



2024:DHC:7759



IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 07.10.2024

+ **BAIL APPLN. 1524/2024 & CRL.M.A. 13458/2024**

AMAN

..... Applicant

versus

THE STATE OF DELHI AND ANR

..... Respondents

Advocates who appeared in this case:

For the Applicant : Mr. Lalit Yadav, Mr. Ankit Yadav & Ms. Jyoti Sharma, Advocates.

For the Respondent : Mr. Naresh Kumar Chahar, APP for the State with Mr. Anand Seth, Ms. Manisha Singh, Ms. Mugha Dwivedi, Mr. Kartikey Awasthi & Mr. P.C. Kaushik, Advocates.
SI Jatin Kaushik (P.S. Raj Park).
Ms. Tara Narula, Advocate for Victim
(Through V.C.)

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') for grant of regular bail in FIR No. 148/2023 dated 24.02.2203, registered at Police Station Raj Park, for offences under Sections 363/365/342/323/506/376 of the Indian Penal Code, 1860 ('IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). The chargesheet has



2024:DHC:7759



been filed against the applicant for the offences under Sections 363/366A/34/109/323/342/506/376 of the IPC and Section 6 of the POCSO Act.

2. The FIR was lodged on a complaint given by the complainant/prosecutrix on 24.02.2023, alleging that the present applicant and the co-accused person Abhay *alias* Kaku (both are stated to be brothers), kept her in confinement and established forceful sexual relations with her.

3. It is alleged that on 29.08.2019, when the prosecutrix was 17 years of age, the said accused persons called her to the park to meet her. Upon meeting the said accused persons, it is alleged that the prosecutrix was made to sniff a handkerchief, pursuant to which she became unconscious. When she regained her consciousness, she found that she was completely naked. Thereafter, it is alleged that the co-accused Abhay threatened her by showing a knife. It is alleged that the co-accused Abhay tied the hands and legs of the prosecutrix and locked her in a room. It is alleged that the present applicant and co-accused Abhay continued to establish physical relations with the prosecutrix against her will.

4. One day when the door of the room in which she was confined was ajar, the complainant saw co-accused, namely, Pooja (the mother of the applicant), who took the prosecutrix to the ground floor and called co-accused Sunil (the father of the applicant). It is alleged that they together requested the prosecutrix to not talk about the incident with anyone and promised to drop her home.



2024:DHC:7759



5. Thereafter, the mother of the prosecutrix was called who consoled her and also told her that there would be shame and bad name for their family in the society. It is alleged that the mother of the prosecutrix suggested that the prosecutrix should get married in the family of the accused persons and the same was agreed by them. Thereafter, the parents of the applicant started calling the prosecutrix as her daughter in law.

6. It is alleged that no marriage ceremony took place between the prosecutrix and the applicant and there was only a *Chunni* Ceremony, after which she was taken by the accused family to their home.

7. It is alleged that two days after the ceremony, the prosecutrix along with the applicant were expelled out of the family home by co-accused Pooja and they were told that the family had disowned the applicant and he has no right in the family property.

8. It is alleged that the applicant and the prosecutrix then started living at a rented premises. During that time, the complainant gave birth to a male child.

9. The prosecutrix supported the case of the prosecution in her statement under Section 164 of the CrPC.

10. The learned counsel for the applicant submitted that the applicant is innocent and he has clean antecedents. He submitted that the applicant has been falsely implicated in the present case.

11. He submitted that that the present FIR was registered after a delay of 3.5 years and no reason for the same has been given. He



2024:DHC:7759



submitted that the present FIR has been maliciously filed due to domestic disputes between the complainant and the accused persons.

12. He submitted that the mother of the applicant had given a complaint against the complainant on 27.09.2021. He submitted that a civil suit was also filed by the applicant's father seeking permanent injunction in respect to their property in Mangolpuri. He submitted that the complainant is trying to grab the said property.

13. He submitted that the prosecutrix had given a complaint to the SHO, Police Station Mangolpuri against the applicant on 22.11.2022 prior to the registration of the present FIR, wherein she alleged that she was in a live-in relationship with the co-accused Aman since 29.08.2019, and during that time, she had gotten pregnant and gave birth to a child. The prosecutrix in her complaint also alleged that the co-accused Aman was delaying the marriage on one pretext or other.

14. He submitted that no such allegations as made in the present FIR were levelled by the complainant in the said complaints.

15. He submitted that similarly placed co-accused Abhay *alias* Kaku has already been admitted on bail by this Court by order dated 19.02.2024, in Bail Application No. 2350/2023. He submitted that the applicant is therefore entitled to bail on the ground of parity.

16. He submitted that the chargesheet has been filed and the charges have been framed in the present case. He submitted that no purpose would be served by subjecting the applicant to further incarceration.



2024:DHC:7759



17. *Per contra*, the learned Additional Public Prosecutor vehemently opposed the grant of any relief to the applicant. He submitted that the offences alleged against the applicant are heinous in nature.

18. He submitted that the victim was a minor at the time of the commission of the offences as per her school certificate.

19. The learned counsel for the complainant also vehemently opposed the grant of bail to the applicant.

20. She submitted that the complainant has been continuously pressurized and threatened to withdraw the complaint and not depose against the accused persons. She submitted that such threats were extended by co-accused Abhay *alias* Kaku (brother of the applicant) on 12.07.2024. She submitted that a complaint was also made in this regard, however, it was not investigated into by the police.

21. She further submitted that the complainant also received two calls on WhatsApp by co-accused Pooja (mother of the applicant) as is reflected in her call records.

22. She submitted that without prejudice to the allegation of forceful penetrative sexual assault, the complainant was a minor at the time of the offence as per her school certificate and she was not capable of giving consent to sexual intercourse. She submitted that the paternity of the applicant was confirmed by a DNA test and the date of conception of the child is prior to the complainant turning 18 years of age.



2024:DHC:7759



23. She submitted that the delay in lodging the FIR cannot be held to be against the complainant as she was entirely dependent on the applicant after having conceived a child.

ANALYSIS

24. While considering the application for bail, the Court has to consider the nature of the offence, severity of the punishment and *prima facie* involvement of the accused. The Court, at this stage, is not required to enter into the detailed analysis of the evidence to establish beyond the reasonable doubt whether the accused has committed the offence.

25. The Court while considering the application for bail in relation to offences under POCSO Act is also required to consider the factors such as age of the victim; age of the accused, that is, the older the accused the more serious the offence; the age difference between the victim and the accused so as to consider the element of perversion; conduct of the accused after the offence; whether it is a case of consensual relationship; etc. In the present case, charges have been framed in relation to offence under Section 6 of the POCSO Act. The same attracts the presumption under Section 29 of the POCSO Act.

26. The Hon'ble Apex Court in ***State of Bihar v. Rajballav Prasad: 2017 (2) SCC 178***, in relation to offences under POCSO Act, had held that, while considering the application for bail at a post charge stage, the Court also has to consider the provisions of Section 29 of the POCSO Act.



2024:DHC:7759



27. The issue of presumption of guilt has been addressed by the Hon'ble Apex Court in relation to a number of statutes. The presumption of guilt is not absolute and is rebuttable. It is the duty of the prosecution to first establish facts on the basis of the evidence which would form the foundation for the presumption to operate.

28. It is the case of the prosecution that the applicant and his brother, namely, Abhay@Kaku called the victim to a park when she was seventeen years old and thereafter established forceful relations with her at their home. It is alleged that she was wrongfully confined by the said accused persons against her will. It is alleged that the prosecutrix was rescued by the parents of the prosecutrix who agreed to get her married to the applicant. It is alleged that the prosecutrix had a *chunni* ceremony with the applicant whereafter they were thrown out.

29. This Court by order dated 19.02.2024 had granted bail to co-accused Abhay *alias* Kaku. It was noted that no material had been brought forth to corroborate the allegations levelled by the prosecutrix. It was also noted that the prosecutrix had alleged in an earlier complaint that she was in a live in relationship with the applicant and already had a child with him whereafter she was subsequently again impregnated by him. It was observed that no complaint was given at by the prosecutrix or her family that she had been abducted. It was also noted that the allegations that she had been living in confinement from the last almost four years and was subjected to sexual intercourse without her consent, at this stage, did not inspire confidence.



2024:DHC:7759



30. It was also noted that the FIR was registered belatedly in the year 2023, even though, the first incident dates back to August, 2019. The Hon'ble Apex Court, in the case of **Meharaj Singh (L/Nk.) v. State of U.P. : (1994) 5 SCC 188**, held as under:

“12. ...Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story...”

31. Although it is not in doubt that that the mere statement of the prosecutrix is sufficient for establishing the offence of rape if the same inspires confidence. However, in the peculiar facts of the present case, at this stage, the allegations do not inspire confidence.

32. The present case is one where the prosecutrix and the applicant share two children. It is alleged that the date of conception of the first child was prior to the prosecutrix turning a major. The same is disputed by the applicant and it is argued that the first child was conceived after the prosecutrix turned eighteen. The allegations and defences in this regard will be seen during the course of the trial, however, at this stage, while considering the application of bail, this Court cannot lose sight of the nature of relationship between the parties.

33. The applicant is in custody since 24.02.2023. The nominal roll indicates that the overall jail conduct of the applicant is satisfactory. It is relevant to note that the chargesheet has already been filed and no further investigation is stated to be pending.



2024:DHC:7759



34. There is no allegation that the present applicant is embroiled in any other case of similar nature.

35. Insofar as the arguments in relation to the threats allegedly levelled by co-accused Abhay (brother of the applicant) and the call made by co-accused Pooja (the mother of the applicant) are concerned, the Status Report mentions that one of the complaints against co-accused Abhay was closed as the presence of the co-accused Abhay at the place of the incident could not be substantiated and it was found that the co-accused Abhay was at a Salon at the relevant time as also confirmed by a worker at the Salon. Insofar as the other allegations are concerned, the Status Report mentions that appropriate steps were taken to ensure proper verification/ action. The prosecutrix is at liberty to pursue appropriate action against the said accused persons in relation to any threats she received, however, the same cannot act as a blanket bar against grant of relief to the applicant.

36. Even otherwise, any apprehension of the applicant threatening the victim or the applicant fleeing from justice can be taken care of by putting appropriate conditions.

37. In view of the aforesaid discussion, in the opinion of this Court, the applicant has made out a *prima facie* case for grant of bail.

38. Without commenting further on the merits of the case, the applicant is directed to be released on bail, if not required in any other case, on furnishing a bail bond for a sum of ₹30,000/- with one surety of the like amount to the satisfaction of the learned Trial Court, subject to the following conditions:



2024:DHC:7759



- i. The applicant shall upon his release provide his mobile number to the concerned IO / SHO and keep it switched on at all times;
- ii. The applicant shall not take unwarranted adjournment and attend the Trial Court proceedings on every date;
- iii. The applicant shall not leave the boundaries of the National Capital Region without informing the concerned IO / SHO;
- iv. The applicant shall not in any manner contact the complainant/victim or any of the witnesses;
- v. The applicant shall upon his release furnish a proof of residence where he shall reside upon his release to the concerned IO/SHO, and in the event of change in address he shall intimate the same to the concerned IO/SHO.

39. In the event of there being any FIR/DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an appropriate application for cancellation of bail.

40. It is clarified that the observations made in the present judgement/order are for the purpose of deciding the present bail application, and should not influence the outcome of the trial. The said observations should not be taken as an expression of opinion on the merits of the case.

41. The present application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

OCTOBER 7, 2024