



2024: DHC: 737



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

% *Date of Decision: 31st January, 2024*

+ **BAIL APPLN. 3419/2022**

MOHD RAFI

..... Applicant

Through: Adv. Yashasvi S.K.
Chocksey, Adv. Ankit
Singh, Adv. Wasim
Akram & Adv. Vijay
Rajput.

versus

STATE AND ANR

..... Respondent

Through: Mr. Hitesh Vali, APP for
the State with IO SI Renu
CAW Cell/ Outer & SI
Sadhna, PS Mangolpuri.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J.

1. The present petition is filed under Section 439 of the Code of Criminal Procedure, 1973 (**CrPC**) seeking grant of regular bail in FIR No. 973/2022 for offences under Section 376 of the Indian Penal Code, 1860 (**IPC**) and Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012 (**POCSO Act**) registered at Police Station Mangol Puri.

2. It is alleged that on 28.07.2022, at around 3:00 p.m., when the prosecutrix was returning home with her sister's children, the

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applicant forced the children outside the lift and thereafter made forceful relations with the prosecutrix.

3. It is further alleged that on the next day, that is, 29.07.2022, when the prosecutrix was alone at home, the applicant came and made forceful relations with the prosecutrix again and afterwards also threatened the prosecutrix of dire consequences if she told anyone about the incident. The applicant was thereafter arrested on 15.08.2022.

4. The learned counsel for the applicant submits that the applicant is a carpenter by profession and was at the relevant time working in the same society where the prosecutrix resides and both were in talking terms.

5. He submits that the applicant is of young age of 22 years approximately, and the prosecutrix had friendly relations with him and used to talk on phone on regular basis. He submits that the statement given by the prosecutrix under Section 164 of the CrPC does not inspire confidence as she refers to one 'Ranjan' who is alleged to have committed the offence.

6. He further submits that the applicant was arrested in a mischievous way by a Beat Officer while patrolling. The Beat Officer has stated in his statement under Section 161 of the CrPC, that he saw a man who was trying to avoid facing anyone and to which he got suspicious and stopped that man and was able to identify him as the one whose photograph was shown to him by the Officer at the Police Station.

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7. The learned Additional Public Prosecutor for the State opposes the grant of bail to the applicant and submits that the prosecutrix, in her statement under Section 164 of the CrPC, has supported the case of the prosecution.

8. He submits that the prosecutrix has also identified the applicant as the accused at the Police Station and also in Court. He submits that the applicant was arrested pursuant to a photograph that was provided by the prosecutrix.

9. He submits that the present applicant impersonated himself as 'Ranjan' to the prosecutrix and therefore, the said name is mentioned by her in the complaint.

Analysis

10. 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 of the POCSO Act reads as under:

“29. 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.”

11. After charges have been framed, the provisions of Section 29 of the POCSO Act have to be considered, which raises the

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threshold of satisfaction required before a bail can be granted. The Court has to evaluate *albeit, prima facie*, the evidence relied upon by the prosecution.

12. Certain considerations that have to be kept in mind while deciding the application in relation to offences under POCSO Act are; the age of the minor victim *vis-à-vis* the age of the accused, the relationship, if any, between the victim and the accused, whether the accused is a repeated offender, the chances of the accused threatening the victim after being enlarged on bail etc.

13. I have perused the chargesheet filed in the present case. The present case is solely based on the testimony of the prosecutrix. It is not in doubt that for an offence under Section 376 of the IPC, mere testimony of the prosecutrix is sufficient for the purpose of conviction of the accused. The testimony does not require corroboration as long as the same inspires confidence. From the record, following facts emerge:

- A. The allegation is that the accused at 3.00 p.m on 28.07.2022 had forced himself into a lift and committed the offence. The lift was admittedly installed in a busy residential society. However, no statement of any of the neighbors has been recorded.
- B. The prosecutrix has alleged that she was in talking terms with the accused as he had given his phone number to her. The photograph of the accused as per the allegations was also provided by the prosecutrix

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herself. Despite the said allegation, no CDR has been placed on record in order to show that the applicant was in contact with the prosecutrix during the contemporaneous time.

- C. Even though the incident is alleged to have taken place in the busy residential society, no efforts have been made to procure any CCTV footage in order to establish the presence of the accused at the place of incident at the relevant time.
- D. No evidence or the CDR has been placed on record or formed part of the chargesheet in order to show that the accused at the relevant time was present in the society.
- E. Even though it is alleged that on 28.07.2022, the victim was taking her sister's children in the lift and the accused had forced the children to go out of the lift, no statement of the children has been brought on record.

14. The arrest of the accused outside the society also appears, at this stage, to be suspicious. A Beat Officer in his statement has stated that he saw a man who was trying to avoid facing anyone outside the society where the incident took place and he was identified on the basis of photograph which was shown to him.

15. Nothing has been brought on record to corroborate any of the allegations which, at this stage, does not inspire any confidence. The presumption as envisaged under Section 29 of the POSCO Act, at this stage, in my opinion, is not satisfied.

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16. The victim has herself stated that she was in regular touch with the accused. There is no allegation that the accused is a repeated offender or has any antecedent. Any apprehension of the accused threatening the victim or the accused fleeing from justice can be taken care of by putting appropriate conditions.

17. In the view of this Court, when tested on the considerations set out above, the circumstances of the present case would favour grant of bail to the applicant.

18. Considering the totality of facts and circumstances, and without any expression on the merits of the case, the present bail application is allowed; and the applicant is directed to be released on bail on furnishing a bail bond for a sum of ₹20,000/- with one surety of the like amount to the satisfaction of the learned Trial Court/ Duty Metropolitan Magistrate, subject to the following terms and conditions:

- i. The applicant shall upon his release provide his mobile number to the concerned IO / SHO and keep it switched on at all times;
- ii. The applicant shall not take unwarranted adjournment and attend the Trial Court proceedings on every date;
- iii. The applicant shall not leave the boundaries of the National Capital Region without informing the concerned IO / SHO;
- iv. The applicant shall not in any manner contact the complainant/victim or any of the witnesses;

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- v. The applicant shall not reside or visit the locality where the victim resides;
 - vi. The applicant shall furnish a proof of residence where he shall reside upon his release, which should be at least 5 KM far from the locality where the victim resides, subject to the satisfaction of the learned trial court.
19. 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.
20. 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.
21. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

JANUARY 31, 2024
“SK”

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