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

+ **BAIL APPLN. 3956/2023**

SAUMENDU GHOURI

..... Petitioner

Through: Mr. Narender Mann and Mr. Shailesh
Chandra Jha, Advocates.

versus

STATE NCT OF DELHI AND ANR.

..... Respondents

Through: Mr. Mukesh Kumar, APP for the
State.

Mr. Vikas Walia, Advocate for R-2
alongwith R-2 in person.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

05.01.2024

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1. The present application under Section 439 read with Section 482 of the Cr.P.C. seeks regular bail in case FIR No. 912/2023, under Section 376(2)(n)/193 of the IPC and Sections 4/6/17/21 of the POCSO Act, registered at P.S. Karol Bagh.
2. The case of the prosecution as per the status report dated 02.01.2024, authored by Sh. Deepak Kumar Malik, SHO, P.S. Karol Bagh, is as under:-

“1. That briefly stated the facts of the case are that on 09.08.2023 one complainant namely "§" D/o 'S' R/o Regharpura, Karol Bagh, Delhi came to PS and reported sexual assault/rape by her father Saumendu Ghouri from last 5 year when she was 11 years old and when she objected, her father threatened of deserting of her mother and other two siblings. Complainant/Victim was sent for medical examination and got medically examined vide MLC No. E/157247 victim denied from internal examination). After medical examination victim/ complainant given her written statement on which the above said case was registered and investigation was taken up by SI Meenu Bhan.



2. During course of investigation, accused Saumendu Ghorui was got arrested on Date-09/08/2023 and sent to J/c. Statements U/s 164 Cr. PC of the complainant was got recorded on Date-11/08/2023 wherein she completely denied from the allegation of rape against her real father i.e. present petitioner and stated that she had made this complaint under the influence and direction of her tuition teacher namely Raj Kumar Samanta with whom she was in a love relationship. After that complainant was produced before the CWC and later sent to shelter home. A notice was sent to first attended school of victim for obtaining the pasting file, same was obtained and placed on file and as per the school record verified date of Birth of victim is 08/01/2007 and she was 16 years old at the time of reporting the offence.

3. During course of investigation on 08/09/23 victim/complainant came to PS and given a hand written complaint against her tuition teacher namely Raj Kumar Samanta, alleging there in that "he made physical relationship with the complainant on pretext of marriage and when father of complainant came to know about their relationship and he stopped the victim from going to tuition, her tuition teacher misfeed/misguided the complainant and made her to complaint against her real father i.e. present petitioner at Police Station. When the case was registered against real father of victim i.e. present petitioner, she again went to the house of accused Raj Kumar Samanta with marriage proposal but he denied." Complainant produced her mobile phone in which chats between accused Raj Kumar Samanta and complainant were found and the same were seized through seizure memo and will be placed on record on case file. Complainant also produced photocopy of chats between accused Raj Kumar Samanta and her, same was seized through seizure memo and placed on file. All chats were in Bengali language, and sent to transcriber, same was received and placed on file. Accused Raj Kumar Samanta got arrested on Date-08/09/2023 and from his possession two mobile phones were seized through seizure memo in which the chats between accused Raj Kumar Samanta and complainant were present. After that he was sent to J/c. However, hard copies of WhatsApp Chats were also supporting the allegations of sexual assault levelled by the complainant against accused Raj Kumar Samanta on Date-08/09/2023. All the exhibits were sent to FSL. Rohini for retrieval of data and will be submitted before trial court through supplementary chargesheet.

4. During course of investigation on 12/09/2023, again statement U/s 164 CrPC of victim/complainant was got recorded, in which complainant supported her version of complaint of dated 08/09/2023.



5. It is further submitted that the investigation of the case completed and chargesheet is submitted before Hon'ble court for further trial of the case and next date of hearing is 18/01/2024 for misc. purpose.”

3. Learned counsel appearing on behalf of the applicant submits that subsequent to the statement of the complainant recorded under Section 164 of the CrPC, her tuition teacher, namely, Raj Kumar Samantha, was arrested and two mobile phones were recovered from his possession, which were seized by the Investigating Officer. It is pointed that chats recovered from the said mobile phones corroborates the version of the complainant recorded under Section 164 of the CrPC. It is further submitted that the present applicant is in judicial custody since 09.08.2023.

4. Learned APP for the State submits that complainant in her statement recorded under Section 164 of the CrPC has categorically stated that the initial complaint made by her resulting in registration of the present FIR was at the instance of her tuition teacher. It is also pointed out that the said tuition teacher has now been arrested under Sections 376(2)(n)/193 of the IPC and Sections 4/6/17/21 of the POCSO Act, in the present FIR itself.

5. Heard learned counsel for the parties and perused the record.

6. The perusal of the statement made by the complainant recorded under Section 164 of the CrPC reflects that she has made the said complaint allegedly at the instance of her tuition teacher as the present applicant was opposed to their love affair. As per the nominal roll, the applicant is in judicial custody since 09.08.2023.

7. In totality of the facts and circumstances of the case, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 25,000/- with one surety of like amount, to



the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
- ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
- v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
8. The application is allowed and disposed of accordingly.
9. Pending application, if any, also stand disposed of.
10. Needless to state that nothing stated hereinabove is an opinion on the merits of the case.
11. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
12. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

JANUARY 05, 2024/sn