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

+ **BAIL APPLN. 3328/2022**

WARYAM SINGH MALHOTRA

.....Petitioner

Through: Mr. M. A. Niyazi, Mr. Amjad Hussain, Mr. Waseem Akhtar Khan, Ms. Anamika Ghai Niyazi, Ms. Kirti Bharadwaj, Ms. Nehmat Sethi, Mr. Arquam Ali, Ms. Shubhangi Mishra, Advocates.

versus

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

Through: Mr. Yudhvir Singh Chauhan, APP for the State.
Mr. Manish Bhadauria, Advocate for the Complainant.
SI Sumeet Poonia, PS Vivek Vihar

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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12.08.2024

1. Petitioner has approached this Court seeking bail in FIR No.402/2022, dated 12.06.2022, registered at Police Station Vivek Vihar for offences under Sections 376 IPC and Section 6 of the POCSO Act.
2. The Petitioner herein is the foster grand-father of the Prosecutrix.
3. On 15.12.2022, this Court granted interim Bail to the Petitioner by passing the following Order:

“The present application has been moved under Section 439 Cr. PC for regular bail in FIR No. 402/2022 registered at PS Shahdra District under Section 376 IPC and Section 6 POCSO Act.

BAIL APPLN. 3328/2022

Page 1 of 5



Learned counsel for petitioner submits that the petitioner is in custody since 12th June, 2022. It has further been stated that the petitioner is 76 years of age and is not keeping well. It has been submitted that in fact the petitioner had advanced a loan of Rs. 50,000/- to the parent of the victim and the parents of the victim in order to block the recovery of this amount, filed a false complaint.

The charge sheet has already been filed.

The mother of the victim is present with the counsel. I have heard the learned counsel for the victim.

Without going into the merits of the case and taking into account, the age of the petitioner, the petitioner is admitted to interim bail subject to furnishing a personal bond in the sum of Rs.20,000/- with the surety of like amount subject to the satisfaction of the learned Trial Court till next date subject to the conditions that petitioner shall not visit the house of the victim nor shall go in the vicinity of the house.

List on 3rd August, 2023.”

4. The short question which arises before this Court is as to whether the interim bail should be made absolute or not.
5. The parameters to be considered for grant of bail have been consistently enunciated by the Apex Court and the same are as under:
 - a. nature and gravity of the charge;
 - b. severity of the punishment in case of conviction;
 - c. reasonable apprehension of witness being influenced;



- d. prima facie or reasonable ground to believe that the accused had committed the offence;
- e. character, behaviour, means, position and standing of the accused;
- f. danger of justice being thwarted by grant of bail.

(Refer: Ram Govind Upadhyay vs. Sudarshan Singh and Others, (2002) 3 SCC 598 and Prasanta Kumar Sarkar vs. Ashis Chatterjee and Another, (2010) 14 SCC 496)

6. One-and-a-half years have passed after the abovementioned Order. In the meantime, the trial has progresses substantially. It is stated that out of 17 witnesses 15 witnesses have been examined including the Prosecutrix and only a formal witness and the Investigating Officer remain to be examined.

7. Undoubtedly, the Petitioner is accused of committing a very heinous offence. However, the magnitude of the offence cannot be the only criterion for denial of bail. The object of bail is to secure the presence of the accused at the time of trial; this object is, thus, neither punitive nor preventive, and a person who has not been convicted should only be kept in custody if there are reasons to believe that they might flee from justice or tamper with the evidence or threaten the witnesses. It is well settled that if there is no apprehension of interference in administration of justice in a criminal trial by an accused, then the Court should be circumspect while considering depriving the accused of their personal liberty.

8. Considering the fact that the Petitioner is 78 years old and almost all witnesses have been examined and therefore, the chances of the Petitioner tampering with evidence and fleeing from justice are remote, and also the fact that the Petitioner has not abused the interim bail granted to the



Petitioner by this Court *vide* Order dated 15.12.2022, this Court is inclined to make the interim bail absolute on the following conditions:

- a) In addition to the Personal Bond of Rs.20,000/- furnished by the Petitioner, the petitioner shall give a security in the sum of Rs.50,000/- with two sureties in the like amount to the satisfaction of the Trial Court;
- b) The Memo of Parties shows that the Petitioner is a resident of B-1/91, Near Central Burry School, Yamuna Vihar, Delhi. The Petitioner is directed to continue to reside at the same address and in case there is any change in the address of the Petitioner, the Petitioner is directed to intimate the same to the Investigating Officer.
- c) The Petitioner is directed not to leave the city of Delhi without prior permission of the concerned Court;
- d) The Petitioner is directed to report to the local police station once in every week, i.e. on every Wednesday at 10:30 AM and the Petitioner shall be released within half an hour after completing the formalities;
- e) The Petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times;
- f) The petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner;
- g) The Petitioner is directed not to contact the Prosecutrix or any of her family members.
- h) The petitioner shall attend all the Court proceedings.



- i) In case it is established that the petitioner has tried to influence the witnesses or tamper with the evidence, the bail granted to the petitioner shall stand cancelled forthwith.
9. The petition is disposed of along with all the pending application(s), if any.
10. Be it noted that this Court has not made any observations on the merits of the case.

SUBRAMONIUM PRASAD, J

AUGUST 12, 2024

Rahul