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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 3592/2023

AJAY RATHORE

..... Applicant

Through: Mr. Rajat Katyal, Mr.
Mayank Punia, Mr.
Kanishk & Ms. Priyanka
Tomar, Advs.

versus

STATE (NCT OF DELHI) & ANR. Respondent

Through: Mr. Utkarsh, APP for the
State
SI Pratima, PS- Vasant
Kunj

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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31.01.2024

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of regular bail in FIR No. 225/2023 dated 09.04.2023 registered at Police Station Vasant Kunj South, for offences under Sections 354A/509 of the Indian Penal Code, 1860 ('IPC') and Section 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').
2. The FIR was registered on a complaint given by the mother of the victim, alleging that, when the victim had gone to play at the applicant/accused's house, the applicant was only wearing a vest.
3. The FIR was registered under Sections 354A/509 of the IPC read with Section 12 of the POCSO Act. Chargesheet in the present case has been filed under Section 354A/509 of the IPC read with Section 10 of the POCSO Act, and the charges have also been framed.
4. The learned counsel for the applicant submits that the

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applicant has been falsely implicated in the present case.

5. He submits that at the time of the alleged incident, admittedly, the applicant was in his own house and even if he was not wearing any underwear, the same is not an offence. It is not the applicant who had gone to the victim's house and taken off his clothes. The victim, in the present case, had gone to the applicant's house to play with his son.

6. He submits that the maximum punishment for the offence under Section 12 of the POCSO Act is three years and the chargesheet has already been filed in the present case. He further submits that the applicant is in custody since 09.04.2023.

7. The learned Additional Public Prosecutor for the State submits that the chargesheet in the present case was filed under Sections 354A/509, IPC read with Section 10 of the POCSO Act. He submits that the minimum punishment for the offence under Section 10 of the POCSO Act is not less than five years.

8. The FIR was registered on a complaint given by the mother of the victim. It is alleged that the wife of the applicant works in the complainant's house as househelp, and stays in the servant quarters with the applicant and their son. On the date of the incident, the victim had gone to the servant quarters to play with the son of the applicant and the applicant's wife at that time was working in their house. It is further alleged that the victim had informed the complainant that the applicant had removed his pyjama and underwear and he was only wearing a vest. When the victim told the applicant to make her wear shoes as she wanted to leave, the applicant came closer and made the victim wear her shoes after which the victim came back to her house.

9. I have also gone through the statement of the victim under Section 164 of the CrPC. The victim has repeated what has been



alleged by the complainant.

10. It appears that there is no allegation that the applicant had attempted or committed any sexual assault on the victim. It is not alleged that the applicant has at any time touched the victim. In fact, it is the categorical statement of the victim, that on being requested, the applicant made the victim wear her shoes.

11. It is not denied that the applicant, at that time, was at his own residence and it was the victim who had come to his house to play. In such circumstances, the argument that the applicant was not wearing proper clothes at his own house and had no intention to remove clothes, at this stage, cannot be, *prima facie* said to unbelievable.

12. Section 10 of the POCSO Act reads as under:

***“Punishment for aggravated sexual assault-
Whoever, commits aggravated sexual assault
shall be punished with imprisonment of either
description for a term which shall not be less
than five years but which may extend to seven
years, and shall also be liable to fine.”***

13. In the absence of any allegation that accused attempted or committed any sexual assault, *prima facie*, the provisions of Section 10 of the POCSO Act are not made out, at this stage.

14. Considering the fact that the chargesheet has already been filed and no further investigation is pending, further incarceration of the applicant is not required. The applicant is directed to be released on bail, on his furnishing a bail bond of ₹25,000/- with one surety of the like amount, subject to the satisfaction of learned Trial Court/ Duty Metropolitan Magistrate, subject to the following 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 city without informing the concerned IO / SHO;
 - iv. The applicant shall not in any manner contact the complainant/victim or any of the witnesses;
 - v. The applicant shall not reside or visit the locality where the victim resides;
 - vi. The applicant is directed to 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.
15. It is also made clear that the observations made in the present case are only for the purpose of considering the 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.
16. In the event, any FIR/DD entry/ complaint is lodged against the applicant, it would be open to the State to seek redressal by way of seeking cancellation of bail.
17. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

JANUARY 31, 2024 “SS”