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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1577/2024 & CRL.M.A. 13768/2024**
BEER BAHADURPetitioner

Through: Ms. Sushma Sharma,
Mr. Girish Kumar Sharma,
Mr. Dhruv Kumar Sharma,
Mr. Jitender Sharma,
Ms. Aayushi Gaur &
Mr. R. Sahil, Advocates

versus

THE STATE NCT OF DELHIRespondent

Through: Mr. Naresh Kumar
Chahar, APP for the State
with W/SI Yaonai, SI
Kirandeep Kaur, Insp.
Narender Singh, PS KM
Pur.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **21.08.2024**

1. The present petition is filed seeking regular bail in FIR No.0040 dated 13.02.2017, registered at police station K.M. PUR for offences under Section 376 of the Indian Penal Code, 1860 and Section 4 of the Protection of Children from Sexual Offences, 2012 ('**POCSO**').

2. It is the case of the prosecution that on 12.02.2017 around 4 o'clock, the complainant due to lack of water in her house went to the neighbour's house to fetch water. It is alleged, the accused namely, Veer Bahudur, asked the victim to come inside to fetch the water. It is further alleged that when the complainant went inside, the accused closed the door and proceeded to sexually assault her. It is alleged that the victim tried to scream for help, however, the accused covered her mouth.

3. The victim informed her sister and brother after which on 13.02.2017, a complaint was lodged alleging the incident. It is

BAIL APPLN. 1577/2024

Page 1 of 5



alleged that the victim at the time of filing of the complaint was around 17 years old.

4. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case.

5. He submits that the date of birth certificate of the victim annexed with the chargesheet has not been verified till date hence in the absence of a verification report no case can be proven under Section 4 of the POCSO.

6. He submits that no ossification test was conducted by the investigation agency to ascertain the age of the victim and in the absence of the ossification test as well as the verification report of the date of birth certificate, there is no clear indication to the age of the victim during the writing of the complaint.

7. He submits that as per the MLC filed by the investigating agency there is no evidence to suggest that rape had been committed on the victim.

8. He submits that since the accused has already served more than seven years in prison, he is eligible for bail as per the order passed by the Hon'ble Supreme Court in ***Satender Kumar Antil v. Central Bureau of Investigation : (2022) 10 SCC 51.***

9. *Per contra*, the learned Additional Public Prosecutor ('APP') submits that the FSL report matched, as the DNA profile of the accused matched with the DNA profile of the victim.

10. He submits that serious allegations have been made against the accused and he should not be given the liberty of bail considering the gravity of the offence.

11. He submits that during the course of the investigation, the age proof certificate of the complainant i.e., the birth certificate in Nepali Script and School Certificate were provided by her brother. An application was moved to the Nepali Embassy for the

BAIL APPLN. 1577/2024

Page 2 of 5



translation of the certificate into Hindi/English language wherein it was clarified that victim was born on 24.02.2001 and was 17 years of age when the case was registered.

12. He submits that an application was moved before the Child Welfare Committee ('CWC') as per Section 94(1) (2) of the Juvenile Justice Act ('JJ Act') but the CWC opined that "*as per Section 94(1)(2) of the JJ Act, CWC has been considered already as authentic age proof by Nepali Embassy, so there is no need for an estimation test.*"

13. The learned Trial Court *vide* its order dated 10.04.2024 while dismissing the bail application, made the following observations:

"Victim has supported the case of prosecution and has proved her previous statement. She has remained consistent through her testimony and has been duly cross examined by the Ld. Defence Counsel. No suggestion of any previous relationship between the victim & accused was put to the prosecutrix during her cross examination.

The last Bail Application of the accused was dismissed by Ld Predecessor court vide order dated 02.05.2023. Thereafter approximately six witnesses have been examined who have all supported the case of the prosecution other than this there is no material change in circumstance in the present case.

The offence is grave in nature. Previous Bail Application of the accused have already been dismissed on merits by the court of Ld Predecessor. In the absence of any material change in circumstance, no ground of grant of bail to accused Beer Bahadur is made out Bail Application is hereby dismissed and disposed off accordingly."

14. The FIR in the present case has been registered under Section 4 of the POCSO and Section 376 of the Indian Penal Code. The minimum punishment for both the offences under the respective acts is 10 years.

15. This court has perused the nominal roll which indicates that the applicant has been in custody for more than 7 1/2 years as on 23.07.2024.

16. The Hon'ble Apex Court, in the case of **Satender Kumar**



Antil v. CBI : (2022) 10 SCC 51, had held that Section 436A of the CrPC has got a laudable object behind it. The provision provides for the maximum period for which an under-trial prisoner can be detained. It is further observed that the provisions contained in Section 436A of the CrPC would also apply to the special acts, including the POCSO Act. The Supreme Court also passed the guideline stating that “(ii) *Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.*”

17. In this court’s opinion the guidelines set in ***Satender Kumar Antil v. CBI : (Supra)*** squarely applies in the present case. The guidelines use the word ‘*shall*’ rather than the word ‘*may*’ which indicates that the grant of bail in cases where the conditions of the guidelines are fulfilled is mandatory.

18. It is trite law that the deprivation of some amount of personal liberty cannot be avoided in certain cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt.

19. It is evident that the applicant is eligible for grant of regular bail as he has served more than 7 1/2 years as on 23.07.2024. The minimum period of punishment for offences the applicant is tried for is 10 years, thus he automatically qualifies for the relief under the guidelines set by the Supreme Court in in ***Satender Kumar Antil v. CBI : (Supra)***.

20. The contentions regarding the disputed age of the complainant at the time of filing of the complaint and the

BAIL APPLN. 1577/2024

Page 4 of 5



avermments made on the veracity of the MLC is a matter of trial.

21. In view of the above, the applicant is admitted on bail on furnishing a bail bond for a sum of ₹1,00,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- i. The applicant shall furnish a proof of residence where he shall reside upon his release, which should be at least 5 KM far from the locality where the victim resides, subject to the satisfaction of the concerned IO/SHO;
- ii. The applicant shall not change the address without informing the concerned IO/SHO;
- iii. The applicant shall, upon his release, not contact the victim or any other witness associated with the case;
- iv. The applicant shall, under no circumstance, leave the city without informing the concerned IO/SHO;
- v. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- vi. The applicant shall appear before the Court as and when directed.

22. It is clarified that the observations made in the present order are only for the purpose of considering the bail applications 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.

23. The present application is allowed in the aforesaid terms.

AMIT MAHAJAN, J

AUGUST 21, 2024

BAIL APPLN. 1577/2024

Page 5 of 5