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

+ **BAIL APPLN. 1841/2023**

KESHAV PRASAD

..... Petitioner

Through: Mr Prakhar Dixit and Mr Narender
Kumar, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr Hemant Mehla, APP for the State
with Mr Dipanshu Meena, Advocate
with W/ASI Saroj, PS Khyala.
Mr Hemant Singh and Ms Urvashi
Jain, Advocates for complainant.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

29.01.2024

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1. The present petition has been filed under Section 439 CrPC read with Section 482 CrPC seeking regular bail in connection with FIR No.0640/2022 under Sections 363 IPC registered at PS Khyala. Thereafter, Sections 354/376 IPC and Sections 4/8 POCSO Act were added in the chargesheet.
2. The case of the prosecution is that the victim and another male child were roaming around Delhi and co-accused Babloo, who also drives auto rickshaw like the present petitioner took the victim all over Delhi and later to Noida. The allegations against the present petitioner is that he raped the prosecutrix on two occasions.
3. Learned counsel for the petitioner submits that this Court *vide* order



dated 24.11.2023 had directed the petitioner to place on record the complete testimony of the prosecutrix. He submits that the testimony of the prosecutrix has been placed on record.

4. Inviting the attention of the Court to the testimony of the prosecutrix, learned counsel submits that the prosecutrix did not disclose the complete facts and she has resiled from her previous statement, therefore, the learned APP had sought permission to cross-examine the victim/prosecutrix. Accordingly, the learned APP was allowed to cross-examine the prosecutrix.

5. Referring to the said cross-examination, learned counsel submits that the prosecutrix has stated that a wrong act was committed by accused Babloo. However, she denied the suggestion that the present petitioner, i.e., accused Keshav Prasad committed rape upon her in his house when CCL 'A' and Babloo were sleeping.

6. He further refers to the testimony of prosecutrix where she has admitted that at the time of leaving her house she was wearing a salwar whereas, in her examination-in-chief she has also referred to the fact that she was wearing pants and she found that chain of her pant was open. He submits that there are thus, contradictions in the testimony of the prosecutrix and she is not a reliable witness.

7. Further, inviting the attention of the Court to the testimony of the prosecutrix he submits that the prosecutrix has admitted that though she had gone to Palika Bazar with the co-accused to buy some clothes but the clothes were never purchased, therefore, the statement of the prosecutrix that at the relevant time she was wearing pant is self contradictory.

8. Inviting the attention of the Court to the impugned order dated 21.02.2023, the learned counsel further submits that the learned Trial Court



has noted that prosecutrix stated that there is no threat perception to her from the side of the accused persons. He submits that in any case, the testimony of the prosecutrix has now been recorded, therefore, there is no occasion for the present petitioner to influence the prosecutrix or extend any threats to her.

9. He submits that the prosecution has cited 26 witnesses in the chargesheet and only 01 witness has been examined in entirety till date. He contends that the petitioner has clean antecedents and he is married and has 05 children out of which 04 are daughters. He, therefore, urges the Court to enlarge the petitioner on bail.

10. *Per contra*, learned APP for the State has argued on the lines of the status report.

11. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the material on record.

12. This Court is cognizant of the fact that since the charges have also been framed by the learned Trial Court for the offence under the POCSO Act, the threshold of satisfaction required would be higher while considering the bail application of the petitioner in view of the impact of Section 29 of the POCSO Act.

13. However, there is substance in the submission of the learned counsel for the petitioner that the prosecutrix has denied the suggestion of learned APP with regard to any rape having been committed by the present petitioner. This fact itself meets the higher threshold required to be met on account of impact of Section 29 of the POCSO Act.

14. That apart there appears to be contradictions and improvements in the statement of the prosecutrix. However, the probative value of the evidence,



as well as, the reliability of the witness will be seen by the learned trial court during the trial but at this stage, the aforesaid factors tilts the balance in favour of the petitioner for grant of bail.

15. That apart the prosecution has cited as many as 27 witnesses out of which only one witness has been examined fully. Needless to say that the conclusion of trial is likely to take long time and the petitioner cannot be kept in custody to await the conclusion of trial regard being had to the factors discussed above.

16. It is also not in dispute that the petitioner does not have any criminal record. Further, the prosecutrix having been examined, there is no possibility of petitioner influencing the prosecutrix in the event he is enlarged on bail.

17. It is also not the case of the prosecution in the status report that the petitioner is a flight risk.

18. Considering the aforesaid facts, I am of the view that the petitioner had made out a case for grant of regular bail. Accordingly, the petitioner is admitted to regular bail subject to his furnishing a Personal Bond in the sum of Rs.10,000/- and one Surety Bond of the like amount to the satisfaction of the learned Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide mobile number, as well as, his permanent address to the IO concerned. He shall keep his mobile in working condition at all times and shall not change the mobile



number without prior intimation to the Investigating Officer concerned.

c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the victim/complainant or any family members of the victim/complainant.

19. The petition is disposed of.
20. Copy of the order be forwarded to the Jail Superintendent for information and necessary compliance.
21. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

JANUARY 29, 2024
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