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

+ **BAIL APPLN. 2240/2024**

MOHD AFROZ

.....Petitioner

Through: Mr. Prashant Prakash, Advocate
(through VC)

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Mukesh Kumar, APP for State
along with SI Yash Pal P.S. Sunlight
Colony.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER
13.12.2024

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1. The present application under Section 439 of the Code of Criminal Procedure has been filed for grant of regular bail in FIR No. 34/2017 registered for the offences punishable under Section 376D/363/366/506/328/34 of Indian Penal Code at P.S. Sunlight Colony.
2. Briefly stated the facts of the case in the status report are that on 02.02.2017, the victim N came to PS Sunlight Colony, Delhi and gave her statement wherein she stated that in October 2016 she reached New Delhi railway station by train where she met one boy namely Arman. The victim further stated that Arman took her to a room in Sarai kale khan, Delhi where she met Haseena (wife of Arman). Victim also stated that Arman sexually



assaulted her in the presence of his wife Haseena and that after two days Arman and his wife Haseena sold the victim to accused Pappu Yadav who took the victim to Sawai Madhopur and forcefully married the victim in a temple there.

3. Furthermore, the victim stated that after three days Pappu Yadav took the her to Teegaon, Faridabad, Haryana where she stayed for about one month. The victim stated that accused Pappu Yadav repeatedly exploited and committed rape upon the her. Victim also stated that on 28.01.2017 the victim somehow managed to escape from there and reached Hazarat Nizamuddin Railway Station and while she was approaching police station to report the matter, on the way Haseena again met her and took victim to a vacant place near railway parking and intimidated her. It is stated that the accused Haseena called the Petitioner who came with a whisky bottle and forced the victim to consume alcohol and other intoxicating materials. Thereafter, Haseena called another accused person Mohd Zakir who made forceful physical relations with the victim in an intoxicated state. As per the statement of victim the present FIR was registered u/s 376/363/366/506/328/34 IPC. During investigation, initially the accused Pappu Yadav and the petitioner were arrested on dated 03.02.2017 and potency test of both the accused persons was also got conducted and exhibits were seized. The statement U/s 164 Cr.P.C of the victim was recorded by the Ld MM wherein the victim supported her previous statement and therefore, Section 6 POCSO Act was also incorporated into the case accordingly.

4. Learned counsel for the petitioner submits that the petitioner has been in custody for the last more than 7 years. He further submits that there is a



sole uncorroborated testimony of the prosecutrix. It has further been submitted that the FSL report has not supported the case of the prosecution.

5. Learned APP for the State has opposed the bail application on the ground that the prosecutrix has made a consistent and corroborated statement on oath. It has been submitted that if the accused is admitted to bail, he may hamper the trial.

6. The parameter for grant of bail or refusing to do so, particularly in serious offences are very settled in ***Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav and Anr.*** (2004) 7 SCC 528 . However, at the same time, it has been held repeatedly that the prolonged detention in the custody during trial cannot be termed as punitive measure. The question of admitting the accused on bail on account of prolonged incarceration has come up for discussion in several cases before the Apex Court. In ***Union of India v. K.A. Najeeb*** reported as (2021) 3 SCC 713 dated 01.02.2021, the Apex Court stated that if a timely trial is not possible, courts are ordinarily obligated to release the under trial on bail and statutory restrictions do not exclude the discretion of Constitutional courts to grant bail on grounds of violation of Fundamental Rights enshrined in Part III of the Constitution. While the said judgement was passed in the context of UAPA, the said observations merit mention:-

“xxx 12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), Babba v. State of Maharashtra and Umarmia v. State of Gujarat enlarged the accused on bail when they had been in jail for an extended period of time with little



possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

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15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

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17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of



provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

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7. This court in ***Ravi Rai vs. State (Govt. of NCT of Delhi)*** vide order dated 08.04.2024 granted bail to the applicant noting the fact that the petitioner cannot be kept in custody for an indefinite period to await the outcome of the trial.

8. In the present case, it is a matter of record that the prosecution has already been examined. Another eye witness examined as PW4 & PW5 have not supported the case of the prosecution. The petitioner is in custody for the last more 7 years. It is stated that out of 33 witnesses, only 13 witnesses have been examined and the trial may take a long time.

9. In view of the facts and circumstances of the case, the applicant is admitted to regular bail on furnishing a personal bond in the sum of Rs. 10,000/- with one surety of the like amount to the satisfaction of concerned learned Trial Court, subject to the verification of address and mobile number to be given and subject to the following further conditions:

- a. the petitioner shall regularly appear before the IO/trial court as and when directed;
- b. the petitioner shall not directly or indirectly make any inducement, threat, intimidation towards any person acquainted with the facts of the case;
- c. the petitioner shall remain available on the address, to be given to the IO and shall not leave the country without the permission of the learned Trial Court;



- d. In case of change of residential addresses and/or mobile number, the petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
10. In view of the above, the instant application stand disposed of.
11. A copy of this order be sent to the concerned Jail Superintendent for necessary compliance.

DINESH KUMAR SHARMA, J

DECEMBER 13, 2024/ssc/KR