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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3394/2022**
MOHD SAKIR

..... Applicant

Through: Mr. Pradeep Kar, Ms.
Arabinda Mayak & Mr.
Manas Mahapatra, Advs.

versus

STATE & ANR

..... Respondent

Through: Mr. Pradeep Gahalot, APP
for the State with Ms.
Disha Malhotra, Mr.
Mukesh Gupta, Ms.
Priyanka & Ms. Kunjan
Malik, Advs.
SI Rahul Rathi, PS-
Sangam Vihar
Mr. Ashutosh Kaushik,
Adv. for victim
(DHCLSC)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

13.05.2024

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1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('**CrPC**') seeking regular bail in FIR No. 359/2021 dated 29.07.2021 registered at Police Station Special Cell, Delhi for offences punishable under Section 354 of the Indian Penal Code, 1860 ('**IPC**') and Section 10 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO**').

2. The present FIR No. 359/2021 was registered on a complaint given by the victim, against her father, who is the present applicant.



3. It is alleged that on 23.07.2021, the applicant called the victim in his room on the pretext of massaging his legs and sexually assaulted her. It is alleged that the victim was around 13 years of age at the time of the alleged incident.
4. It is alleged that the applicant had molested the victim even during the lifetime of her mother (now deceased) and when the victim had disclosed the same to her mother during her lifetime, she did not believe her.
5. It is alleged that the victim left her house on 29.07.2021 and reached a Shooting Range in the forest area, where she met a guard to whom she narrated the entire incident, thereafter the guard contacted an NGO who thereafter took the victim to police station where the FIR was registered.
6. Subsequently, the applicant was arrested on 30.07.2021.
7. Thereafter, the victim's custody was restored to one of the family members of applicant (sister of the applicant) by CWC after noting the victim's desire to go back to her family members and also noted the fact that the victim has anger issues.
8. Thereafter, the victim left the house again on 13.10.2021, and a missing complaint / FIR bearing No.20/2021, was registered at the instance of mother of the applicant. The victim was traced in Ambala and was produced before the CWC on 25.10.2021.
9. The CWC perused the statement of the victim given under Section 164 of the CrPC, wherein the victim disclosed that she went to Ambala, Haryana, by train, due to her anger issues and she had given her statement against her father in FIR No. 359/2021, and had falsely implicated her father due to anger. The CWC noted that the victim is taking treatment from IBHAS Hospital, with respect to her anger issues. It was also noted that



the victim was willing to go back to her aunt – sister of the applicant, and thereafter the custody of the victim was also restored.

10. The learned Counsel for the applicant submits that the applicant has falsely been implicated in the present case. He submits that the applicant is the father of the victim / complainant and the victim is a very aggressive child by her very nature and her aggression increases in case her demands are not met.

11. He submits that applicant is the sole bread earner of the family, belongs from a poor strata of society and after the death of his wife he was looking after his three children and both of his parents.

12. He submits that the applicant and all the family members live in one small room and it is not possible for the applicant to commit the alleged act without anyone seeing it, also if there was any hue and cry there would have been someone to listen the same.

13. He submits that there is delay since the last alleged incident took place on 23.07.2021 and the matter was reported to police on 29.07.2021, when the victim had left the house at around 08:00 a.m. after which she met the NGO worker at around 05:30 p.m., with a help of a guard, but the FIR is reported to be logged at around 10:55 p.m. He submits that after meeting the NGO worker there is inordinate delay in getting the FIR registered.

14. He further submits that the victim has anger issues and whenever she was unable to get some sort of freedom that she's been looking for, she would do something to trouble the family. He submits that the present FIR was also registered by the victim



out of her anger and frustration and places reliance on the statement given by the victim under Section 164 of the CrPC in FIR No. 520/2021.

15. He further submits that the victim is suffering from her anger issues for quite some time and is taking regular treatment from Institute of Human Behaviour and allied Sciences, and the victim is suffering from a psychiatric disorder and cannot be said to be in her normal state of mind. He submits that the allegations as alleged in her statement should be given a lesser weightage. The applicant is in judicial custody since 30.07.2021.

16. The learned Additional Public Prosecutor for the State (**APP**) has opposed the grant of present bail application.

17. The learned Counsel for the victim on instructions submits that the victim has no objection if the applicant is released on bail.

18. The learned APP for the State submits that the serious allegations have been made against the applicant who happens to be her father, and enlarging the applicant on bail would prejudice the trial.

19. He submits that the victim in her the statement recorded under Section 164 Cr.P.C., has consistently maintained that the applicant sexually assaulted her and touched her inappropriately on the alleged day of incident.

20. He submits that the victim was threatened by the applicant, being her father, and therefore she did not give any complaint earlier and later filed the complaint when she ran away from the house and gained support from the NGO.

21. I have heard learned counsel for the parties.

22. From the perusal of the record that, it is pertinent to note that the victim had given contradictory statements on two



separate occasions. In first statement she stated about the commission of the alleged offence whereas in the second statement which was recorded in FIR No. 520/2021, after she was recovered from Ambala, when she had run from the house for the second time, leaving the custody of her aunt and grandmother, she stated to have falsely implicated the victim in anger.

23. The child welfare committee also recorded that the complainant has anger issues and also killed a goat due to anger. Thereafter she agreed to stay with her family and stated that she got the FIR lodged against her father (present FIR) in anger.

24. The chargesheet has already been filed, the charges have been framed, the learned APP has also, on instructions, stated that the examination of the victim has also taken place. Therefore, the application for bail is required to be considered keeping in mind the provisions of Section 29 of the POCSO Act.

25. The Hon'ble Apex Court in ***State of Bihar v. Rajballav Prasad: (2017) 2 SCC 178***, in relation to offences under POCSO, had held that, while considering the application for bail at a post charge stage, the Court also has to consider the provisions of Section 29 of the POCSO Act. Section 29 reads as under:

“Presumption as to certain offences

Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.”

26. On this point, this Court also refers to the view taken by a coordinate Bench of this Court in ***Dharmender Singh v. State*** in



BAIL APPLN. 1559/2020, where the court had considered the aspect of presumption provided in Section 29 of the POCSO Act. It was held that while considering the application for bail even at a stage after charges have been framed, the impact of Section 29 would only be to raise the threshold of satisfaction required before a Court grants bail. The Court, therefore, is required to evaluate whether the evidence placed is credible or ex facie appears to support the case of prosecution.

27. It is not disputed that the applicant and all of his family members live in one room house where all the family members reside. The victim was 13 years of age, studying in 8th standard in Government School, J-Block Sangam Vihar. It is not disputed that she did not make any hue and cry at the time of alleged incident, and after she was recovered pursuant to a missing complaint of her grandmother, she stated that she got an FIR registered against her father in anger and wants him released from jail.

28. The allegations like in the present case are of such nature when put to the accused, especially when he happens to be the father of the victim, that he would inevitably be looked down upon by society and it would have far reaching social consequences. The possibility of giving a false complaint, especially when the victim herself stated that she has anger issues, is unable to manage her anger, and is also receiving treatment with respect to the same cannot be ruled out. In the present case, as noted above, the victim has a history of running away from the house when she is unable to manage her anger. Victim herself has admitted that she had given a false complaint.

29. Merely, because Section 29 of the Act provides for a statutory presumption, the same does not bind the Courts to



accept the prosecution version as gospel truth and the discretion in relation to grant of bail is still to be exercised considering the facts of the case.

30. The statement is given by the victim under Section 164 of the Cr.P.C, in FIR 520/2021 wherein she has categorically stated that she had run away to Ambala; she has anger issues and is unable to control her anger and she is also taking medicine for the same. She also stated that once she had also given a wrong statement against her own father and because of the said reason he is in at present in jail and she wants to him to be out. The victim also stated that she doesn't wish to reside with her family, she also mentioned that she had ran away from the house on two earlier occasions.

31. It is true that the statement of the prosecutrix is to be given prime consideration and the conviction can be based merely on the statement even if not corroborated with other evidence as long as the same inspires confidence. However, to hold that the statement of the prosecutrix is to be accepted even if the same appears improbable and belies logic would be doing violence to the criminal justice system.

32. The prosecutrix at present is staying with an NGO and therefore there is no chance of any inducement. It is also not alleged that the applicant is a flight risk or that he will tamper with evidence if released on bail. Any apprehension, even otherwise, can be taken care of by putting appropriate conditions.

33. Considering the totality of facts and circumstances, and without further commenting on the merits of the case, the present bail application is allowed; and the applicant is admitted on bail on furnishing a bail bond for a sum of ₹25,000/- with one surety



of the like amount, subject to the satisfaction of the learned Trial Court on the following terms and conditions:

- a. The applicant shall, upon his release, provide his mobile number to the concerned IO / SHO and keep it switched on at all times;
- b. The applicant shall, upon his release, provide his address, where he shall be residing after his release, to the concerned IO / SHO;
- c. The applicant shall not leave the Country with the prior permission from the learned Trial Court;
- d. The applicant shall not in any manner contact the complainant/victim or any of the witnesses;
- e. The applicant shall not in future reside in the same house or visit the locality where the victim resides.

34. 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 way of seeking cancellation of bail.

35. It is clarified that any 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 and also not be taken as an expression of opinion on the merits of the case.

36. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MAY 13, 2024