



2024:DHC:8105



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

Judgment delivered on: 21.10.2024

+ **BAIL APPLN. 2617/2024, CRL.M.A. 21738/2024 & CRL.M.A. 21739/2024**

PYARE LAL

.....Applicant

versus

**THE STATE NCT OF
DELHI & ANR.**

.....Respondents

Advocates who appeared in this case:

For the Applicant : Mr. H.M. Gauracharya, Adv.

For the Respondents : Mr. Naresh Kumar Chahar, APP
for the State with Ms. Nandini
Diesh, Adv.
W/SI Ritu, PS- Nangloi
Ms. Swati Singh Malik and Mr.
Rohan Kumar, Advs. for
prosecutrix with prosecutrix in
person

**CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present application is filed seeking regular bail in FIR No. 711/2021 dated 09.10.2021, registered at Police Station Nangloi, for offence under section 363 of the Indian Penal Code, 1860 ('IPC').

2. Briefly stated, the FIR in the present case was registered pursuant to the information received from the mother of the

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KAUR

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victim aged 16 years that she was missing. During investigation, on 01.08.2022, the complainant informed the Investigating Officer that the victim was admitted at Sanjay Gandhi Hospital. It is alleged that the victim was found to be admitted in the hospital with another name and had given birth to a child on 29.07.2022.

3. Thereafter, counselling of the victim was conducted and statement under Section 161 of the CrPC was recorded wherein she stated that on 08.10.2021, her neighbour – Pinki, asked her to come to her house and gave her tea to drink subsequent to which she fell unconscious and was kept in the house for two days. She stated that when she regained her consciousness, her neighbour – Pinki made her get married with the accused/applicant, who thereafter took her to some unknown place and sexually assaulted her due to which she got pregnant and delivered a baby.

4. On 06.08.2022, the statement of the victim was recorded under Section 164 of the CrPC before the learned Trial Court wherein she reiterated the allegations made in her statement under Section 161 of the CrPC. The proof of age was verified from the concerned school as per which date of birth of the victim was found to be 07.04.2005.

5. Subsequently, on 04.09.2022, the applicant was arrested.

6. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. He submitted that the investigation is complete and the chargesheet has also been filed and no purpose would be served by keeping

Signature Not Verified the applicant in further custody.

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7. He submitted that the co-accused – Pinki has already been released on bail vide order dated 17.01.2023 passed by this Court however, the applicant/accused is in custody since 04.09.2022 without even committing any offence. He submitted that the applicant has deep roots in the society and has clean antecedents.

8. It is further submitted that the victim and the applicant were in love and wanted to marry each other, however the parents of the victim were against the marriage. Further, it has been stated that the victim forced the applicant to get married, due to which the applicant and the victim got married legally for which the signatures of the victim were obtained by an Advocate in furtherance of performing marriage formalities. Further, it has been submitted that both the applicant and the victim were living happily till the birth of their daughter on 29.07.2022, however, when some disputes arose between the parties, the victim in collusion with her mother, falsely implicated the applicant and his family members in the present case.

9. The learned counsel submitted that the age of the victim as per her Aadhar Card is 05.07.2000 and she was major at the time of the alleged incident.

10. *Per Contra*, the learned Additional Public Prosecutor for State assisted by the learned counsel for the prosecutrix opposed the present bail applicant. It is submitted that the offence alleged against the applicant is a serious offence and hence, he is not entitled to bail.

11. They submitted that the victim was a minor at the time of the commission of the offences as per her school records.



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12. The Hon'ble Apex Court in catena of judgments has consistently emphasised the factors to be taken into account when considering bail application, which include: (i) the nature or gravity of the offense; (ii) the character of the evidence and circumstances unique to the accused; (iii) the likelihood of the accused evading justice; (iv) the potential impact of the release on prosecution witnesses and its societal repercussions; and (v) the probability of the accused engaging in tampering.

13. It is pertinent to note that the prosecutrix, despite alleging wrongful confinement, stayed with the applicant for nearly a year and made no complaints during her alleged visits to medical establishments. Notably, as per her own statement recorded under Section 164 of the CrPC before the learned Trial Court, she mentioned attending a Mohalla Clinic where she was treated by a doctor, yet no complaint regarding wrongful confinement or abuse was made at that time or on any prior occasion.

14. Furthermore, it is noteworthy that the prosecutrix's age is a point of contention due to conflicting records. Her Aadhar Card indicates she was of legal age at the time of the alleged incident, whereas her school records indicate otherwise. This discrepancy raises doubt and is a subject for trial, and cannot be looked into at this stage. While the veracity and strength of the allegations against the applicant would be tested during the course of trial, the benefit of such doubt cannot be denied to the applicant at the stage of considering application for bail.

15. It is trite that long period of incarceration is an important factor to be kept in mind while considering the application for



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bail. It cannot be denied that the applicant is in custody since 04.09.2022 and the trial is not likely to conclude in the near future.

16. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeer*** : AIR 2021 SC 712, has held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

17. The continued incarceration of the applicant will result in the denial of his fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India, when the trial is not likely to conclude in the near future.

18. The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

19. In view of the above, without commenting further on the merits of the case, I am of the opinion that the applicant has made out a *prima facie* case for bail.

20. Considering the aforesaid, the applicant is directed to be released on bail on furnishing a bail bond for a sum of ₹20,000/- with two sureties of the like amount subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;



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- b. The applicant shall under no circumstance leave the boundaries of the country without the permission of the learned Trial Court;
 - c. The applicant shall appear before the learned Trial Court as and when directed;
 - d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
 - e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
21. 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.
22. 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.
23. This Court appreciates the efforts of Ms. Swati Singh Malik, who represented the prosecutrix in the present case on the request of this Court.
24. The bail application is allowed in the aforementioned terms. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

OCTOBER 21, 2024

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