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

+ **BAIL APPLN. 1637/2024 & CRL.M.A. 21704/2024**

SEEMA RANI KHAKHA

.....Petitioner

Through: Mr. Shubhashish Rasir Soren,
Mr. Rahul Kumar and
Ms. Rashika Ved, Advocates.

versus

STATE (GOVT. OF NCT DELHI)

.....Respondent

Through: Ms. Rupali Bandhopadhy, ASC for
the State with Mr. Abhijeet Kumar,
Advocate and SI Bharti Singh, PS
Burari.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

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06.09.2024

1. The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case bearing FIR No.1068/2023, under Section 376(2)(f)/376(3)/323/313/120B/34 IPC read with 21 POCSO Act, registered at PS Burari, Delhi.
2. Learned counsel for the petitioner submits that false and frivolous allegations were made by the victim against the petitioner. Learned counsel submits that in the statement under Section 164 Cr.P.C., the petitioner did not make any allegation against the present petitioner. It has further been submitted that the story of pregnancy is propounded by the victim and her mother was false in view of the fact that during the investigation it was



found that the vasectomy certificate of the main accused, Shri Premodya Khakha, was found to be genuine. Learned counsel submits that the petitioner is in custody, is a lady of almost 50 years of age and is in custody since last one year. Learned counsel submits that therefore, she may be admitted to regular bail.

3. Learned Additional Standing Counsel has vehemently opposed the bail application. The mother of the prosecution is also present in Court and submits that the bail application may be rejected.

4. Learned Additional Standing Counsel submits that the accused and the complainant party belongs to very small community and if the accused is released on bail there are chances of tampering with the prosecution witnesses. Learned Additional Standing Counsel has also submitted that the charges are yet to be framed before the learned Trial Court. Learned Additional Standing Counsel submits that the offence is very grievous in nature and therefore, the petitioner is not entitled for grant of bail.

5. The parameters to be considered for grant of bail have been succinctly laid down by the Apex Court and the Courts have to see the following aspects before allowing or rejecting a bail application:

- a. nature and gravity of the charge;
- b. severity of the punishment in case of conviction;
- c. reasonable apprehension of witness being influenced;
- d. prima facie or reasonable ground to believe that the accused had committed the offence;
- e. character, behaviour, means, position and standing of the accused; f. danger of justice being thwarted by grant of bail.

6. There is no doubt that the rule is bail and acceptance is jail. However,



the Court while applying this rule has to maintain the balance. Particularly in the sexual offences cases with the minor, the Court has to consider about the tempering with the prosecution witnesses. The court has also considered and taking into account the facts and circumstances in which the alleged offence has taken place. Here is a case where allegations are that the victim after the death of her father, went to the family of the accused. The victim used to call Shri Premodya Khakha, the husband of the accused as her Mama. The allegations are that while she was with the family to recover from the loss of her father, the alleged offence had taken place. The facts are very serious in nature. It strikes on the root of trust and faith in the society. The accused and her husband allegedly betrayed the trust reposed in them by the minor victim and her mother and succeeded in executing their illegal and immoral acts, which definitely constitutes an offence not only under the POCSO Act but also under the provisions of the IPC.

7. The POCSO Act was introduced to shield minors from exploitation, harassment, and sexual assault. In ***Eera through Dr. Manjula Krippendorf v. State NCT of Delhi and Others***, (2017) 15 SCC 133, the Apex Court made the following observations regarding the assertion and goal of the POCSO Act:

“20. The purpose of referring to the Statement of Objects and Reasons and the Preamble of the POCSO Act is to appreciate that the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the Preamble, it is manifest that it recognises the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the



child. Best interest and well-being are regarded as being of paramount importance at every stage to ensure the health physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The Statement of Objects and Reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing child-friendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the POCSO Act.

(emphasis supplied)

8. Considering the above, I consider that the gravity of the allegations and the facts and circumstances in which the alleged offence has taken place, persuade this Court not to grant bail. Further, the argument of the learned counsel for the petitioner regarding the aspect of the pregnancy and the vasectomy certificate are not relevant at this stage. At the present stage only a *prima facie* view is to be seen. Such evidences are to be appreciated/considered only at the stage of trial. Moreover, in the present case the trial has barely commenced. The possibility of threatening or tempering with the main prosecution witnesses, and harm the minds of the minor victim, coupled with the chances of influencing the victim or her mother also cannot be ruled out in view of the specific assertions made by the learned Additional Standing Counsel that both the parties belong to the same community and go to the same church.



9. In view of the above, the present petition is dismissed. Pending applications, if any, stands disposed of.

10. Next date fixed i.e. 18.09.2024 stands cancelled.

DINESH KUMAR SHARMA, J

SEPTEMBER 6, 2024

Mk/ht..