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

+ **BAIL APPLN. 3613/2023**

NAFEES KHAN

..... Petitioner

Through: **Mr. Suraj Prakash Sharma, Adv.**

versus

STATE (NCT OF DELHI) ADN ANR.

..... Respondents

Through: **Mr. Ritesh Kumar Bahri, APP for
State with SI Richa, PS Fatehpur Beri**

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

23.04.2024

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1. The present petition has been filed seeking regular bail in connection with FIR No.446/2022 under Sections 354/376(2)(f)(n)/506 IPC and Section 6/15 of the POCSO Act registered at P.S. Bhalswa Dairy.
2. The case of the prosecution is that prosecutrix made a complaint against her father that around the month of April 2022, when she was alone at home with her father, then her father forcibly made physical relations with her and took photographs of her private parts and he also threatened to kill her mother if she disclosed the said incident to anyone. It is further the case of the prosecution that the victim's father used to make physical relations with her by scaring her of making the photos viral.
3. It is further the case of the prosecution that on 06.06.2022, the victim told everything to her mother, thereafter her mother called the police which led to the registration of the present FIR.



4. Learned counsel appearing on behalf of the petitioner has invited attention of the Court to the cross-examination of his wife / victim's mother who was examined as PW2 to contend that there was a matrimonial discord between the petitioner and his wife. Further, in her cross examination, she has also admitted that the petitioner used to often beat her, as well as, her children. According to the learned counsel, the said witness has also admitted that she had made a phone call to the police and had mentioned that her husband was beating her but no allegations of rape were mentioned by the said witness when she had made a call to the police.

5. He further submits that the FSL report is negative and there is nothing incriminating against the present petitioner in the MLC report. It is further the contention of the learned counsel for the petitioner that face of the victim is not clearly visible in the photograph on which the reliance has been placed by the prosecution. He further submits that the petitioner does not have any criminal record. He therefore urges the Court that the petitioner may be enlarged on bail.

6. *Per contra*, learned APP has argued on the lines of the status report. He has invited the attention of the Court to the testimony of the victim who was examined as PW1 to contend that by giving certain suggestion, the petitioner has rather admitted having taken the photographs of the victim as well as having done the wrong act and thus admitted the incident of rape.

7. I have heard the learned counsel for the petitioner as well as learned APP for the State.

8. The cross-examination of PW2, *prima facie* shows that there was a matrimonial discord between the petitioner and his wife (mother of the victim). It also appears that when the phone call was made by PW2 to the



police, she only stated that she was being beaten by her husband. No allegations of rape were made by her. It is also on record that the age of the victim was 14 years at the relevant time and she was not of tender age where she could not have put any resistance. Further the allegation that the victim was raped repeatedly are not substantiated, in as much as, no complaint related to rape had been made on earlier occasions.

9. On a query posed by the Court, learned APP on instructions from IO fairly states that the photographs retrieved from the mobile phone of the petitioner / accused which has been made part of the charge sheet are not clear and does not reveal the face of the victim.

10. The prosecution has cited as many as 18 witnesses out of which only 7 witnesses have been examined. In the facts and circumstances of the present case, the petitioner cannot be kept in custody for indefinite period to await the outcome of trial, the conclusion of which is nowhere in sight.

11. It is also not in dispute that the petitioner does not have any criminal record nor it is the case of the prosecution that the petitioner is at a flight risk.

12. Considering the aforesaid circumstances, this Court is of the view that the petitioner has made out a case for grant of regular bail. In view of the above, the petitioner is granted regular bail subject to his furnishing Personal Bond of Rs. 25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide mobile number to the IO concerned which



shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.

c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

13. The petition stands disposed of.

14. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

15. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

APRIL 23, 2024

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