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

% **Decided on : 28.02.2024**

+ **BAIL APPLN. 2216/2023**

ANUP BHENGRA @CHOTU

..... Petitioner

Through: Mr. M. Naushad with Mr. Shamsheer Singh, Advocates

versus

THE STATE GOVT OF NCT OF DELHI Respondent

Through: Mr. Manoj Pant, APP for the State.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. The Instant application has been filed under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') on behalf of applicant seeking grant of regular bail in case FIR bearing no. 396/2019 registered at Police Station Sarita Vihar, Delhi for the offences punishable under Sections 376/363 of the Indian Penal Code, 1860 ('IPC') and Section 6 of protection of children from of sexual offences Act ('POCSO').
2. Learned counsel for the applicant has argued that the present applicant/accused has falsely been implicated in the present case. It is argued that the evidence of the complainant has not been recorded, and the complainant has not deposed anything against the present applicant/accused. It is further argued that the learned Trial Court had wrongly presumed that



them complainant is under any threat or coercion. It is argued that as per the MLC of the complainant, no external injury has been found on the body of complainant. It is argued that there is no evidence to show the direct or indirect involvement of the present applicant/accused in the commission of alleged offence. Therefore, it is prayed that the present applicant/accused be enlarged on bail.

3. Learned APP for the State, on the other hand, argues that the allegations against the present applicant/accused are serious in nature, and the complainant has supported the case of the prosecution in her statement given under Section 164 of Cr.P.C. It is further argued that the complainant in the present case has not turned hostile, and the attention of this Court has been drawn to order of bail passed by the learned Trial Court *vide* which the bail application of the present applicant/accused was dismissed. Learned APP for the sate also argues that after the last dismissal order was passed, no further proceedings have taken place before the learned Trial Court regarding recording of statement of the complainant though charge in this case was framed in the year 2022 itself. Thus, the present bail application be dismissed.

4. This Court has heard arguments addressed by the learned counsel for the applicant and learned APP for the State and has perused material on record.

5. The allegations against the present applicant/accused, in a nutshell, are that the present applicant/accused had brought the complainant to Delhi from her village in Jharkhand, and had subsequently forcefully established physical relations with her. It has been alleged that the present



applicant/accused had then got her employed her in a house in Delhi. Thereafter, the present applicant/accused had taken the complainant to his room in Jasola, Sarita Vihar, Delhi, and had again forcefully established physical relations with her on 24.10.2019. The incident was reported to the police authorities on 25.10.2019, after one Sunil, a resident of the complainant's village, had discovered the complainant crying outside the room of the present applicant/accused.

6. This Court observes that the complainant was only 12 years and 8 months of age at the time of the alleged incident. It is noted that the complainant was brought to Delhi from Jharkhand, when she had appeared before the learned Trial Court for deposition on 03.08.2022 through the DCP concerned. The learned Trial Court had noted in the order dated 03.08.2022 that the witness had remained silent even after efforts were taken by the Court. It was further noted by the learned Trial Court that victim had been sent to the counsellor for counselling by the Court, and it was reported by the counsellor that the complainant was in extreme emotional distress, sadness, anxiousness and hopelessness, complainant was not even able to communicate properly with the counsellor. The relevant portion of the order dated 26.07.2022 passed by the learned Trial Court after perusing the counselling report of the victim, reads as under:

“ Counselling report of the victim has been filed and as per the report of CWC the witness was in emotional distress, sadness and anxiousness, hopelessness were present in the victim, victim was not able to communicate properly and the victim is repeatedly saying that she wanted to go home to her family. As the victim was in stress and was not able to c01mnunicate and the same was situation of the victim during the evidence in the court, therefore, at this stage undersigned does not deem fit that the evidence of the victim should be recorded immediately rather the time and



counselling should be provided to the victim to overcome distress so that she can depose properly. Accordingly, the victim is at liberty to join her family and IO is directed to arrange counselling sessions for the victim either in person or through VC so that the victim can overcome the trauma and depose. In the meanwhile matter is fixed for evidence of witnesses at sf. no. 2 and 3 for 19.09.2022. Victim be summoned for evidence on 04. 11.2022.”

7. The learned Trial Court had further noted in order dated 03.08.2022 that since the witness was in emotional distress, sadness and anxiousness, realising the accused on bail will enhance the the distress of the victim, and the accused could also threaten the victim.

8. This Court has also gone through the statement recorded under Section 164 of Cr.P.C. of the victim which was recorded on 28.10.2019 wherein she has specifically alleged that the accused herein had brought her to Delhi forcibly on the pretext of getting her new clothes and mobile phone, however, though she was not ready to accompany him, he had brought her forcibly to Delhi from Ranchi. He had taken her somewhere for working, however, the accused was not paying her anything. After one year, when despite working at the place where he had employed her, when the accused had not given her a single penny she had insisted that she be given salary by the accused, however, he kept on insisting that he will not send her home and she should continue to work. She had fallen sick in the house where she was working thereafter, he had taken her to his home in Delhi at Jasola and had sexually abused her. She had narrated the incident to one Sunil from her village. In her statement, she had further stated that she had been earlier also sexually assaulted by the present accused when they had come from their village to Delhi. The police was informed and investigation was conducted



thereafter.

9. Learned counsel for the accused has argued that present applicant/accused has falsely been implicated in the present case and all the facts mentioned in the statement of the complainant recorded under Section 161 of Cr.P.C. are incorrect including the fact that the complainant was brought to Delhi. In this regard, this Court notes that a perusal of statement recorded under Section 161 of Cr.P.C. of the person under whom the complainant was employed, reveals that the complainant had been employed in their house by the present accused/applicant, which itself corroborates the claim of the complainant that she had been brought to Delhi by the present applicant/accused and was employed by him. During the course of the investigation, it has also been revealed that the complainant was studying in a school at Ranchi, Jharkhand from 2012 till 24.05.2019 and as per the school record her age at the time of incident was only 12 years and she was studying in 8th standard when she was brought to Delhi.

10. A perusal of status report filed on record, also reveals that in the MLC, the doctor had opined "Hymen Torn, old Tear Positive" and the complainant had given "Alleged history of Sexual assault committed by the present applicant/accused.

11. This Court takes note of the realities of profound impact of sexual assault and human trafficking for the purpose of employment on a minor victim, which extends beyond mere physical harm that inflicts enduring mental trauma. The psychological distress endured in such instances far exceeds what meets the eye. **It is crucial to recognize that delays in the victim's testimony before the learned trial court, often attributed to the**



intricate nature of trauma recovery, should not serve as grounds for the accused to seek bail.

12. The present case not only involves the disturbing dimension of sexual assault perpetrated against a minor, a mere 12 years old, but also highlights the grim reality of human trafficking, exploiting individuals for exploitative labour practices. This Court notes that the victim is still grappling with the trauma of the alleged incident, and awaits counselling before her statement can be recorded. It is further noted that given the gravity of the situation and the comprehensive examination of the case's facts and circumstances, this Court finds it inappropriate to grant bail to the accused. In adjudicating bail matters, courts must strike a delicate balance, not only considering the accused's right to bail but also upholding society's right to protection from such heinous crimes and ensuring justice for the victim. In this instance, denial of bail is essential, especially considering the vulnerability of the victim who has been subjected to such egregious acts.

13. A perusal of the proceedings which had taken place before the learned Trial Court and observations made by the learned Trial Court, reveals that the victim has not come out of the trauma of the alleged incident as she was undergone sexual assault when she was only 12 years of age and has studying in school, and was forcibly brought to Delhi on pretext of buying new clothes and mobile phone, and was subsequently allegedly raped on multiple occasions by the present applicant/accused. This Court also takes note of the affect of break in studies of the victim which will have life-changing and life-time affect on her life.

14. Thus, in view of the aforesaid discussion, and the fact the allegations



against the present applicant/accused are serious in nature, and that the evidence of the complainant has not yet been recorded, and the observations made by the learned Trial Court that the complainant was in emotional distress and was not able to communicate properly, this Court is not inclined to grant bail to the present applicant/accused at this stage. It is not a case of not deposing against the accused as suggested, but a case of “not being able to depose” due to trauma of sexual abuse and human trafficking.

15. Granting bail in such cases will send a wrong single to the society at large. The Courts have a duty to ensure that accused persons involved in serious offences as the present case, which result in life altering changes in a young girl’s life are not released on bail on ground of the victim being not in a position to depose against them, when it is writ large on the face of the record that she has become tongue-less qua the deposition against the accused only due to the impact of trauma undergone by her due to sexual assault and human trafficking thousands of miles away from her home and her family at the tender age of 12 years.

16. Accordingly, the present application stands dismissed.

17. It is however clarified that nothing expressed herein shall tantamount to an expression of opinion on merits of the case.

18. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 28, 2024/hs