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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3389/2023**

DALJEET SINGH @ GOLDY Applicant
Through: Adv. Rajesh Kumar Singh,
Adv. Nikita Parmar, Adv.
Lokesh Kumar Biduri,
Adv. Varun Bhadana.

versus

STATE Respondent
Through: Mr. Utkarsh, APP for the
State with W/SI Amrita,
PS Anand Parbat.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
12.02.2024

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1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in FIR No. 367/2023 dated 22.06.2023 under Sections 376/377/506/34 of the Indian Penal Code, 1860, registered at Police Station Anand Parbat.

2. The FIR was registered on the complaint made by the victim's mother. The case was registered on the DD entry dated 21.06.2023. It is stated that on the said date, the victim could not disclose the history of sexual assault before the Counsellor and the lady Police Officer. On the next date, that is, 27.06.2023 statement under Section 164 Cr.P.C, was recorded where she disclosed the persons who have committed the sexual assault with her.

3. The complaint was filed when the complainant found that

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the victim was pregnant. It is alleged by the complainant that she was not aware that who had impregnated the victim. Victim in her statement under Section 164 Cr.P.C stated that she was raped. She stated that the offence was committed by one Sikh (Sardar) and one Tea Seller. The victim mentioned that she has a small child and she is unmarried and that she is not aware of the name of her child.

4. The learned Metropolitan Magistrate, while recording the statement under Section 164 Cr.P.C observed that the victim was laughing and speaking incomprehensible words.

5. The learned Counsel for the applicant submits that the medical examination of the applicant has confirmed that he is impotent. He further submits that the DNA report of the foetus of the victim does not match with the DNA profile of the applicant. He submits that the applicant has been falsely implicated by the prosecution. The prosecution has taken advantage of the mental illness of the victim. He submits that the victim has already been examined by the learned Trial Court, wherein she had submitted that the applicant has not committed any crime.

6. The learned Additional Public Prosecutor for the State opposes any relief to the applicant. He submits that the victim is a mentally challenged girl and has specifically stated that the offence was committed by one Sikh having a cement shop. He submits that the applicant is the only Sikh person having a cement shop in the vicinity of the residence of the victim. He further submits that the fact that the applicant has erectile disfunction and that he is impotent is not of any consequence. The allegation is also that he had penetrated his penis into the victim's mouth and had inserted his finger into the victim's

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vagina.

7. From the perusal of the statement recorded under Section 164 Cr.P.C, as well as the evidence as recorded by the learned Magistrate on 22.01.2024, it appears that the victim is not in a fit state of mind. The learned Magistrate, while recording the victim's statement under Section 164 Cr.P.C, has also noted that the witness was laughing and speaking incomprehensible words. It is an admitted fact that the victim does not have a child, though, in her statement under Section 164 Cr.P.C, she states that she has a baby and does not know the name of the baby.

8. Even though the learned ASJ records that she is of the opinion that the victim is able to understand the questions and is fit to give rational answers and that the victim is well oriented, the perusal of the evidence, however, reflects to the contrary. In one of the questions put to the victim, she has replied by stating that whenever the Sikh used to commit the crime, he used to give ₹100 or ₹200 and her mother came to know when she missed her periods and was taken to the hospital. Victim also then stated that she told her mother that the Tea Vendor and the Sikh man, who has a cement shop, have committed the crime. However, immediately thereafter she states that the Tea Vendor and the Sikh man have not done any crime and their names were taken at the instance of the police. She further states that she had taken the applicant and other co-accused person name by mistake and that she has no reason to blame the accused persons.

9. The present case is an unfortunate case where the mental state of the victim does not appear to be normal. However, at the same time, it is apparent that she was pregnant and the family and the victim was not aware as to how she got pregnant. The victim has alleged that she had been subjected to rape by the
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applicant and the co-accused person.

10. On being asked, the Investigating Officer has stated that there is no other corroborative material to show the involvement of the applicant in the alleged crime.

11. It is not in dispute that the mere statement of the victim is sufficient for the conviction of an accused if the same inspires confidence.

12. As noted above, the statement given by the victim is not consistent. There is a possibility that the same is for the reason of the mental state of the victim.

13. It is settled law that for the purpose of conviction, the statement of the witness is only a piece of evidence and even if the witness does not support the case of the prosecution, the conviction can be based on the other corroborative evidence.

(Ref: *Ravasaheb @ Ravasahebgouda etc. v. State of Karnataka*).

14. The Court, at this stage, is considering the application for bail and nothing has been brought on record that would corroborate the statement which was given on an earlier occasion by the prosecutrix. As noted above, the complaint was given by the mother of the victim when she came to know about the fact that victim is pregnant. The pregnancy of the victim led to the belief that she was subjected to sexual intercourse.

15. It is not disputed that the DNA of the victim foetus does not match with the DNA profile of the applicant. It is also not denied that potency test of the applicant is negative. Thus, at this stage, it would not be safe to presume that any act of the applicant led to the pregnancy of the victim.

16. The other act as alleged at the initial stage, that the applicant has inserted his finger in the victim's vagina also falls
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within the definition of rape under Section 375 of the IPC. The allegation, at this stage, is not corroborated by any other material, though the statement of the prosecutrix alone is sufficient for the conviction in relation to offence of rape, but the same, at this stage, does not inspire confidence.

17. The applicant is in incarceration since 22.06.2023 and the chargesheet has already been filed, there can be no apprehension of the accused absconding or fleeing or tampering with evidence if released on bail. Moreover, the same can also be taken care of by putting appropriate conditions. No apprehension has been raised about the witnesses being influenced.

18. The object of Jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time. The presence of the accused can be secured at the time of trial by putting appropriate conditions.

19. Without commenting further on the merits of the case and keeping the above facts and circumstances in mind and the fact that the trial is likely to take some time, I am satisfied that the applicant has made out a case for grant of regular bail.

20. The applicant is, therefore, directed to be released on bail on furnishing a bail bond for a sum of ₹30,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court/ Duty Metropolitan Magistrate, on the following terms and conditions:

- i. The applicant shall upon his release provide his mobile number to the concerned IO / SHO and keep it switched on at all times;



- ii. The applicant shall not take unwarranted adjournment and attend the Trial Court proceedings on every date;
 - iii. The applicant shall not leave the country without the permission of the learned Trial Court;
 - iv. The applicant shall not in any manner contact the complainant/victim or any of the witnesses;
 - v. The applicant shall upon his release shall furnish a proof of residence where he shall reside upon his release to the concerned IO/SHO, and in the event of change in address he shall intimate the same to the concerned IO/SHO.
7. 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 appropriate application for cancellation of bail.
8. It is clarified that the 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. The said observations should not be taken as an expression of opinion on the merits of the case.
9. The present application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

FEBRUARY 12, 2024
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