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

Date of decision: 05th AUGUST, 2024

IN THE MATTER OF:

+ **BAIL APPLN. 2381/2023**

ABHISHEK KHAN @ MONU

.....Petitioner

Through: Mr. Gaurav Sharma, Advocate
(DHCLSC)

versus

THE STATE GOVT OF NCT, DELHI & ANRRespondents

Through: Ms. Priyanka Dalal, APP for the
State.

Mr. Faraz Maqbool, (DHCLSC), Ms.
Sana Juneja, Ms. Vismita Diwan,
Advocates for R-2.

SI Satender Kandhol, PS Prem Nagar.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court for grant of bail in FIR No.337/2019 dated 04.07.2019 registered at Police Station Prem Nagar initially for an offence under Section 363 IPC which was later on converted into an FIR under Section 363, 366A & 376(2)(n) IPC read with Section 6 of the POCSO Act.
2. The FIR was initially registered at the complaint of the father of the Prosecutrix stating that his daughter is missing. It is stated that efforts were made to trace the victim. It is stated that on 04.03.2021, the victim was traced and she told that accused Abhishek Khan @ Monu S/o Siddar Khan R/o Nayapura, Khatik Khana, Bhind, M.P. allured her to marry so she



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eloped with him. She stated that the accused sexually exploited her and did not marry her. She further stated that the accused left the victim alone and went to his native place at Bhind, Madhya Pradesh.

3. Investigation was conducted. The statement of the Prosecutrix under Section 164 CrPC was recorded wherein she stated that she was not happy and left her home on 04.03.2019 along with one Junaid Khan, who introduced himself as Abhishek. It is stated that she did not know that the Petitioner herein is a Muslim and came to know only after one year.

4. It is stated that they stayed in Delhi for about a month, and then they went to Mumbai where they stayed for a week, and then she was taken to Gujarat where they stayed for about 1 ½ yrs. The Prosecutrix stated that the Petitioner and the Prosecutrix changed their residence frequently and that the Petitioner used to beat her after consuming alcohol. It is stated that the Petitioner left the Prosecutrix telling her that he would come back within a month.

5. It is stated that since the Petitioner did not come back even after three months, the Prosecutrix went to his village in Bhind, M.P., where she came to know that the Petitioner is married and has two children. It is stated that only later on she came to know that his name is not Abhishek but Junaid Khan.

6. The Petitioner was arrested on 25.03.2021. Chargesheet has been filed for offences under Section 363, 376(2)(n) IPC read with Section 6 of the POCSO Act. The trial has commenced and the Prosecutrix has been examined.

7. Learned Counsel for the Petitioner states that the Petitioner is in judicial custody since 25.03.2021 and he has spent more than three years



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four months in incarceration.

8. Learned Counsel for the Petitioner states that the Petitioner would not flee from justice and that no useful purpose would be served in keeping him in further custody. He further states that the Petitioner would be staying at Bhind, M.P. if released on bail. He states that the Petitioner has no criminal antecedents.

9. *Per contra*, learned APP for the State and the learned Counsel for the Prosecutrix vehemently oppose the bail application stating that the Petitioner is accused of a very serious offence and if convicted, he is likely to be punished upto life imprisonment. He states that the fact that the Prosecutrix has been examined does not alone mean that the Petitioner would be entitled to bail looking at the gravity of the offence.

10. It is stated that the Petitioner introduced himself as Abhishek without revealing his identity that he is a Muslim and lured the Prosecutrix on the promise to marry her without having any intention to marry her. He was married having two children and therefore the Petitioner is not entitled for grant of bail.

11. Heard learned Counsel for the parties and perused the material on record.

12. Material on record indicates that the Petitioner had introduced himself as Abhishek to the Prosecutrix. Though he has promised the Prosecutrix marriage but he never married her. The Petitioner was living with her in Delhi, Mumbai and Gujarat and he abandoned the Prosecutrix and went to his village in Bhind, M.P. and also flatly refused to marry her. The Prosecutrix later on came to know that the Petitioner is married having children. The Petitioner is accused of a very heinous offence.



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13. In Ram Govind Upadhyay v. Sudarshan Singh, (2001) 3 SCC 598, the Apex Court explained the factors to be considered for granting bail, wherein the Apex Court has held as under:-

“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.” (emphasis supplied)

14. In Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., 2010 (14) SCC 496, the Apex Court has observed as under:-



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“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC



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280 : 2001 SCC (Cri) 674] , and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] .]

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In Masroor [(2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] , a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows : (SCC p. 290, para 13)

“13. ... Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.”

(See also State of Maharashtra v. Ritesh [(2001) 4 SCC 224 : 2001 SCC (Cri) 671] , Panchanan Mishra v. Digambar Mishra [(2005) 3 SCC 143 : 2005 SCC (Cri) 660] , Vijay Kumar v. Narendra [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195] and Anwari Begum v. Sher Mohammad [(2005) 7 SCC 326 : 2005 SCC (Cri) 1669] .)”

15. It is pertinent to mention that the Petitioner has committed an offence under Section 3 of the POCSO Act which is punishable under Section 4 of the POCSO Act. Section 29 of the POCSO Act provides that if a person is prosecuted for committing or abetting or attempting to commit any offence under Section 3, 5, 7 and 9 of the POCSO Act, then the Court shall presume



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that the said person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. The Prosecutrix in her Section 164 CrPC statement has supported the case of the prosecution.

16. Viewed in this light and in view of the judgment passed by the Apex Court in Ram Govind Upadhyay v. Sudarshan Singh, (2001) 3 SCC 598 and Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., 2010 (14) SCC 496, there is a *prima facie* and reasonable ground to believe that the Petitioner has committed the offence, and since the Petitioner has been accused of a very heinous offence for which he can be punished upto imprisonment for life. Looking at the severity of the offence and punishment, there is a danger of the Petitioner absconding if released on bail. The Petitioner has actually lured the Prosecutrix without telling her that he is married and is of different religion to commit the offence. Looking into the fact that the Prosecutrix is a minor and considering Section 29 of the POCSO Act, even though the Prosecutrix has been examined, it would not entitle the Petitioner to get bail automatically.

17. In view of the above, applying the law laid down by the Apex Court, this Court is not inclined to grant bail to the Petitioner at this juncture.

18. The petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 05, 2024

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