



2024: DHC: 764



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 31.01.2024*+ **BAIL APPLN. 3316/2023 & CRL.M.As. 26727/2023,
26728/2023**

PATIRAM

..... Applicant

Through: Mr.Asheesh Raizada,
Mr.Tejendra Rajawat and
Mr.Nand Kishore, Advs.

versus

STATE OF NCT AND ANR.

..... Respondents

Through: Ms.Priyanka Dalal, APP with
SI Vivek Tomar
Ms.Tara Narula,
Mr.Harshvardhan Jain and
Ms.Priya Sahil, Advs. for R-2.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This application has been filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking release on Bail in FIR no.101/2017 registered at Police Station: Govindpuri, South-East District, Delhi under Sections 366A/376 of the Indian Penal Code (in short, 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short, 'POCSO Act').



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2. It is the case of the prosecution that on 13.03.2017, 'B' along with the daughter 'T', aged 6 years, came to the police station and stated that there is continuous bleeding from her daughter's private part and she had been missing since evening around 06.30 P.M. It is stated that 'T' along with her mother was sent to AIIMS Hospital, where she was medically examined vide MLC no.2189/2017, and Doctors confirmed sexual assault being committed on her. Thereafter, 'T', in her statement, stated that an Uncle namely Mantra had taken her to his vehicle, removed her clothes and inserted his finger into her private part due to which she started bleeding. Based on her statement, the present FIR was registered.
3. On 17.03.2017, CCTV footages near Navjeevan Camp and Fish Market, Govindpuri were checked. CCTV footage of Camera no.8 at Shop of Pannalal was checked and it was found that the accused Mantra @ Mantram @ Sonu was coming along with the prosecutrix on 13.03.2017 from 21:39:13 to 21:39:18. CCTV footage of Camera no.3 at Church, Ravi Das Marg, Govindpuri Extension was checked in which the accused can be seen alone after dropping the prosecutrix from 21:21:15 to 21:21:55. The victim was discharged from AIIMS on 28.03.2017. Her statement under Section 164 of the Cr.P.C. was recorded by the learned Link Metropolitan Magistrate, South-East District, Saket Courts, New Delhi.
4. On 08.04.2017, the prosecutrix had identified the place of occurrence, which is the roof of a small room, near Office of the



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Principal Commissioner of Service Tax, Delhi, Nehru Place Flyover, Kalkaji, New Delhi.

5. The prosecution further alleges that in the local enquiry conducted, the photographs of the accused were shown to the people in the nearby areas and two persons recognized the applicant as the person in these photographs. The applicant was thereafter apprehended as his face resembled the face of the accused in CCTV footage. He refused the TIP.
6. The learned counsel for the applicant submits that the applicant has been in custody since 08.04.2017. He submits that the statement of the victim stands recorded before the learned Trial Court. He submits that the Compact Disk (CD) of the alleged CCTV footage was found broken in the Trial Court record. He submits that, therefore, there is no evidence apart from the statement of the victim, who has been tutored to implicate the accused in the aforementioned offence. He submits that there are material contradictions in the statement of the victim as recorded under Section 161 of the Cr.P.C., 164 of the Cr.P.C., and the one recorded before the learned Trial Court.
7. He further submits that the person from whom the alleged CCTV footage had been obtained has also stated that his signatures on the certificate under Section 65B of the Indian Evidence Act has been taken by the police on a printed format, which he did not read before signing the said document.
8. On the other hand, the learned APP for the State and the learned counsel for the Victim/Complainant strongly oppose the present



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bail application by contending that the victim in her statement recorded before the learned Trial Court has given specific details of the manner in which the applicant has committed the offence and that she has also identified the applicant as the perpetrator. They further submit that the testimony of the victim is also corroborated by the FSL report. They submit that though the CDR of the CCTV footage has been found broken in the Trial Court Record, this would not, in any manner, affect the case of the prosecution as the footage is likely to be recovered from the DVR of the CCTV footage.

9. I have considered the submissions made by the learned counsels for the parties.
10. I have perused the statement of the victim recorded before the learned Trial Court. She has supported the case of the prosecution. The trial is stated to be at its fag end and there is every likelihood that if the applicant is, at this stage, released on bail, he may abscond from the process of law.
11. While considering an application for releasing the accused on bail, various considerations have to be kept in mind, including of whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence, nature and gravity of the accusation, severity of the punishment in the event of conviction, and danger of the accused absconding or fleeing if released on bail. Proceedings where serious allegations have been made of the offence under the POCSO Act, are to be handled with due care and precaution, especially when the Court is



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dealing with an application for releasing the accused on Bail.

12. Tested on the above parameters, in my opinion, the applicant has not been able to make out a case for being released on bail.
13. The Bail Application along with the pending applications is, accordingly, dismissed.
14. It is, however, clarified that any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the matter and shall not influence the learned Trial Court during the trial.

NAVIN CHAWLA, J

JANUARY 31, 2024
RN/AS

Click here to check corrigendum, if any