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

+ **BAIL APPLN. 3366/2023**

SHADAB @ ANNU

..... Petitioner

Through: Ms. Pooja Roy, Ms. Shivani Sharma
and Ms. Jayseeka Viridi, Advocates.

versus

STATE

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State.
SI Parul, PS Shastri Park.
Mr. Gaurav Sharma (DHCLSC),
Advocate for complainant alongwith
complainant in person.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

24.04.2024

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1. The present application under Sections 438 read with Section 482 of the CrPC seeks anticipatory bail in FIR No. 562/2023, under Sections 376/354/323 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012, (for short 'POCSO') registered at PS Shastri Park.
2. The case of the prosecution as per the Status Report dated 28.11.2023 authored by Insp. Manjeet Singh Tomar, SHO, Shastri Park is as under:

"1) Brief facts of the matter are that on 19.07.2023 a PCR Call was received at PS Shastri Park in which the PCR Caller (later identified as 'S') alleged scarf pulling of her daughter. On the same day another PCR Call (PCR caller was later identified as 'Z', mother of petitioner herein) was received at PS regarding quarrel near B-356, Buland Masjid, Shastri Park, Delhi.

2) The medical examination of the injured of both the parties was got conducted at JPC Hospital, Shastri Park, Delhi. Statements of 'S' were recorded. The statements of 'Z' could not be recorded as she was referred to GTB Hospital. On 20.07.2023 the statements of 'Z' were recorded.



- 3) However on 20.07.2023 itself 'S' again made a PCR Call regarding nonaction on her PCR Call dated 19.07.2023.
- 4) On 20.07.2023 itself, the mother of the petitioner makes a PCR Call alleging that her grand-daughter is sexually molested by the son of 'S'.
- 5) The mother of petitioner lodged a complaint at DCP Office on 22.07.2023 regarding inaction on her PCR Call dated 20.07.2023 and she further alleged that her grand-daughter was molested on 18.07.2023.
- 6) That on 04.08.2023 on the statement of the victim 'S' (daughter of 'S') a case FIR No.562/2023 Vis 354/323 IPC & 8 POCSO Act were registered at PS Shastri Park, Delhi. She stated that on 19/07/23 she was molested by Shadab @Annu while returning from tuition, she told this incident to her mother who went to the petitioner's house where quarrel between both the parties happened and the victim's brother Sahil got beaten by the petitioner's party.
- 7) It is pertinent to mention that a cross FIR No. 560/23 Vis 376 IPC & 6 POCSO act was registered on the same date i.e. 04.08.2023 on the complaint of the mother of the petitioner/accused in which the accused Sahil (brother of the victim has been arrested and is currently in judicial custody in which the chargesheet has been filed before the Hon'ble Session Court.
- 8) During the course of investigation the counselling and medical examination of the victim was conducted in which the victim had leveled allegations of fingering against the applicant/accused Shadab @ Annu.
- 9) On 05.08.23 the statement Vis 164 CrPC of the victim were recorded before the Hon'ble Court in which also the victim had leveled allegations of fingering against the applicant/accused Shadab @ Annu. After this section 376/509 IPC & 4 POCSO Act was added in the present case.
- 10) Efforts were made to nab the accused Shadab @ Annu however he could not be traced. On 17.08.2023 the accused filed an anticipatory bail application before the Hon'ble Sessions Court. The Hon'ble Court granted protection from arrest to the accused Annu subject to his joining investigation of the case and with the direction to the Investigating Officer to serve a notice Under Section 41 A CrPC to the accused.
- 11) On 18.08.23 a PCR Call was received that the petitioner is trying to threaten the Victim. Hence, a notice U/s 41A Crpc was served to the petitioner and was interrogated but he did not cooperate in the investigation.
- 12) That on 14.09.2023 the accused Abdul Salam, Irfan, Khushbu, Zareen, Bulbul, Afreen, Asmin were served notice U/s 41A CrPC to join the investigation and were bound down U/s 323/509 IPC.



13) It is pertinent to mention that the petitioner and his family have many cases registered against them ill P.S Shastri Park actively involved in other types of crimes.”

3. Learned counsel for the applicant submitted that the FIR in the present case was registered as counterblast to the FIR No. 560/2023, under Section 376 of the IPC and Section 6 of POCSO, registered at PS Shastri Park with regard to an incident, which took place on 18.07.2023 at about 07:00 - 08:00 P.M. when the granddaughter of ‘Z’, who is the niece of the applicant, was sexually assaulted by the brother of the complainant herein and thereafter, the family of the applicant had gone to the house of the complainant. It is further submitted that in order to counter the aforesaid FIR registered on account of the act committed by the brother of the complainant, the present FIR was registered on 04.08.2023 under Sections 354/323 of the IPC and thereafter, on 05.08.2023, the complainant improved her statement on the basis of which Sections 376 and 509 of the IPC and Section 4 of the POCSO Act were added.

4. Learned counsel for the applicant further submitted that the latter was granted interim protection on 20.10.2023 and has joined investigation on the directions of the Investigating Officer and has not misused the liberty granted to him. It is also the case of the applicant that he has not tried to threaten the applicant in any manner while he was on interim protection. It is submitted that the chargesheet has been filed and charges have been framed.

5. *Per contra*, learned APP for the State, as assisted by the learned counsel for the complainant, submitted that allegations levelled against the applicant are grave and serious in nature. He also points out that the complainant in her statement under Section 164 of the CrPC has made



specific allegations against the present applicant.

6. Learned APP for the State, on instructions from the Investigating Officer, submits that the applicant has joined the investigation after notice under Section 41A of CrPC was served on him.

7. Heard learned counsel for the parties and perused the record.

8. The case of the prosecution was that the applicant had tried to outrage the modesty of the complainant while she was returning home from her tuition on 19.07.2023 and accordingly, the present FIR No. 562/2023, was registered under Sections 354/323 of the IPC and Section 8 of POCSO Act. The other FIR bearing No. 560/2023 had been registered at the instance of the mother of the present applicant on the same date i.e., 04.08.2023, with respect to the incident dated 18.07.2023 wherein the accused is the brother of the complainant in the present case which was prior in time.

9. In the status report, it has been mentioned that family members of the parties in the present case have many cases registered against each other at PS Shastri Park. During the investigation, as per the allegations made by the complainant in her statement under Section 164 of the CrPC, Sections 376 and 509 of the IPC and Section 4 of the POCSO Act were added in the present case.

10. The applicant in the present case has joined investigation as per the directions of the Investigating Officer, who also confirms the same. The application has not misused the liberty granted to him. The investigation in the present case is complete and the chargesheet also stands filed before the Court of competent jurisdiction.

11. In totality of the facts and circumstances of the case, the present application is allowed. In the event of arrest, the applicant is directed to be



released on bail on his furnishing personal bond of Rs. 25,000/- with one surety of like amount to the satisfaction of the learned Trial Court/Link Court/Investigating Officer/Arresting Officer, further subject to following conditions:

- i. The applicant shall not leave the country without prior permission of the learned Trial Court.
 - ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
 - iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - iv. The applicant shall join the investigation as and when called by the Investigating Officer concerned.
 - v. The applicant will not try to influence the witnesses in any manner.
 - vi. The applicant shall provide his mobile number to the Investigating Officer and intimate about any change.
12. The application is allowed and disposed of accordingly.
 13. Pending applications, if any, also stand disposed of.
 14. Needless to state that nothing stated hereinabove is an opinion on the merits of the case.
 15. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

APRIL 24, 2024/sn

Click here to check corrigendum, if any