Courts to respondent No. 2 in the proceedings emanating from FIR No. 180/2023 registered under Sections 376 AB/354 of IPC and Sections 6/10 of POCSO at P.S. Welcome, Delhi.



2. The petitioner contends that the impugned order has been passed without considering the gravity of the offence and being a cryptic order, it does not show any application of judicial mind.

3. In support, learned counsel for the petitioner has drawn attention of the Court not only to the FIR, but also to the statement of the child victim recorded under Section 164 Cr.P.C., wherein she has leveled specific allegations against the respondent No.2 who happens to be her maternal uncle (Mama). It is contended that the impugned order proceeds on the ground that there is no expert forensic opinion to substantiate the allegations against the accused. Learned counsel for petitioner also submits that after the respondent No.2 was admitted to bail, a complaint came to be filed on behalf of the father of the child victim stating that threats were being extended to them, however the same was later closed.

4. Learned APP for the State submits that though no separate petition has been filed by the State, however, on instructions, supports the present petition filed on behalf of the child victim.

5. Learned counsel for respondent No.2 however, has opposed the petition by contending that there is a delay of about four days in reporting the incident. In this regard, he relies on the statement of the grandfather of the child victim recorded during investigation, wherein he had stated that the child victim had informed him on 08.02.2023 about the incident, whereas the present FIR came to be registered on 13.02.2023. He has also referred to the proceedings dated 01.04.2023 recorded before the Ld. Sessions Court, wherein it came to be recorded that the child victim had no complaint against the family members with whom she was residing. It is submitted that the order granting bail should not be interfered with unless there are



allegations of violation of any bail condition or that the order is being obtained by fraud. In this regard, he has placed reliance upon Himanshu Sharma v. State of Madhya Pradesh, reported as **(2024) 4 SCC 222** as well as Coordinate Bench of this Court in Samey Singh v. State, reported as **1998 SCC OnLine Del 260** .

Lastly, it is submitted that there is a video in which the child victim is seen narrating the incident which implies that the child victim was tutored. At this stage, learned APP for the State informs that the same was made by the father of the child victim and was sent to the concerned IO. The said video also forms part of the chargesheet.

6. I have heard the counsels for the parties and perused the material available on record.

7. The FIR was registered on 13.02.2023, wherein the child victim, aged about six years, has stated that during the lockdown, the child victim has gone along with her mother to live with her maternal uncle i.e., respondent No.2. In the FIR, it has been stated that on account of emotional trauma, the child victim has stopped visiting her maternal uncle. She has further narrated in detail as to how and in what manner she was sexually assaulted by the respondent No.2. The child victim has also reiterated her statement and allegations at the stage of recording the statement under Section 164 Cr.P.C. The impugned order proceeds on the ground that there is no medical or scientific evidence suggesting the guilt of the accused. The allegations in the present case relate to insertion of finger and the incident is spread over a period of time. The internal medical examination of the child victim was not permitted by her grandmother. Even otherwise, the incident was reported 4-5 days after being informed by the child victim.



8. In these circumstances, on a prima facie look, the internal medical examination would not have much bearing in the present case. The next reason rendered in the order is that the respondent No.2 has no direct access to the residence to the child victim. In this regard, it is noted that it has been alleged that the accused has approached the child victim and the incident occurred when the child victim was taken to the residence of the respondent No.2.

9. At this juncture, it is pertinent to quote the main objective of the POCSO Act and the reason for the enactment of this special legislation:

“An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment for Courts for trial of such offences and for matters connected or incidental thereto”.

10. In Eera through Dr. Manjula Krippendorf v. State NCT of Delhi reported as (2017) 15 SCC 133, the Supreme Court had remarked on the statement and object of the POCSO Act as follows:

“20. The purpose of referring to the Statement of Objects and Reasons and the Preamble of the POCSO Act is to appreciate that the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the Preamble, it is manifest that it recognises the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and well-being are regarded as being of paramount importance at every stage to ensure the health physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The Statement of Objects and Reasons provides regard being had to the constitutional



mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing child-friendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the POCSO Act.”

11. It is a settled proposition that the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence, likelihood of fleeing justice etc.

12. In Sushila Aggarwal v. State (NCT of Delhi) reported as **(2020) 5 SCC 1**, it was inter alia held as under

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

13. Considering the nature of accusations, weighing in the gravity and severity of the offence, it is the opinion of this Court that the reasoning in the impugned order is fallacious and contrary to the principles of consideration of bail application. The principles governing the petition assailing grant of bail by way of an appeal, are well within the principles established in State of U.P. v. Amarmani Tripathi, **reported as (2005) 8 SCC 21**.



14. In this fact situation, this Court is of the opinion that no case is made out for regular bail. The reasoning given in the impugned order is already held to be completely fallacious. Accordingly, this petition succeeds and the impugned order is set aside. Respondent No.2 is directed to surrender before the concerned Jail Superintendent.

MANOJ KUMAR OHRI, J

AUGUST 29, 2024

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