



\$~34

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3771/2022**
RAJESH BADAIAK Applicant

Through: Mr.Vibhas Kumar Jha, Adv.

versus

STATE NCT OF DELHI Respondent
Through: Ms.Priyanka Dalal, APP with
SI Priyanka
Mr.Ram Ashish Yadav, Adv.
for the victim (through VC)
Mr.Brajesh Kumar, Brother-in-
law and victim in person
(through VC)

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
03.05.2024

%

1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for the applicant to be released on bail in FIR No. 369/2019 registered at Police Station: Subhash Place, Delhi under Sections 376D/506 of the Indian Penal Code, 1860 (in short, 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short, POCSO Act').
2. It is the case of the prosecution that on 14.10.2019, a PCR call was received regarding sexual assault. Pursuant thereto, statement of the victim was recorded, wherein she stated that she had come to Delhi to her cousin sister's house one month ago looking for job



opportunities. She spoke to her brother-in-law, who in turn spoke to his friend Sanjay regarding the same. On 09.10.2019, Sanjay came to her house and took her to the co-accused Pinku's house, in Shakurpur, Delhi as Pinku was alleged to be running a placement agency. At co-accused Pinku's house on that day, he offered her beer and that night, her brother-in-law Rajesh-the applicant herein sexually assaulted her. She mentioned this incident to co-accused Pinku, who upon hearing the same, threatened to kill her. On 10.10.2019, Pinku took her to a tailor's house, where the tailor committed sexual assault upon her. On the next day, that is 11.10.2019, a friend of Rajesh, namely Rahul also sexually assaulted her at Pinku's house. On 12.10.2019, Pinku had taken her along with another lady to Rohini, where she was again sexually assaulted. She had told the lady that she was suffering from stomach pain. Upon hearing the same, the lady called Pinku and Pinku took her to Shakurpur, and from there, on getting an opportunity, she ran away. On 13.10.2019, the victim told the whole incident to her sister and her brother-in-law, who then called 100 number. On 15.10.2019, the victim was medically examined from Bhagwan Mahavir Hospital Pitampura, Delhi. Thereafter, the case was registered and the statement of the victim under Section 164 of the Cr.P.C. was recorded on 15.10.2019.

3. The learned counsel for the applicant submits that the applicant has been in Judicial Custody since 15.10.2019. He submits that the victim already stands examined before the learned Trial Court. He further submits that as far as the sister and the brother-in-law of the victim are concerned, the prosecution has dropped them as witnesses.



He submits that, therefore, now only the formal witnesses remain to be examined and there is no chance of the applicant influencing the witness(s) in any manner. He has also taken me through the testimony of the victim recorded in the trial.

4. The application is opposed by the learned APP and the learned counsel for the victim, stating that the charges against the applicant are heinous and that the applicant and the co-accused Pinku, were involved in a prostitution racket. The applicant is also alleged to have committed sexual assault on the victim. The learned APP submits that the victim has been consistent in her statement as against the applicant.

5. I have considered the submissions made by the learned counsels for the parties.

6. The applicant has been in Judicial Custody since 15.10.2019. The statement of the victim already stands recorded before the learned Trial Court, while the other important witnesses, that is, the brother-in-law and the sister of the victim have been dropped by the prosecution (it is stated that they were not traceable). Now only the formal witnesses remain to be examined.

7. I have also considered the statement of the victim recorded before the learned Trial Court. I am intentionally not making comment on the same as it may influence the trial.

8. Keeping all the above factors in the mind and being guided by the principles enunciated by the Supreme Court in its judgment of *Vinod Bhandari v. State of Madhya Pradesh* (2015) 11 SCC 502, that the objective of keeping the accused in custody during trial is not



meant to be punitive or preventive, but only to ensure his presence at the trial and later to face the sentence, if so awarded by the learned Trial Court, in my view, the applicant has been able to make out a case for being released on bail.

9. Accordingly, it is directed that the Applicant Rajesh Badaik be released on Bail in FIR No. 369/2019 registered at Police Station: Subhash Place, Delhi under Sections 376D/506 of the IPC and Section 6 of the POCSO Act, on furnishing a personal bond in the sum of Rs.25,000/- with one local surety of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.
- ii. The Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iii. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the Applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned.
- iv. The applicant shall not contact or come in the vicinity of the applicant or the her brother-in-law or sister. He shall



make no attempt to in any manner contact any of the witnesses or to influence the trial.

- v. The Applicant shall not indulge in similar or any other criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses or the co-accused.
- vi. In case the Applicant is found involved in another case, it will be open to the prosecution to file an appropriate application seeking cancellation of his Bail in the present case as well.

10. Needless to state, any observation touching upon the merits of the case is purely for the purposes of deciding the question of grant of Bail and shall not be construed as an expression on the merits of the matter.

11. The application is disposed of in the above terms.

12. Copy of this order be sent to the Jail Superintendent for information and necessary compliance.

13. *Dasti.*

NAVIN CHAWLA, J

MAY 3, 2024/ns/am

Click here to check corrigendum, if any