



2024:DHC:7529



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 24th September, 2024***
+ **BAIL APPLN. 2336/2024**

JITENDER KUMAR @ PALTUPetitioner
Through: Ms. Shrey Sharawat, Mr. Vikrant Singh, Ms. Ishita Misra, Mr. Himanshu Sihag and Mr. Archit Singh, Advocates.
versus

STATE OF NCT OF DELHIRespondent
Through: Mr. Hemant Mehla, APP for State with SI Pramila Malik, P.S.V.K.South.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Bail Application under Section 439 of the Code of Criminal Procedure (*hereinafter referred to as 'CrPC, 1973'*) has been filed on behalf of the petitioner for grant of Regular Bail in FIR No. 0381/2023 for the offence under Section 354/354A/323/506/509 of the Indian Penal Code (*hereinafter referred to as IPC, 1860'*) read with Section 10 of POCSO Act, registered at Police Station Vasant Kunj, South.
2. The applicant has stated that he is a money lender, who had lent a sum of Rs.2,50,000/- to Ms. Gulshan, the complainant's mother and when he asked her to return the amount, a false complaint dated 12.07.2023 was registered against him by the complainant, in order to help the mother to



2024:DHC:7529



wriggle out of her liability.

3. Pertinently, the complainant along with her minor daughters and her husband, do not reside at the alleged place of incidence and her presence at her mother's house is nothing but a result of a hatched conspiracy solely aimed to falsely implicating the accused.

4. The accused is in judicial custody since 12.07.2023. He claims that he has been falsely implicated as no offence is made out.

5. Furthermore, the arrest is illegal as the Investigating Officer failed to follow the directions given by the learned Apex Court in the Case of Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 273 and Satender Kumar Antil vs. CBI, (2022) 10 SCC 51, 2024 SCC OnLine SC 172.

6. It is settled law that in cases where the offences punishable upto seven years, the Investigating Officer would either make up his mind to not arrest the accused and issue the Notice under Section 41 A of CrPC or arrest him while recording reasons as mentioned in Section 41(1) (b) of the CrPC. Moreover, it is mandatory on the Remand Magistrate not only to check the reasons so recorded as mentioned in Section 41(1)(b) of CrPC, but also it is quintessential to record the satisfaction *qua* the reasons so recorded failing which the custody would be illegal. Having not followed the said procedure, the arrest of the petitioner is illegal.

7. The accused had filed six Regular Bail Applications before the learned Trial Court and two Regular Bail Applications before this Court but has not met any success as two were dismissed while one was withdrawn.

8. The petitioner has asserted that present FIR has been filed by the complainant only to falsely implicate the accused, to aid her mother to evade the financial responsibility of repaying the amount lent to her by the



2024:DHC:7529



accused. The learned Trial Court has also observed that there are several cases under the Excise Act, which have been registered against the accused while overlooking that the accused has been acquitted in most of the cases and those cases have not related to the alleged offence, which is the subject matter of this FIR. Furthermore, *arguendo*, if a dispute exists at all, then it is a civil dispute pertaining to a certain amount of money, which has been given the colour of criminal case by tutoring the child victim and to ensure that no money is returned by the applicant.

9. The Charge-Sheet has been filed on 09.09.2023 and the cognizance of the offence was taken on 11.09.2023 by learned ASJ, POCSO Court. The Charges have been framed on 03.02.2024 and the matter is at the stage of prosecution evidence. The complainant failed to appear and bailable warrants have been issued against her despite which she has not appeared. It is evident that not only has the complainant falsely implicated the accused but is deliberately delaying the trial court by not appearing before the trial court.

10. Furthermore, there is a delay of six days in registration of FIR and the possibility of embellishment and fabrication of the alleged dispute, cannot be overlooked. Furthermore, there are a total 10 General Diary Entries (GD entries) annexed with the Charge Sheet, which recorded that the dispute pertains to certain amount of borrowed money and the caller did not want to file any complaint *qua* the said dispute. Even though it has been recorded that a lady was assaulted, *vide* GD No. 202A dated 07.07.2023 but the name of the accused has crept up for the first time in GD No. 0001A dated 10.07.2023 wherein it is recorded that the accused was merely asking to vacate the house. In spite of constant efforts by the police to reach out the



2024:DHC:7529



caller, the caller did not pick up the phone and did not register any written complaint.

11. In GD No. 0117A dated 10.07.2023, it is recorded that the accused allegedly misbehaved with the caller and her seven years old daughter on 07.07.2023. Neither is there any mention of an assault on complainant's elder daughter i.e. victim 'K' nor is there any mention of sexual assault upon the complainant or her younger daughter, which clearly showcases that the present FIR is pre-mediated and only an afterthought

12. Further claim that the facts as narrated in the Complaint, is an exaggerated account and concocted story, which is an outcome of deliberation and consultation, since the FIR has been registered on 12.07.2023 i.e. after the complainant returned from her brother-in-law's house.

13. There are glaring inconsistencies/omissions in the contents of the complaint given by the Complainant dated 11.07.2023, her statement dated 12.07.2023 recorded under Section 161 CrPC and the statement under Section 164 CrPC recorded on 18.07.2023 before the learned Magistrate. In the MLC of the two victims and the complainant, there is no mention of sexual assault as alleged in the FIR. It is submitted that the petitioner is, therefore, entitled to bail.

14. **Submissions heard.**

15. There are grave allegations of alleged sexual assault on the complainant and her two minor daughters, though the petitioner has tried to give it a colour of false implication on the ground that the complainant owes some money to the accused which has not been returned. Even otherwise, this is his defence which is required to be proved during the trial. The



2024:DHC:7529



testimony of prosecutrix/complainant and the witnesses and the victims is yet to be recorded. Further, there has been no change of circumstances since when the last bail was rejected.

16. The present Bail is, therefore dismissed with the observation that in case the testimony of the complainant and the victim is not concluded within four months, the petitioner shall be at liberty to move the Bail Application afresh, which shall be considered by the trial court, in accordance with law.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER, 24, 2024/RS