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

+ **BAIL APPLN. 2137/2023**

MOHD MUSHARAF Applicant

Through: Mr. Ashok Kumar Mishra,
Mr. Pushpendu Shukla,
Ms. Sudha Mishra & Mr. Shivam
Saraswat, Advocates.

versus

STATE OF NCT DELHI Respondent

Through: Mr. Utkarsh, APP for the State
with SI Mohd. Mussaraf, SI
Pooja Meena, PS Lahori Gate.
Mr. Shiv Chopra, Ms. Aadhyaa
Khanna & Mr. Siddharth Arora,
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

16.01.2024

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1. The present application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of regular bail in FIR No. 264/2023, under Sections 376(2)(f)(n) of the Indian Penal Code, 1860 & Section 6 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Lahori Gate.

2. On 10.04.2023, a complaint was made by the mother of the victim (who is stated to be seven years old) alleging that her daughter has been sexually assaulted. Pursuant to the said complaint the victim was provided counselling by the Counsellor for Delhi Commission for Women and afterwards the victim and the complainant were taken to the Aruna Asaf Ali Govt. Hospital

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for medical examination when MLC 35/23 was recorded.

3. The FIR was registered on 10.04.2023, after taking into consideration the nature of allegations, the MLC and the counsellor report. It is alleged that the applicant, who is the father of the victim, has committed the offence.

4. As per the FIR, it is alleged that on the date of the complaint, that is, 10.04.2023, the complainant on waking up in the morning saw, that while her daughter was sleeping, her husband—the present applicant was sitting next to her and was touching her private parts.

5. It is alleged by the complainant that the victim started staying quiet, and unresponsive and under fear and used to complain about burning sensation at her private parts.

6. She further alleged that this was not the first incident, and earlier on 06.03.2023 a similar incident had happened and she upon confrontation was threatened by the applicant.

7. The learned counsel for the applicant submits that the present FIR was a result of the complaint given by the complainant against the applicant on 27.02.2023, he submits that the he had filed the said complaint alleging that an amount of Rs.5,50,000/- was stolen from his house, when his wife's sister had come, to take his wife and children to her mother's place.

8. The applicant had alleged that the complainant had threatened him for implicating in a false case.

9. He submits that the applicant was arrested on 10.04.2023, the chargesheet has also been filed, and no purpose would be served by keeping the applicant in incarceration.

10. The learned Additional Public Prosecutor for the state has strongly opposes the present bail application as he states that the trial is at nascent stage, and the victim in her statement under



Section 164 Cr.P.C., has supported the case of the prosecution.

11. He submits that the complaint dated 27.02.2023, given by the applicant was closed after the applicant informed the concerned investigating officer that the same was a family dispute between him & his wife, and the same is sorted.

12. The parameters for grant of bail have been laid down by the Hon'ble Apex Court in number of cases. It has been held that the Court, while considering the application for grant of bail, has to keep in mind not only the nature of accusations but the severity of the punishment; the reasonable apprehension of witness(es) being tampered; or the apprehension of there being a threat to the complainant.

13. The Court can look into, if the allegations are frivolous and, in the event of there being some doubt as to the genuineness of the allegations, the accused is entitled for an order of bail. The grant of bail is dependent upon the facts of each case, and the relationship of the accused with the victim if the allegations are in regard to the sexual assault, is an important factor to be kept in mind.

14. The allegations, in the present case, are made against the father of the victim for having sexually assaulted his own minor child, who was only seven years of age. The allegations, by their very nature, are heinous, inhumane and shameful. The punishment for the offences alleged, is imprisonment for the remainder of natural life and can also, in certain cases, be death.

15. The rape is, not only, a physical assault on the victim but has the effect of destroying the entire personality of the survivor and scars the psyche. The trauma of such incidents persists for years, especially, when the perpetrator happens to be the victim's own father.



16. I have perused the statement of the victim under Section 164 of the CrPC. The same, at this stage, does not appear to be tutored.

17. It is a well-settled law that the testimony of the victim is vital and in the absence of compelling reasons necessitating looking for corroboration of her statement, the same alone would be sufficient for proving the guilt as long as the testimony inspires confidence and is found to be reliable.

18. The argument that the applicant had complained to the Police that he fears that the complainant would falsely implicate the applicant in a case, is also unmerited.

19. It is pointed out that the State had enquired into the said complaint and the applicant had mentioned that the dispute was a family dispute, which had been sorted and he did not want any legal action on his complaint.

20. The statement given by the prosecutrix, thus, at this stage, cannot be stated to be unreliable or that the same had been given to implicate the applicant.

21. Moreover, the trial is at a nascent stage and the possibility of threatening the witness(es), especially, when the victim happens to be accused's own daughter, cannot be ruled out.

22. In view of the above, this Court finds no merit in the present bail application and the same is, accordingly, dismissed.

AMIT MAHAJAN, J

JANUARY 16, 2024

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