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

+ BAIL APPLN. 3446/2023
ANAND KUMAR PATHAK

..... Petitioner

Through: Mr. Tripurari Jha & Mr. Brajesh
Kumar, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI) & ANR.

..... Respondents

Through: Mr. Amit Ahlawat, APP for the State.
SI Rita, P.S. Daryaganj & PSI
Aayush, Jama Masjid.
Ms. Astha, Advocate for prosecutrix.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

05.04.2024

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1. The present application under Section 439 of the Cr.P.C. seeks regular bail in case FIR No. 279/2023, under Sections 377 of the IPC and Sections 4/6 of the POCSO Act, 2012, registered at P.S. Jama Masjid.

2. The present FIR was registered on the complaint of child survivor, who alleged that he was studying and living in an orphanage and on 02.06.2023 at around 09:00 PM, guard uncle, who was working at the same orphanage, signalled him and took him to his room where he committed unnatural act with him. It is alleged that the said guard uncle threatened him of dire consequences if he disclosed the same to any other person. It is stated that on 29.06.2023, at 09:00 PM again, the said guard uncle called him but he refused and ran away from there. It is alleged that the next morning, he called his mother and told her everything and her mother called the police and thereafter, the present FIR was registered.



3. Upon completion of the investigation, chargesheet *qua* the present applicant was filed.
4. Learned counsel appearing on behalf of the applicant handed up in Court today an uncertified copy of the testimony of the complainant recorded before the learned Trial Court. The same is taken on record. It is submitted that the complainant did not identify the present applicant as the said guard who had committed the unnatural act upon him. In view of the same, it is submitted that the applicant may be released on bail.
5. Learned APP for the State, assisted by the learned counsel for the complainant appointed by the Delhi High Court Legal Services Committee, confirms the fact that the child did not identify the present applicant as the guard, who purportedly committed the said act upon him.
6. Examination of the complainant placed on record reflects that initially the applicant was being produced through video conferencing however, as the said witness did not identify him through video conferencing, the applicant was later on produced physically before the witness. At that stage also, the witness did not identify the applicant. It is recorded that on a suggestion given by learned APP for the State that the witness could not identify the applicant on account to lapse of time, the witness has categorically stated that the present applicant was also a guard in the orphanage where he was living; however, the said act was not committed by the present applicant but by some other guard. It is further stated by the witness that the duty hours of the present applicant was in the morning; however, the alleged act was committed during night.
7. In totality of the facts and circumstances of the case, the present application is allowed. The applicant is directed to be released on bail, on his



furnishing a personal bond of Rs. 25,000/- with one surety of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave the State of NCT of Delhi 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 is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
- v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
8. The application is allowed and disposed of accordingly.
9. Pending application(s), if any, also stand disposed of.
10. Needless to state that nothing stated hereinabove is an opinion on the merits of the case.
11. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
12. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

APRIL 05, 2024/bsr

Click here to check corrigendum, if any