



\$~4

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

+ **BAIL APPLN. 1546/2024**

YATINDER SINGH

.....Applicant

Through: Mr. Jai Shankar, Mr.
Manoj Kumar Makhija,
Ms. Nandita Rao, Mr.
Mayank Besoya & Mr.
Ashish Yadav, Advs.

versus

STATE & ANR.

.....Respondent

Through: Mr. Sunil Kumar Gautam,
APP for the State.
Mr. Rajneesh Bhasker,
Adv. (DHCLSC) with Mr.
Rachit Raushan, Adv. for
R-2/victim along with
victim through V.C.
SI Mhoit Chahar, PS Vijay
Vihar.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

23.08.2024

%

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking regular bail in FIR No. 04/2024 dated 02.01.2024 registered at Police Station Vijay Vihar for offences punishable under Section 354 of the Indian Penal Code, 1860 ('IPC') and Section 10 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO').

2. The FIR was registered pursuant to a complaint given by the prosecutrix stating that on two separate occasions the accused had made sexual advances towards her. Accused is the father of the prosecutrix. The prosecutrix stated that her mother and father have acrimonious relations. It is alleged that on 17.12.2020 when her mother was not at home, the applicant came to her room at

BAIL APPLN. 1546/2024

Page 1 of 6



9.00 PM in an inebriated state after consuming liquor and misbehaved with her. It is alleged that he grabbed the top of the prosecutrix and pulled her towards him as a result of which her top tore. It is also alleged that the applicant tried to force himself upon the prosecutrix, however, she managed to escape.

3. It is alleged in the FIR that the mother was informed about the incident which led to a heated argument between the parents but no further action was pursued. On a separate occasion on 18.04.2023, it is alleged that the accused again came in an inebriated state and attempted to engage in a physical relationship with the prosecutrix, however, the prosecutrix managed to escape.

4. The FIR was filed after the prosecutrix confided in her mother around the month of June 2023, however, the FIR was filed on 02.01.2024.

5. A statement under Section 164 of the CrPC was also recorded before the learned Metropolitan Magistrate wherein the prosecutrix alleged that her father was an alcoholic and often requested sexual favours from her.

6. Subsequently, the applicant was arrested on 10.01.2024.

7. The learned counsel for the Applicant submits that the Applicant is a victim of a framed story made by the mother of the prosecutrix.

8. He submits that there is no evidence of sexual assault at the behest of the applicant in the present case.

9. He submits that the allegations made by the prosecutrix fail to constitute the offence under Section 8 of POSCO and thus, automatically the aggravated charge under 10 POSCO also gets ruled out.

10. He submits that there is an unexplained delay in the filing
BAIL APPLN. 1546/2024

Page 2 of 6



of the FIR since the first alleged incidence took place on 17.12.2020, however the FIR was only registered on 02.01.2024

11. He submits that the MLC enclosed with the chargesheet clearly shows that there is no indication of penetrative or non-penetrative sexual assault and physical violence.

12. The learned Additional Public Prosecutor for the State ('APP') has opposed the grant of present bail application.

13. The learned APP for the State submits that the serious allegations have been made by the prosecutrix against the applicant who happens to be her father, and enlarging the applicant on bail would prejudice the trial.

14. He submits that the victim in her the statement recorded under Section 164 Cr.P.C., has consistently maintained that the applicant sexually assaulted her and touched her inappropriately on the alleged day of incident.

15. He submits that the victim was threatened by the applicant, being her father, and therefore she was apprehensive about disclosing details to her mother and the police.

16. I have heard learned counsel for the parties.

17. Certain considerations that have to be kept in mind while deciding the application in relation to offences under POCSO Act are; the age of the minor victim vis-à-vis the age of the accused, the family relationship, if any, between the victim and the accused, whether the accused is a repeated offender, the chances of the accused threatening the victim after being enlarged on bail etc.

18. It has to be kept in mind that in cases where the victim is a child, her statement has to be scrutinized with great care and caution as children can be easily swayed away and are prone to tutoring. It can also be a possibility that the statement is made at

BAIL APPLN. 1546/2024

Page 3 of 6



the behest of one of the parents. It is the duty of the Court to also examine and analyze other corroborative evidence and circumstances which are important to the case (Ref.: ***Atender Yadav v State NCT of Delhi : 2013 SCC OnLine Del 4322***).

19. The allegations of such nature puts the accused, especially if he happens to be a father, in such situation where he is looked down upon by society and has far reaching social consequences. The possibility of getting such complaint lodged, especially when the parents have history of matrimonial discord, cannot be ruled out.

20. It is pointed out that the wife of the applicant, that is, the mother of the victim had complained to the police on 13.05.2023 that the applicant had taken certain money and jewellery from the house and that she was had suspected that the applicant was having illicit relationship with another woman. Another complaint was filed which led to registration of the FIR dated 22.06.2023 at the instance of the mother of the victim alleging that the applicant had called her and abused her. It was also alleged that the applicant had come to her Beauty Parlour and created nuisance and had also beaten her.

21. On 13.07.2023, a complaint under the Protection of Women from Domestic Violence Act, 2005 (**DV Act**) was also filed by the mother of the victim against the applicant.

22. It is apparent that the parents of the victim are on logger head and have matrimonial acrimony. It is alleged that the victim told the mother about the incident in the month of June, 2023. No reason has been mentioned as to why the FIR for such a serious offence was registered on 02.01.2024. Further, no reference of the alleged incident was mentioned in the complaint filed under the DV Act.

BAIL APPLN. 1546/2024

Page 4 of 6



23. The delay between the alleged incident and the filing of the complaint, and the fact that the mother of the victim and the applicant who also happens to father of the victim, are litigating against each other due to matrimonial acrimony cannot be ignored by the Court while deciding the application for bail.

24. The victim has appeared through video conferencing and is represented by the learned counsel, who is appointed by the Delhi High Court Legal Service Committee (DHCLSC). The learned counsel for the victim states that the victim has no objection if the applicant is released on bail. The applicant is in custody since 09.01.2024 and the chargesheet has already been filed.

25. It is not alleged that the applicant has been contacting the prosecutrix since the time he has been staying separately. The consequences of pre-trial detention are grave, and the burden of such incarceration also causes a severe effect. The apprehension of the applicant fleeing from justice or tampering with evidence, can be taken care of by putting appropriate conditions. The purpose of custodial interrogation is to aid the investigation and is not punitive.

26. In view of the above, the applicant, in the opinion of this Court, has made out a case for grant of bail.

27. Without commenting further on merits of the case, the applicant is directed to be released on bail on furnishing a bail bond for a sum of ₹50,000/- with one surety of the like amount subject to the satisfaction of the concerned SHO, on the following conditions:

- i. The applicant shall join and cooperate with investigation as and when directed by the Investigating Officer;



- ii. The applicant shall not leave the city without informing the IO/ SHO concerned;
- iii. The applicant shall not leave the country without the permission of the learned Trial Court;
- iv. The applicant shall not contact the prosecutrix or tamper with the evidence in any manner;
- v. The applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

24. 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 application seeking cancellation of bail.

25. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

26. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

AUGUST 23, 2024