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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2585/2024**

SHAILESH KUMAR @ PINTUApplicant
Through: Mr. Harikrishan, Adv.

versus

THE STATE NCT OF DELHIRespondent
Through: Mr. Naresh Kumar
Chahar, APP for the State
along with Mr. Amit Goel,
Ms. Ruchi Goel, Mr.
Vikramjeet & Mr. Vipin
Bansal, Advs.
SI Vijay Maan, PS Sarai
Rohilla.
Victim in person.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
12.08.2024

1. The present application is filed seeking regular bail in FIR No. 677/2021 dated 11.11.2021, for offences under Sections 323/376 of the Indian Penal Code, 1860 ('**IPC**'), registered at Police Station Sarai Rohilla. The chargesheet was filed against the applicant for offences under Sections 376(2)(n)/323 of the IPC and Sections 6/21 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO**').
2. The prosecutrix is present in person and on being asked, she states that she does not need a counsel to represent her in the present case.
3. The FIR was registered on a complaint given by the prosecutrix, who stated that she had been addicted to drugs and

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other substances for almost three years. On 10.11.2021, when the prosecutrix had gone to consume smack along with her friend, namely, Sachin, at the roof of the jhuggi adjacent to the one that belonged to the accused Vijay. It is alleged that the accused Vijay came there and asked them to leave the jhuggi. It is alleged that thereafter, the victim requested the accused Vijay to allow her to sleep in his jhuggi. She alleged that when she woke up, she found that she was undressed. It is alleged that when the prosecutrix raised alarm, the present applicant, who is the nephew of the accused Vijay, came and gave her beatings.

4. The allegations were repeated by the prosecutrix in her deposition before the learned Trial Court on 15.09.2023. The prosecutrix was thereafter re-examined, where she stated that on an earlier occasion, the applicant had also established physical relations with her.

5. It is not in dispute that the FIR was registered way back on 11.11.2021 and the chargesheet was also filed in regard to the incident which allegedly took place on 10.01.2021. From the complaint which led to filing of the chargesheet, it is apparent that no allegation was made against the applicant for committing rape. It is also not the case of the prosecution that pursuant to the further statement tendered by the prosecutrix, any supplementary chargesheet was filed in the present case.

6. The incident and the allegations therein is a subject matter of trial, however, *prima facie*, no offence under Section 376 of the IPC has been alleged against the present applicant in the present FIR.

7. PW-2 (Sachin) was also examined before the learned Trial Court and he had disputed the case of the prosecution. The allegations against the applicant, at this stage, appears to be in

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relation to the offence under Section 323 of the IPC for giving a beating to the prosecutrix.

8. The applicant is in incarceration since 01.12.2021 and the material witnesses have already been examined and no purpose would be served by keeping the applicant in further custody.

9. In view of the above, the applicant is admitted to bail on furnishing a personal bond in the sum of ₹25,000/- with two sureties 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, furnish a proof of residence of where he shall reside, which should be at least 5 KM away from the locality where the victim resides, subject to the satisfaction of the IO;
- b. The applicant shall upon his release provide his mobile number to the concerned IO / SHO and keep it switched on at all times;
- c. The applicant shall not change his residence without informing the concerned IO / SHO;
- d. The applicant shall not take unwarranted adjournment and attend the Trial Court proceedings on every date;
- e. The applicant shall not contact the victim and tamper with the evidence in any manner whatsoever.

10. 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 filing an application seeking cancellation of bail.

11. It is clarified that the observations made in the present order are only for the purpose of deciding the bail application

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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.

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

AMIT MAHAJAN, J

AUGUST 12, 2024 / “SK”