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

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**Reserved on: December 14, 2023
Decided on: January 11, 2024**

+ **BAIL APPLN. 3102/2022**

AKASH

..... Petitioner

**Through: Mr. Devendra Kumar,
Advocate.**

V

STATE OF NCT OF DELHI & ANR. Respondents

**Through: Mr. Yudhvir Singh
Chauhan, APP for State.
Mr. Nitin Saluja,
Ms. Shivani Luthra Lohiya,
Ms. Simran Khurana,
Advocates for complainant.**

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present bail application is filed on behalf of the applicant/Akash S/o Kashi Ram under section 439 Cr.P.C. for grant of regular bail in FIR bearing no.0196/2022 registered under section 363 IPC at P.S. Tigri.



2. The present FIR bearing no.0196/2022 was got registered on the basis of the complaint dated 26.04.2022 made by “R” regarding missing of his daughter since 24.04.2022. Thereafter ASI Dilbag Hussain made efforts to trace the missing girl (hereinafter referred to as “**victim**”). However, on 02.05.2022, someone had left the missing girl in the police station. SI Manisha examined the victim and recorded the statement under section 161 Cr.P.C. wherein the victim stated that she had gone to market to purchase momos on 24.04.2022 at about 08-08:30 P.M. and when she was returning back to her home, she sat in an auto which was being driven by Shahrukh. Subsequently Salman @ Chesey, Sahil @ Chuttangi, Tamatar, Mohit and Akash also came to sit in the auto. The victim was given a cold drink and after consuming the cold drink she became unconscious. The victim regained the conscious on the next day and found that the lower portion of her abdomen was paining and her clothes were found to be torn. The victim on 26.04.2022 at about 12:00 in the night was attempted to be taken to Koshi but due to presence of police personnel on the way she was brought back at the same place, where Salman, Akash, Mohit and Sahil committed rape (*galat kaam*)



with her. ASI Dilbag Hussain arrested Akash @ Chuha S/o Sohan Lal, Mohit S/o Dilip, Shahrukh S/o Ayyub Khan and A @ T who was found to be a juvenile. The statement of victim was also recorded under section 164 Cr.P.C. wherein she primarily reiterated the contents of the statement under section 161 Cr.P.C. During further investigation, Mohd. Kaif S/o Israil, Chandan S/o Pappu, Mohd. Ilyas S/o Hameed Lovekush S/o Ramesh and Akash S/O Kashi Ram, i.e. the applicant were also apprehended and their disclosure statements were also recorded. The juvenile S @ C was also apprehended on 21.05.2022. The victim was found to be aged about 13 years. The applicant i.e. Akash @ S/o Kashi ram was also subjected to the Test Identification Parade (TIP) but he could not be identified by the victim. The victim only identified Luvkush S/o Ramesh as one of the accused. After completion of the investigation, the charge-sheet was filed.

3. The applicant filed a bail application before the trial court which was ordered to be dismissed vide order dated 28.07.2022 by the court of Ms. Shreya Arora Mehta, ASJ (FTSC) (POCSO),



District South, Saket Court, Delhi by observing that the allegations against the applicant are heinous and grave in nature.

4. The applicant being aggrieved filed the present bail application and seeks bail on the grounds that the applicant is an innocent person of 19 years old and is not having any criminal antecedent. The applicant has been falsely implicated in the case on the basis of disclosure statement made by him and other co-accused. The applicant is stated to be in judicial custody since 20.05.2022. The applicant was not present in Delhi on the alleged date of commission of offence. The victim could not identify the applicant in TIP conducted on 20.06.2022. The applicant is not named neither in the statement of the victim recorded under section 161 Cr.P.C nor in statement recorded under section 164 of Cr.P.C. Accordingly, the applicant prayed for grant of bail.

5. The respondent no.1/State filed the Status Report wherein it stated the factual position as mentioned hereinabove. It is also stated that during the investigation ASI Dilbag Hussain also apprehended Lovekush@Lula S/o Ramesh, Chandan S/o Pappu, Ilyas S/o Hameed, Mohd. Kaif S/o Israil, and Akash S/o Kashi Ram who in



their disclosure statement have confessed to commit the offence subject matter of present FIR. The victim could not identify the applicant as one of the offender during TIP. The applicant is not involved in any other case previously. It is also stated that the present bail application is liable to be dismissed.

6. The counsel for the applicant argued that the bail application preferred by the applicant in the trial court was summarily dismissed on the ground that the offences alleged against the accused person/s are heinous and grave in nature, without considering the fact that neither the applicant is named in FIR nor his name is disclosed by the victim in her statements under section 161 & 164 Cr.P.C rather the applicant is arrested & dragged in this case only on the basis of disclosure statement of a co-accused. TIP proceedings were also conducted wherein the victim failed to identify the applicant. He further argued that the applicant was not in Delhi at the time of alleged incident as he had gone to his native village to attend the wedding of his elder brother on 24.02.2022 and status report with CDR and tower details clearly shows that on date of occurrence i.e. 24.04.2022, the applicant's location was in UP and he reached in



Delhi in morning at 07.37 am of 25.04.2022. Medical report of the victim does not support the allegations of the prosecution.

6.1 The counsel for the applicant further argued that the co-accused namely, Md. Kaif @ Anna S/o Israil, has already been granted bail vide order dated 17.11.2023 in SC No. 273 of 2022 passed by the court of Ms. Sheetal Chaudhary Pradhan, ASJ- (POCSO), South, Saket Courts, Delhi. Another co-accused namely Akash @ Pramod @ Kabbaddi S/o Sh. Mohar Singh, who was arrested on the 02.04.2023 on the basis of disclosure statement having similar allegation was also granted regular bail vide order dated 06.10.2023 in SC No. 738 of 2018 by the court of Ms. Sheetal Chaudhary Pradhan, ASJ- (POCSO), South, Saket Courts, New Delhi. The counsel for the applicant submitted that the applicant is languishing in jail since 20.05.2022 and it is more than one and half year. The applicant is in his youth and is of 19 years of age and is a student of higher secondary and due to arrest and custody in this case, he could not appear in the board examination of class twelve last year as well as this year. There is no involvement of the applicant in any other case. The charges have already been framed



and therefore there is no chance of tampering the evidence. The case is pending before the trial court and is at the stage of prosecution evidence and it would take considerable time to conclude. The counsel placed his reliance on the judgement titled as **Kashmira Singh V State of Madhya Pradesh** 1952 AIR 159. It is prayed by the counsel for the applicant that in these circumstances the present bail application be allowed.

7. The counsel for respondent no.2/ victim submitted that present case involves serious offence of rape being committed upon a minor girl aged 13 years. The victim was assaulted, physically and mentally, intoxicated with drugs and alcohol and sexually abused by the applicant and other co-accused who took the victim away for a span of 8 long days from 24.04.2022 to 02.05.2022. The counsel for respondent no.2 further relied on the judgment titled as **State of Himachal Pradesh V Asha Ram**, 2005 (13) SCC 766. He further stated that there is inconsistency and contradiction in the evidence of *alibi* led by the applicant, since as per the Status Report, the Mobile No.8800850603 which was being used by the applicant actually belonged to one Sunny who is the real brother of the



applicant/Accused. The CDR and CAF report for the period between 25.04.2022 to 02.05.2023 of the said Mobile No. shows location of Delhi for the aforesaid duration. The victim went missing from 24.04.2022 and was recovered only on 02.05.2022, thus this negates the plea of *alibi*. The victim in her statements under sections 161 and 164 Cr.P.C stated that she was compelled to take substances like drugs and alcohol made her unconscious multiple times and this led to her inability to recognize the applicant during the TIP. The counsel relied on the judgment titled as **Prakash Prakash V State of Karnataka**, (2014) 12 SCC 133. The counsel while placing reliance on judgment titled as **Naveen V State of Haryana** decided by High Court of Punjab &Haryana in CRM-M-14491-2020 stated that merely because the DNA report does not match with that of the applicant, it cannot be concluded that the applicant is not involved in the crime. It is prayed that in these circumstances, the present bail application be dismissed.

8. The Additional Public Prosecutor for respondent no.1/Sate stated that in their disclosure statements, the accused persons admitted that they have committed the crime. He also referred to the



Status Report wherein it is stated that during 25.04.2022 to 02.05.2022 as per the CDR the applicant was in Delhi. The Additional Public Prosecutor further stated that the allegations are serious in nature and the present bail application is liable to be dismissed.

9. The applicant is stated to be in judicial custody since 21.05.2022. The victim could not identify the applicant during the TIP. The applicant/accused is neither named in the statement under section 161 Cr.P.C. nor in the statement under section 164 Cr.P.C. by the victim. The applicant was implicated in the present case merely on the basis of the disclosure statement made by other co-accused.

10. The other two similarly placed co-accused namely, Md. Kaif @ Anna S/o Israil and Akash @ Pramod @ Kabbaddi S/o Sh. Mohar who could not be identified by the victim have already been granted bail vide orders dated 17.11.2023 in SC No. 273 of 2022 and 06.10.2023 in SC No. 738 of 2018 respectively by the court of Ms. Sheetal Chaudhary Pradhan, ASJ- (POCSO), South, Saket Courts, New Delhi. After considering all facts, the applicant is admitted to regular bail on furnishing personal bond in the sum of Rs.25,000/-



with one local surety of the like amount to the satisfaction of the concerned trial court on the following condition:-

- (i) The applicant shall not indulge in any criminal activity after release from the jail in future;**
- (ii) The applicant shall not tamper with the evidence or extend any threat to the witnesses**
- (iii) The applicant shall participate in the trial as and when directed by the trial court unless and until his personal appearance is exempted by the trial court.**
- (iv) The applicant shall not try to contact any of the prosecution witness.**
- (v) The applicant shall also mark his presence before the concerned Police Station on every 2nd and 4th Friday of each English Calendar month till the conclusion of the trial.**

11. In view of the above, the present bail application stands disposed of.

12. A copy of this order be sent to the concerned Jail Superintendent for information and compliance, and be also sent to concerned Trial Court for information.

DR. SUDHIR KUMAR JAIN
(JUDGE)

JANUARY 11, 2024

j/sd