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

+ **BAIL APPLN. 2546/2024**

SHAKEEL MALIK

.....Petitioner

Through: Counsel for petitioner (appearance
not given)

versus

STATE NCT OF DELHI AND ANR

.....Respondents

Through: Mr. Hemant Mehla, APP for the State
with SI Kriti Singh, PS Welcome.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **23.07.2024**

CRL.M.A. 21308/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

**BAIL APPLN. 2546/2024 (under Section 439 CrPC filed by the
petitioner for grant of Bail)**

3. The Bail Application under Section 439 CrPC has been filed on behalf of the petitioner for grant of Bail.
4. It is submitted that the accused had been arrested in FIR No. 0767/2022 under Sections 376/506 IPC and 6 of POCSO Act, registered at Police Station Welcome.
5. As per the case of prosecution, accused is the father of the victim, who had an evil eye on her since she turned 11-12 years old. She had



claimed that the accused had established physical relationship with her, when she was 12 years old and was threatened not to disclose about this incident or else he would kill her. Eventually, she disclosed the incident to her mother and the FIR No. 0767/2022 got registered in December, 2022. The charges have been framed against the accused.

6. It is submitted that after the registration of FIR, the statement of the victim under Section 164 CrPC was recorded on 14.12.2022, wherein she improved her stand and brought out new facts contrary to her earlier statement. Charge Sheet was filed on 08.02.2023.

7. The first Bail Application was rejected on 05.12.2023 and the second Bail Application was rejected on 17.05.2024.

8. It is submitted that the accused is in judicial custody since 13.12.2022. The FIR is based upon conjectures and surmises. The FIR got registered on account of domestic issue between the father and mother of the victim. No wrong act has been committed by the petitioner. The mobile phone of the accused had been sent to FSL. Nothing objectionable was recovered from the Mobile Phone of the accused.

9. The petitioner has relied upon '*Moti Ram vs. State of M.P.*', 1978 4 SCC 47 and '*Dr. Shivinder Singh vs. State*' in Bail Application No. 1353/2020, decided on 23.07.2020 wherein it has been observed that the accused need not be kept in custody only on a hunch or a presumption that he would prejudice or impede the trial; or to send any message to the society.

10. In the present case, the investigation has been conducted by the police in the haphazard manner. The possibility and credibility of the victim is clearly dented as she was tutored to implicate the present applicant/accused



in this false case. The prosecutrix in her testimony, has not supported the case of the prosecution nor it is supported by the medical evidence. The petitioner has thus sought Regular Bail.

11. The learned Prosecutor has vehemently opposed the bail application on the ground that the cross-examination of the prosecutrix is yet to be completed and the FSL Report is awaited and is likely to be received by 09.08.2024. The cross-examination of the prosecutrix is listed for 22.08.2024. The learned Prosecutor has thus opposed the grant of bail, at this stage.

12. **Submissions heard.**

13. The allegations made by the daughter against her father. Though, she has been recorded her examination-in-chief but her cross-examination is yet to be completed. Therefore, the bail application is dismissed with liberty to the petitioner, to move a fresh application before the learned ASJ, after the cross-examination of the prosecutrix is completed.

14. The Petition is disposed of.

NEENA BANSAL KRISHNA, J

JULY 23, 2024/RS