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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1582/2024**

YOGENDER KUMARPetitioner
Through: **Mr. Harikrishan, Advocate.**

versus

STATE OF NCT OF DELHI & ANR.Respondents
Through: **Mr. Sanjeev Sabharwal, APP for State**
with SI Prashant Malik, P.S. Mayur
Vihar.
Ms. Sonakshi Singh Amicus Curiae
for respondent No.2.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

% **ORDER**
08.07.2024

1. By way of present bail application, the applicant seeks regular bail in FIR No. 248/2017 registered under Sections 376/506 IPC and Sections 6/17/21 of the POCSO Act at P.S. Mayur Vihar.

2. Learned counsel for the applicant submits that in the present case all the prosecution witnesses have already been examined and only testimony of I.O. is left to be recorded. He further submits that the applicant is in continuous custody since 08.07.2017.

On merits, it is submitted that as per the prosecution case, the prosecutrix was taken to the terrace of a building by the sister and brother of the accused where the applicant is alleged to have inserted a wooden stick in the vagina of the child victim. He submits that though the said stick was recovered and sent to FSL however, no blood was detected on it. On this



aspect, learned counsel for the applicant has referred to the testimony of Dr. Devika Mor who had examined the child victim on the next day. Learned counsel further submits that the applicant's sister and brother were released on anticipatory bail.

3. The bail application is vehemently opposed by the learned APP for the State as well as Ms. Sonakshi Singh, learned Amicus Curiae appointed by this Court for representing the prosecutrix. Learned Amicus Curie points out that the child victim has fully supported the prosecution case and she has not only identified the applicant but also the wooden stick which was used in the incident. She further states that applicant has failed to suggest any contradictory suggestion to the child victim during her testimony. It is further submitted that MLC of the child victim also supports the prosecution case, inasmuch as, same shows that there was 'oozing' which is corroborative of the prosecution case. The testimony of Dr. Mor is to the following extent:-

"I have noted the history given by the victim in which she stated that stick insertion in private part by her neighbour. Victim also gave history on further asking that similar incident in the past had also occurred. I have conducted internal medical examination of the victim. On local examination, I found that hymen was intact and only small oozing present below hymen. The MLC No, 50/17 of the victim is already Ex. PW7/A which bears my signature at point 'B'.

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Court Question: Whether oozing in the manner given in the history can be caused due to insertion of stick?

Ans. Sometime, the oozing can occur due to the stick but it does not appear in the present case that oozing had happened



because of stick.

Both the sides are permitted to put questions to the witness pursuant to the court question.

Question by Ld. Addl. P.P for State:

Question: Why did you not mention in MLC Ex. PW7/A that oozing in the present case did not occur due to stick specially when history of stick insertion was told to you at the time of examination of the victim?

Ans. I have no answer to this question.

It is wrong to suggest that I had no basis to say that oozing cannot happen in the present case because of stick.

No questions by Ld. Defence Counsel in respect to the court question.”

4. I have heard the learned counsels for the parties and perused the material available on record.

5. The applicant is in continuous custody since 08.07.2017. The contradiction in the oral and medical testimony, as pointed out by the learned counsel for the applicant, would be appreciated by the Trial Court at the end of trial however, considering that the applicant is in custody and all the material witnesses stand examined, applicant is directed to be released on regular bail subject to him furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/concerned Trial Court/Duty M.M. and subject to the following further conditions :-

i) The applicant shall not leave the NCR without prior permission of the concerned Court.



- ii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.
 - iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.
 - iv) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
 - v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.
6. The bail application is disposed of in the above terms.
7. Copy of the order be communicated to the concerned Jail Superintendent for information and necessary compliance.
8. Needless to state that this Court has not expressed any opinion on the merits of the case and have made the observations only for the purpose of disposal of the present bail application which shall have no bearing on the trial of the case.

MANOJ KUMAR OHRI, J

JULY 8, 2024

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