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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2621/2023 & CRL.M.A. 20998/2023**
MOHD NAWAB Petitioner

Through: Mr.K.G. Seth, Adv.
versus

STATE AND ANR Respondents
Through: Mr.Aman Usman, APP with SI
Dinesh Kumari, PS Mehrauli.
Mr.Chaitanya Sundriyal &
Ms.Nimisha Menon, Adv. for
R-2

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **04.03.2024**

1. This Bail Application has been filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for being released in FIR No.0151/2023 registered at Police Station: Mehrauli, Delhi under Section 354 of the Indian Penal Code, 1860 (in short, 'IPC') and under Section 10 of the Protection of Children from Sexual Offences, 2012 (in short, 'POCSO Act').
2. It is the case of the prosecution that a complaint was received from the father of the victim, aged 4 years at that time, stating that the applicant, who is the step-grandfather of the victim, molested the victim when she had gone to the first floor of the building where they reside, to use the bathroom.
3. The learned counsel for the applicant submits that there is a property dispute going on between the applicant and the complainant. He submits that earlier as well, a false case under Sections



354/354A/506(I) of the IPC was registered against the applicant at the behest of the wife of the complainant. The applicant was acquitted of all charges by the judgment dated 21.12.2022 passed by the learned Metropolitan Magistrate-03, Mahila Court, South District, Saket Court, New Delhi, in CR Cases No. 2039975/2016. There are other civil litigations also pending between the parties.

4. The learned counsel for the applicant further submits that the child victim has already been examined before the learned Trial Court and there are almost 17 witnesses cited by the prosecution, and the trial is likely to take long. He submits that the applicant has been in custody since 16.03.2023 and has no criminal antecedents.

5. The learned counsel for the applicant further draws my attention to the MLC of the victim, to submit that there were no fresh external or internal injuries noticed therein.

6. On the other hand, the learned counsel for the complainant and learned APP submit that the victim has corroborated the case of the prosecution in her statement recorded before the learned Trial Court on 22.02.2024. They submit that merely because there have been past litigations between the complainant and the applicant, cannot be a ground to disbelieve the case of the prosecution or grant bail to the applicant. They submit that in the MLC, it is also recorded that the vaginal area of the prosecutrix to be extremely tender, this could be a result of the assault on the victim.

7. The learned counsel for the complainant submits that, in fact, there are constant threats being received by the complainant and his family members at the behest of the applicant.



8. I have considered the submissions made by the learned counsels for the parties. As noticed hereinabove, the applicant has been in custody since 16.03.2023. There are 17 witnesses cited by the prosecution, out of which only the victim has so far been examined. The trial is likely to take long. The testimony of the victim was most crucial, and she has already been examined. Keeping in view the totality of the circumstances, in my view, therefore, the applicant has been able to make out a case for being released on bail.

9. It is a well settled principle of law that at pre-conviction stage, there is a presumption of innocence. The principal aim of custodial detention pertains to securing attendance of the accused at trial and ensuring compliance with any subsequent sentencing, rather than serving as a punitive or preventive measure. While considering bail, not only the seriousness of the accusation or the evidence supporting it should be taken into account, but other factors should also be considered. Individual cannot be held in custody indefinitely if the trial is unlikely to be completed within a reasonable timeframe.

10. Accordingly, it is directed that the applicant be released on bail in FIR No.0151/2023 registered at Police Station: Mehrauli, Delhi under Section 354 IPC and under Section 10 of the POCSO Act on furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. The Applicant will not leave the country without the prior permission of the learned Trial Court.
- ii. The Applicant shall provide his permanent address to the



learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.

iii. The Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.

iv. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned. The mobile location be kept on at all times.

v. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses or tamper with the evidence of the case.

11. Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

The Bail Application is disposed of in the above terms. The pending application is also disposed of.

12. Copy of this order be sent to the Jail Superintendent for information and necessary compliance.

13. *Dasti.*

NAVIN CHAWLA, J

MARCH 4, 2024/rv/am

Click here to check corrigendum, if any