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

+ **BAIL APPLN. 2927/2023**

SALEEM

..... Petitioner

Through: Mr. Kartik Murukutla, Advocate

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Shubhi Gupta, APP for State with
SI Satyapreet, PS: Jaitpur.

Ms. Sunita Arora, Advocate for Complainant.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

22.02.2024

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1. This is an application preferred on behalf of the Applicant Saleem S/o Mr. Isak under Section 439 Cr.P.C. seeking regular bail, in case FIR No. 320/2022 dated 03.06.2022 under Section 376 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) registered at PS: Jaitpur, South East (Delhi). Charge Sheet has been filed in which Sections 363/366A/34 IPC were added. Supplementary Charge Sheet has also been filed wherein Sections 376D(A) and Section 6 of the POCSO Act has been added.

2. It is argued on behalf of the Applicant that Applicant is in custody since 24.08.2022 despite being innocent. There are no allegations of rape against the Applicant and he was not named in the Charge Sheet. It was only subsequently that Applicant's name was added in the Supplementary Charge Sheet. The role ascribed to the Applicant is at best of a Driver of the Alto



vehicle, allegedly involved in the incident and the prosecutrix has clearly stated that there is no wrongdoing on part of the Applicant. Prosecution has failed to establish the identity of the Applicant and the prosecutrix in her statement under Section 164 Cr.P.C. has also not named him. No TIP was conducted by the prosecution to establish the identity of the Applicant, despite the Applicant suggesting that he was Saleem and not Rahul. Absence of TIP is fatal to the case of the prosecution considering that the prosecutrix deposed that the person driving the car was Rahul, while the Applicant is Saleem. There are material contradictions in the testimony of the prosecutrix. In her statement under Section 164 Cr.P.C., prosecutrix stated that Sachin offered to be friends with her, which offer she accepted. When she was going for her coaching, Sachin met her and asked her to sit in the car for a drive and the prosecutrix sat in the car. However, during the evidence before the Trial Court, prosecutrix stated that she was forcibly taken in the car by Sachin. From the testimony of the prosecutrix, it also emerges that Sachin and the prosecutrix had known each other and were friends and the alleged act, if any, was consensual. This, according to the Applicant, is fortified by the MLC, which shows that there was no external or internal injury on the prosecutrix and she did not make any noise, which she could have, as the car was not parked at any isolated place. Prosecutrix deposed that the AC of the car was on since it was summer time. It was not possible for the AC to be running and the car being locked from outside at the same time, as for both the key was required. It was further urged that in the absence of allegation of rape against the Applicant and the alleged act between the prosecutrix and co-accused Sachin being consensual, there is no reason why the Applicant should continue under incarceration. Applicant



has clean antecedents. Evidence of the prosecutrix is concluded and thus there is no chance of threatening or intimidating her.

3. Learned APP appearing for the State, on the other hand, opposes the bail application contending that TIP was not conducted during investigation, but this fact by itself cannot be fatal to the case of the prosecution since prosecutrix identified the Applicant during her evidence before the Trial Court. A specific role has been assigned to the Applicant by the prosecutrix stating that he along with co-accused Sachin took the prosecutrix in the car and Applicant left the prosecutrix alone with Sachin after locking the car, thereby aiding the co-accused in committing rape. During investigation, accused Sachin was arrested and in his disclosure statement, he disclosed that he had told the victim that his friend's name was Rahul but on the day of incident, Saleem was with him. On 24.08.2022, Applicant surrendered and disclosed that he was with Sachin at the time of the incident. Applicant has committed a heinous offence and there are chances that he may not join the trial, if released on bail and/or may influence other witnesses.

4. I have heard the learned counsel for the Applicant and the learned APP.

5. Indisputably, as per the prosecution case, there are no allegations of rape against the Applicant. The role ascribed to the Applicant is at best of a driver, who along with the Accused Sachin travelled in the car, while Sachin and the prosecutrix were on the back seat and later stopped the car, locked it from outside and went away, only to return after the alleged act had been committed by Sachin. Counsel for the Applicant has attempted to point out discrepancies in the version of the prosecutrix as initially she stated in the statement under Section 164 Cr.P.C. that she and Sachin were friends and



she had accompanied him in the car for a drive, however, later during her evidence before the Trial Court, she deposed that she was forcibly taken in the car. Applicant has also sought to raise doubts on the correctness of the allegations against the Applicant by pointing out that if he had locked the car from outside, there was no possibility of the AC running inside. It is denied that the Applicant has played any role in aiding the alleged offence and according to the Applicant, prosecutrix and co-accused Sachin were friends and had known each other prior to the day of the alleged incident. This Court is conscious of the fact that it is not open at this stage while considering an application for bail to appreciate or delve into evidence led before the Trial Court and/or examine the credibility of a witness. However, for the limited purpose of considering whether the accused warrants grant of bail, it is open to the Court to come to a *prima facie* satisfaction in support of commission of the alleged offence. In this context, it would be relevant to allude to the judgment of the Supreme Court in ***Lt. Col. Prasad Shrikant Purohit v. State of Maharashtra, (2018) 11 SCC 458***, relevant paragraph of which is as follows:-

“29. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider, among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*



(c) Prima facie satisfaction of the court in support of the charge.”

6. There are no allegations of rape against the Applicant and he has set up a defence of mistaken identity. As per the nominal roll, Applicant has no criminal antecedents and his jail conduct is ‘satisfactory’. Applicant has not misused the liberty granted to him while being released on interim bail. Prosecutrix has been examined and thus there is no question of her being threatened or intimidated. Applicant is in custody since 25.08.2022 and so far only 5 out of 19 witnesses have been examined and thus, there is no possibility of the trial concluding soon. Purpose of keeping a person under incarceration is to ensure that he is available during trial and for receiving the sentence awarded, if convicted.

7. Considering the aforementioned circumstances holistically, this Court is of the view that Applicant is entitled to grant of regular bail during trial. Accordingly, Applicant is directed to be released on bail subject to his furnishing a personal bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the Trial Court and further subject to the following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court;
- ii. He shall provide his mobile number to the IO concerned and keep the same active at all times and shall not change the number without prior intimation to the IO and the Trial Court;
- iii. He shall furnish his permanent residential address to the concerned IO and shall intimate the IO as well as the Trial Court by filing an affidavit regarding any change in his residential address;



- iv. He shall not indulge in any criminal activity or communicate with or come in contact with the Complainant/victim as well as the witnesses and/or any other person associated with the present case;
 - v. He shall report to concerned IO once a month on every third Monday at 2:00 PM; and
 - vi. He shall appear on every date of hearing before the Trial Court unless exemption is sought and granted by the Court on any given date.
8. It is made clear that nothing stated in this order shall tantamount to expression of an opinion on merits of the case.
9. Application stands disposed of.
10. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

FEBRUARY 22, 2024/kks/shivam/KA