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

+ **BAIL APPLN. 1875/2024**

MOHIT KUMAR

.....Applicant

Through: Mr. Pawan Sharma, Adv.

versus

STATE GOVT. OF NCT OF DELHIRespondent

Through: Ms. Meenakshi Dahiya,
APP for the State.

SI Neha Bana, PS Karawal
Nagar.

Adv. Tanya Jain along
with victim.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

01.10.2024

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1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC'), seeking pre-arrest bail in FIR No. 135/2024 dated 29.03.2024, registered at Police Station Karawal Nagar, for offence under Section 363 of Indian Penal Code, 1860 ('IPC'). The chargesheet has been filed against the applicant for the offences under Sections 363/376 of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

2. The present FIR was registered at the instance of the father of the victim alleging that the victim, who was seventeen years and 5 months old at that time, had gone to the Shiv Hanaman Mandir Prem Vihar Karawal Nagar Delhi and she could not be traced. Thereafter, on 05.04.2024, the victim's father received a call from Roorkee Police Station who gave him information about the whereabouts of the victim. The victim's father communicated the same to the Investigating Officer ('IO'). The

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victim's family reached the Roorkee Police Station along with the IO where they met the victim and the applicant. During examination, the victim pointed towards the applicant and stated that she had gone with him on her own will.

3. On 06.04.2024, the victim in her statement recorded under Section 164 of the CrPC stated that she had left her house after being scolded by her mother. She further stated that she had pressurized the applicant to go with her and they had gone to Haridwar. She also stated that nothing wrong had happened.

4. Thereafter, on 08.04.2024, the statement of the victim was again recorded under Section 164 of the CrPC. She stated that she had not been able to express her thoughts due to nervousness. She stated that she had left her home due to a fight at her home. She stated that she found the applicant on the road as his shop was in front of her house. She stated that the applicant suggested they go to Haridwar and he established sexual relations with her against her will by taking advantage of the situation.

5. The learned counsel for the applicant submits that the applicant has clean antecedents and he has been falsely implicated in the present case.

6. He submits that the applicant was released from the Police Station as the victim had categorically made a statement before the police that she had run away from the house herself and nothing wrong had happened to her. He submits that the victim again reiterated the same in her statement recorded under Section 164 of the CrPC on 06.04.2024.

7. He submits that the victim only changed her stance at the instance of her family members and levelled false allegations against the applicant on 08.04.2024.



8. He submits that the chargesheet has already been filed and no purpose would be served by subjecting the applicant to custodial interrogation.

9. The learned counsel for the victim opposes the grant of any relief to the applicant and submits that the victim has categorically stated in her statement recorded on 08.04.2024 that she had not given a correct statement as she was nervous.

10. She submits that the second statement was recorded after the victim was taken for counselling to the Child Welfare Committee where she stated that she could not tell about the forceful sexual intercourse as she was scared.

11. She submits that the age of the victim as per the documents received from the principal of the school was seventeen years and 6 months. She submits that the victim was a minor at the time of the incident while the applicant was about 30 years old and a *prima facie* case is thus made out against the applicant.

12. Learned Additional Public Prosecutor for the State echoes the submissions made on behalf of the complainant. She submits that the CDR of the applicant's mobile number was analysed and it was shown that the applicant was in Haridwar on 29.03.2024.

13. I have heard the learned counsel and perused the record.

14. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. The relief of pre-arrest bail is a legal safeguard intended to protect individuals from potential misuse of power of arrest. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra* : (2011) 1 SCC 694**, elucidated some parameters to be considered before granting pre-arrest bail:

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“112.

- (i) *The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- (ii) *The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
- (iii) *The possibility of the applicant to flee from justice;*
- (iv) ***The possibility of the accused's likelihood to repeat similar or other offences;***
- (v) ***Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;***
- (vi) ***Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;***
- (vii) *The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- (viii) *While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- (ix) *The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- (x) *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)

15. False allegations of sexual misconduct and coercion not only tarnish the reputation of the accused but also undermine the credibility of genuine cases. Hence, it is imperative for the Court to exercise utmost diligence in evaluating the *prima facie* allegations against the accused in each case, especially when issues of consent and intent are contentious.



16. It is the case of the prosecution that the applicant took the victim, who was seventeen years old at that time, to Haridwar and raped her.

17. The applicant has sought the grant of pre-arrest bail on the ground that no allegations of rape had been made by the victim initially and the false allegations were subsequently levelled at the insistence of her family members.

18. A bare perusal of the material on record indicates that the allegations *qua* the offence of rape were not made by the victim initially when she was recovered at the Police Station Roorkee and neither in her first statement that was recorded under Section 164 of the CrPC on 06.04.2024.

19. It is stated that the CDR of the applicant shows that he was present in Haridwar on 29.03.2024. It is pertinent to note that the victim has not stated that the applicant forcibly took her to Haridwar even in her statement under Section 164 of the CrPC that was recorded on 08.04.2024.

20. In her statement recorded on 08.04.2024, the victim has clearly stated that she did not make the allegations earlier as she was scared. It is settled law that contradictions in the version of the victim does not nullify the case of the prosecution. While it would be seen during the course of the trial as to whether the statement of the victim inspires confidence, at this stage, the benefit of the apparent improvement in the version of the victim cannot be denied to the applicant.

21. The applicant was granted interim protection by this Court by order dated 27.05.2024. This Court had observed that there was clear improvement in the statements given by the victim under Section 164 of the CrPC.

22. It is true that the applicant, who is 30 years old and is

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married, going out with another woman that too a minor is not an acceptable behaviour but in the absence of any allegation of sexual abuse at the first instance by the victim, as noted above, the benefit of doubt cannot be denied at this stage.

23. It is not the prosecution's case that the applicant has since misused the liberty of interim protection or that the applicant has not cooperated with the investigation thereon.

24. It is not in doubt that an order for bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that great amount of humiliation and disgrace is attached with arrest. The purpose of custodial interrogation is to aid the investigation and is not punitive.

25. The chargesheet has already been filed in the present case and the trial is likely going to take a long time to conclude. In such circumstances, this Court is of the opinion that custodial interrogation of the applicant is not required.

26. Any apprehension regarding the applicant tampering with the evidence or threatening the witnesses can be taken care of by imposing appropriate conditions.

27. In view of the above, it is directed that in the event of arrest, the applicant be released on bail on furnishing a personal bond of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the concerned SHO, on the following conditions:

- a. The applicant shall join and cooperate with investigation as and when directed by the Investigating Officer;
- b. The applicant will not leave the boundaries of NCT of Delhi without informing the concerned IO/ SHO;

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- c. The applicant shall not contact the complainant or her family members in any manner whatsoever;
- d. The applicant shall not stay within 5 Km radius of where the victim resides;
- e. The applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- f. The applicant shall give the details of his residence to the concerned IO/SHO, and inform them in case of any change.

28. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

29. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application 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.

30. This Court appreciates the efforts of Ms. Tanya Jain, Advocate for *pro-bono* representing the victim in the present matter.

31. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

OCTOBER 1, 2024