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

+ **BAIL APPLN. 3129/2023**

ARFAT

..... Petitioner

Through: Mr. Lewish Edward and Mr. Yusuf,
Adv.

Versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Raghuinder Verma, APP for State
with SI Gajal Chugh, PS. Krishna
Nagar.
Mr. Vaseem Khan, Adv. for
victim/prosecutrix (D/3547/2018).

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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01.02.2024

CRL.M.A. 30187/2023 (additional documents)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No.131/2022 under Section 363/328/354B/34 IPC and Section 8 of POCSO Act, registered at Police Station Seemapuri.
4. The prosecution's case in brief is that the FIR was registered on the Statement of the complainant 'R' wherein she stated that on 23.01.2022 at



around 04:00 p.m. her daughter/victim i.e., 'S' aged 14 years went missing from her home without informing anyone. After registration of the FIR, efforts were made to trace the victim 'S'. On 25.01.2022, the mother of the victim came to the Police Station along with her daughter and told that she was found with a boy at Yamuna Vihar, who on seeing the family members of the victim ran away from the spot. Subsequently, on 27.01.2022, the statement of the victim under Section 164 CrPC was recorded wherein she alleged that she loves the accused Arfat and on 23.01.2022 when she was in the market, Arfat took her to his home but his family told him to take her away. Thereafter, he took the victim to Sarai Rohilla Hotel and gave her water after that she fell unconscious and when she woke up, she saw no clothes on her body.

5. The learned counsel for the petitioner submits that the prosecutrix has been examined and she has not supported the case of the prosecution. Even her mother and sister also turned hostile.

6. Inviting the attention of the Court to the cross-examination of the prosecutrix, who was examined as PW-1, he submits that after the prosecutrix was declared hostile she was cross-examined by the learned APP and during her cross-examination she has even denied the suggestions given to her by the learned APP.

7. Further, inviting attention of the Court to the cross-examination of the prosecutrix conducted at the instance of the petitioner/accused, he contends that the prosecutrix has testified that whatever she had stated to the doctors, as well as, in the statement made by her under Section 164 CrPC was at the instance of a madam from the NGO, who met her at the police station.

8. He further submits that the petitioner has clean antecedents and in any



case, his custody is no more required, in as much as, the investigation is complete and the testimony of the prosecutrix has also been recorded.

9. He contends that out of 18 witnesses cited by the prosecution, only 09 witnesses have been examined till date, therefore, inevitably, the trial is going to be protracted one. He thus, urges the Court to enlarge the petitioner on bail.

10. *Per contra*, the learned APP has argued on the lines of the Status Report.

11. Mr. Vaseem Khan, Advocate, who represent the prosecutrix and has joined through VC, submits that he has instructions from the prosecutrix not to oppose the bail application of the petitioner.

12. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and the learned counsel for the prosecutrix.

13. This Court is cognizant of the fact that after framing of charge of an offence under the POCSO Act, the threshold for granting of bail is higher because of the impact of Section 29 of the said Act.

14. However, a perusal of the testimony of the prosecutrix/PW-1 clearly shows that she has not supported the case of the prosecution. Further, when she was cross-examined by the learned APP, she denied the suggestions put to her. Her cross-examination conducted at the instance of the petitioner/accused further reveals the statement given by her to the doctor or under Section 164 CrPC was at the instance of NGO madam, who met her at Police Station. It is also a matter of record that the mother, as well as, sister of the prosecutrix, who were examined as PW-2 and PW-3, respectively have also turned hostile.

15. The probative value of the statement of the prosecutrix and other



witnesses and their credibility will be judged by the learned Trial Court at an appropriate stage but the very the fact that the prosecutrix , her mother and sister, have not supported the case of the prosecution meets the required higher threshold in terms of Section 29 of the POCSO Act.

16. Further, the prosecution has cited as many as 18 witnesses of which only 09 witnesses have been examined till the date. Therefore, it appears that the conclusion of trial is likely to take long time and the petitioner cannot be kept in custody for an indefinite period to await the outcome of the trial, particularly regard being had to the circumstances stated above.

17. On a query posed by the Court, the learned APP, on instructions, fairly states that the petitioner has clean antecedents. It is also not the case of the prosecution in the Status Report that he is a flight risk.

18. Considering the aforesaid circumstances in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs. 15,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.



19. The petition stands disposed of.
20. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
21. Order *dasti* under signatures of the Court Master.
22. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

FEBRUARY 1, 2024/dss