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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2248/2024**
MIHIR MANDALApplicant

Through: Mr. S.P.M. Tripathi, Mr.
Deepak Sharma, Mr.
Rahul Poonia, Mr. Sawakh
Dwivedi & Mr. Ashish
Tiwary, Advs.

versus

STATE OF NCT DELHIRespondent

Through: Mr. Naresh Kumar
Chahar, APP for the State
with Ms. Shriyaan Gupta,
Mr. Mohi, Ms. Sanya
Munjal, Mr. Sushant
Pandey, Mr. Abhishek
Anand & Ms. Sunitaa
Kumari, Advs.
SI Nisha Choudhary, PS-
Kalindi Kunj
Ms. Tanushka Kohli, Adv.
for Complainant (through
VC)

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
05.08.2024

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1. Pursuant to the interim bail granted by this Court by order dated 18.07.2024, the applicant has surrendered before the Jail Authorities on 02.08.2024.
2. The applicant is seeking bail in FIR No. 193/2022 dated 25.03.2022, registered at Police Station Kalandi Kunj. It is alleged that the victim, who was 13 years old at the time of the incident, was sleeping at night when she woke up due to some movement near her legs. It is alleged that the victim found a man sitting near her legs. It is alleged that the said man disrobed the victim and touched her private parts.



3. It is the case of the prosecution that the applicant was arrested after he was identified through a CCTV footage.
4. The applicant was arrested on 25.03.2022.
5. The chargesheet was filed against the applicant for the offences under Sections 457/354 of the Indian Penal Code, 1860 and Section 8 of the Protection of Children from Sexual Offences Act, 2012.
6. The learned counsel for the applicant submits that the applicant is innocent and he has been falsely implicated in the present case.
7. He submits that the CCTV footage only shows the applicant's presence in the area since the camera was installed in the lane outside the house.
8. He submits that, admittedly, it was dark and the victim had not seen the face of the assailant.
9. He submits that the matter is at the stage of examination of prosecution witnesses and the trial is likely going to take a long to conclude.
10. The learned Additional Public Prosecutor vehemently opposes the grant of any relief to the applicant as the offences alleged against the applicant are heinous in nature.
11. I have heard the counsel for the parties and perused the record.
12. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a prima facie case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the



witnesses being threatened; etc. However, at the same time, the period of incarceration is also a relevant factor that is to be considered.

13. The allegations in the present case are grave in nature. It is the prosecution's case that the applicant disrobed the victim and sexually assaulted her by touching her private parts.

14. It is argued by the applicant that the CCTV footage merely captures the applicant's presence in the area at the time of the incident. The defence in this regard would be a matter of trial and cannot be presumed at this stage.

15. However, it is relevant to note that the offences levelled against the applicant attract a maximum punishment of five years and the applicant has already undergone more than two years of incarceration.

16. On being asked, it is pointed out that only four witnesses have been examined and more than ten witnesses still remain to be examined.

17. The Hon'ble Apex Court in the case of *Union of India v. K.A. Najeeb*: AIR 2021 SC 712, has held that 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.

18. In the present case, the applicant has already undergone more than two years of incarceration and the trial is likely to take time before it comes to an end. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

19. By order dated 18.07.2024, it was noted that the father of the applicant is an old age person and is suffering from 'Non-



Hodgkins Lymphoma Cancer’ which requires regular medical attention. It was also noted that the applicant’s family is of limited financial means and the applicant, at the time of arrest, was the only sole breadwinner.

20. In such circumstances, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail.

21. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

22. In view of the above, the applicant is directed to be released on bail in FIR No. 193/2022 dated 25.03.2022, registered at police station Kalandi Kunj, on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- b. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- c. The applicant shall not stay within 5 Kms of the radius of where the victim resides;
- d. The applicant is directed not to communicate with the victim or her family members, in any manner, whatsoever;
- e. The applicant shall under no circumstance leave the boundaries of NCT of Delhi during



his release;

- f. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever.

23. 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.

24. 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.

25. The bail application is allowed in the aforesaid terms.

AMIT MAHAJAN, J

AUGUST 5, 2024

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