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

+ **BAIL APPLN. 3451/2023**

MANISH SAHU

..... Petitioner

Through: Mr. Faiz Imam, Adv.

versus

STATE OF N.C.T. OF DELHI

..... Respondent

Through: Mr. Hemant Mehla, APP for State
with SI Vandana, PS. GK-I.
Mr. Hira Lal Jha and Mr. K.K. Singh,
Advts. for victim.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

% **23.01.2024**

1. The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in connection with FIR No. 150/2022 under Sections 363/366/376 IPC and Sections 6/17 of POCSO Act registered at the Police Station Greater Kailash, District-South, Delhi.
2. The case of the prosecution is that the mother of the prosecutrix made a complaint that on 13.07.2022, her daughter had not returned from the school following which the aforesaid FIR was registered.
3. The learned counsel for the petitioner submits that in the statement of the prosecutrix recorded under Section 164 CrPC, the prosecutrix has not made any allegation of sexual assault against the present petitioner.
4. He further submits that the charge sheet was filed under Sections 363/366/376 IPC and Sections 6/17 of POCSO Act and subsequently charges were framed under the same sections and the testimony of the prosecutrix has been recorded.
5. The learned counsel has handed over the testimony of the prosecutrix



in the Court and the same is taken on record. Referring to the testimony of the prosecutrix, he submits that the prosecutrix has not supported the case of the prosecution, therefore, he urges the Court to enlarge the petitioner on bail.

6. *Per contra* the learned APP for the State has argued on the lines of the Status Report.

7. This Court is cognizant of the fact that since the charges have been framed, the threshold of satisfaction required would be higher while considering bail application of the petitioner in view of the impact of section 29 of POCSO Act.¹

8. On a query posed by the Court, the learned APP for the State, on instructions from the I.O, fairly states that the prosecutrix has not supported the case of the prosecution. A perusal of the testimony of the prosecutrix reveals that when she did not support the case of the prosecution, she was also cross-examined by the learned APP but *prima facie* it appears that nothing material could be elicited in the cross-examination.

9. The probative value of prosecutrix's testimony and her credibility will be seen by the learned Trial Court during the trial but at this stage the non-supporting of prosecution version by the prosecutrix *prima facie* strengthens the presumption of innocence of the petitioner and meets the higher threshold and thus, tilts the balance in favour of the petitioner for the grant of bail.

10. That apart, the prosecution has cited as many as 24 witnesses and till date only three witnesses have been examined. Needless to say, that the

¹ Dharmender Singh vs State, 2020 SCC OnLine Del 1267



conclusion of trial is nowhere in sight and the petitioner cannot be kept in custody to await the outcome of trial in the facts and circumstances of the present case.

11. In response to the query put by the Court, the learned APP also fairly states that the petitioner does not have any criminal record. Further, the prosecutrix has already having been examined, therefore, there is no possibility of the petitioner influencing the prosecutrix. It is also not the case of the prosecution that the petitioner is a flight risk.

12. Considering the aforesaid circumstances and regard being had to the fact that the petitioner is in custody since 22.07.2022, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to bail subject to his furnishing a Personal Bond in the sum of Rs. 25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

13. The petition stands disposed of.

14. Needless to say, that nothing stated hereinabove shall be construed to be an expression of opinion on the merits of the case.



15. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.
16. Order *dasti* under signatures of the Court Master.
17. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

JANUARY 23, 2024
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