



2024:DHC:5752



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

Date of decision: 30th JULY, 2024

IN THE MATTER OF:

+ **BAIL APPLN. 1400/2024**

SUKHBIR @ BHOLA

.....Petitioner

Through: Mr. S B Tripathi, Advocate.

versus

NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP for the State
SI Vishal, W/PSI Anjali, PS Mayur
Vihar.

Mr. Kumar Shailabh, Advocate for
Respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner seeks bail in FIR No. 489/2020 dated 09.10.2020 registered at Police Station Mayur Vihar for offences under Section 376 IPC read with Section 6 of the POCSO Act.
2. The brief facts of the case are that on 09.10.2020, a PCR call *vide* GD No.58A was received in Police Station Mayur Vihar. The Complainant 'S', who is the mother of the victim levelled allegations of sexual assault of her daughter 'Z' against an unknown person. The said unknown person was apprehended at the instance of the victim and he was identified as Sukbir@ Bhola S/o Ramanad R/o 21/106, Trilokpuri, Delhi.
3. The complainant and her daughter were taken to Lal Bahadur Shastri Hospital, Khichripur, Delhi, where counselling of the Prosecutrix was done by the Counsellor and further medical examination of the Prosecutrix was



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conducted.

4. The doctor gave two pullandas sealed with the seal of the hospital, one of sexual assault evidence collection kit and other of outer clothings of the Prosecutrix. The said pullandas were taken into police possession through the seizure memo.

5. Thereafter, the Complainant gave a hand written complaint wherein she alleged that on 09.10.2020 at about 3:00 PM, her daughter, who is aged about six years went to a public toilet, after about 10-15 minutes came running to the Complainant crying and when she asked her, the victim told the Complainant that while she was using the toilet, a man entered her toilet and closed the gate and started moving his finger on her urinary part and he started licking her urinary part. The victim told the Complainant that she somehow managed to run away.

6. It is stated that the Complainant called the Police and the Police reached the spot and found the Petitioner sitting near the public toilet. The victim immediately recognized him and he was taken to the Police Station.

7. On the said complaint, the instant FIR was registered against the Petitioner.

8. The medical examination of the Petitioner which was conducted at Lal Bahadur Shastri Hospital, Khichripur, Delhi, *vide* MLC No. 7944, two sealed pullandas of blood samples were taken from the doctor for the purpose of DNA matching and the presence of alcohol in the blood of the Petitioner.

9. It is stated that the Prosecutrix has given her statement under Section 164 CrPC and chargesheet has been filed in the matter. The trial has commenced and the Prosecutrix and the mother of the Prosecutrix have been



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examined.

10. The Petitioner had filed several applications for bail and last of the bail application filed by the Petitioner has been rejected on 09.11.2023. Now, the Petitioner has approached this Court by filing the instant bail application.

11. Notice was issued on 25.04.2024. Status Report has been filed.

12. Learned Counsel for the Petitioner states that the Petitioner is in custody from 10.10.2020. He states that about three years eight months have passed and all the public witnesses have been examined in the matter and there is no danger of the Petitioner tampering with the evidence, therefore, bail ought to be granted to the Petitioner.

13. *Per contra*, learned APP for the State strongly opposes the bail application and contends that the Petitioner is alleged of committing a very heinous and reprehensible offence and no leniency should be shown to the Petitioner. He states that the chances of the Petitioner fleeing from justice cannot be ruled out. He also states that the Prosecutrix and the mother of the Prosecutrix have supported the case of the prosecution and the Petitioner has been identified during the examination under Section 164 CrPC and also in the Court.

14. The parameters for grant of bail have been laid down by the Apex Court in several judgments. In Gurcharan Singh v. Delhi Administration, (1978) 1 SCC 118, the Apex Court has held as under:-

“24. Section 439(1) CrPC of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), CrPC against granting of bail by the High Court or the Court of Session to persons accused of an



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*offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. **The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.*** (emphasis supplied)

15. In Ram Govind Upadhayay v. Sudarshan Singh, (2001) 3 SCC 598, the Apex Court explained the factors to be considered for granting bail, wherein the Apex Court has held as under:-

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor



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in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.” (emphasis supplied)



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16. In Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., **2010 (14) SCC 496**, the Apex Court has observed as under:-

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering 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 accusation;

(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 influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC



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21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), *Prahlad Singh Bhati v. NCT of Delhi* [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and *Ram Govind Upadhyay v. Sudarshan Singh* [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] .]

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In Masroor [(2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] , a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows : (SCC p. 290, para 13)

“13. ... Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.”

(See also State of Maharashtra v. Ritesh [(2001) 4 SCC 224 : 2001 SCC (Cri) 671] , Panchanan Mishra v. Digambar Mishra [(2005) 3 SCC 143 : 2005 SCC (Cri) 660] , Vijay Kumar v. Narendra [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195] and Anwari Begum v. Sher Mohammad [(2005) 7 SCC 326 : 2005 SCC (Cri) 1669] .)

17. The aforesaid principles laid down by the Apex Court have been re-stated in several other subsequent judgments, viz., Neeru Yadav v. State of U.P., (2014) 16 SCC 508; Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129 and Mahipal v. Rajesh Kumar, (2020) 2 SCC 118.



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18. No doubt a couple of public witnesses have turned hostile in the cross-examination, however, a submission has been given by the learned APP for the State that the public witnesses have turned hostile because of the influence of the mother of the Petitioner herein. Upon conviction, the Petitioner can be sentenced minimum upto 20 years rigorous imprisonment which may extend upto imprisonment for life.

19. The Prosecutrix and the mother of the Prosecutrix supported the case of the prosecution to the hilt. The Petitioner has been identified in Court and this Court at this juncture is of the *prima facie* view that there is a reasonable ground to believe that the Petitioner has committed an offence under the POCSO Act for which the Petitioner can be sentenced minimum upto 20 years rigorous imprisonment which may extend upto imprisonment for life.

20. Considering the gravity of the offence, taking into account the fact that the Prosecutrix was only six years old at the time of the incident and the Petitioner was about 30 years of age and since there is a reasonable ground to believe that the Petitioner can flee from justice and the propensity of the Petitioner repeating the offence cannot be ruled out at this juncture, this Court is not inclined to grant bail to the Petitioner.

21. Resultantly, the bail application is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JULY 30, 2024

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