



\$~17

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

+ BAIL APPLN. 4057/2023 & CRL.M.A. 7119/2024 (Additional documents)

LUCKY

..... Petitioner

Through: Mr. Charanjeet Bhalla and
Mr. Gautam Sharma, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State.
SI Vijay, PS Mahendra Park.
Mr. Vasu Bhushan, Advocate for
the complainant alongwith the
complainant and the victim in person.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

05.03.2024

%

1. The present application under Section 439 read with Section 482 of the CrPC seeks regular bail in case FIR No. 354/2022, under Sections 377/341 of the IPC and Section 4(2) of the POCSO Act, registered at P.S. Mahendra Park.

2. The case of the prosecution as per the status report dated 31.12.2023 authored by Insp. Lokesh Sharma is as under:-

"1. Briefly stated the facts of the case are that on 18.02.2022, a PCR call vide GD no. 124A regarding" I-1900 WALI GALI H NO. 1918 JH. PURI CALLER BOL RAHA HAI KI MERE BETE AGE 12 YEARS KE SATH EK LDKE NE GALAT KAM KIYA HAT" was received at PS Mahindra Park, Delhi and the same was marked to SI Ashok Kumar for necessary action. SI Ashok Kumar enquired the victim 'D' age 11 years in the presence of his father and CIC counsellor and recorded his statement therein stating that he lives with his father and they are 4 brother and sister. That on 18.02.2022 at around 9 pm. when the victim/



complainant was playing in the street outside the home. Then Lucky Bhaiya (Accused/ petitioner) who lives in victim's neighbour, called the victim/Complainant and asked him to bring Kurkure and sting (energy drink) from nearby confectionary store. When the victim brought the same then bhaiya (the accused) bolted the door and asked the victim to remove his cloths and he would give money to him. when the victim refused to do the same, the accused removed victim's pants. Further the accused removed his underwear. The accused was drinking energy drink mixing it with something and eating Kurkure. Thereafter, The Applicant/Petitioner asked the victim to lay on the bed and asked the Victim/ complainant to put accused penis into his mouth and also told him that if he would create noise then the accused would tell father of the victim. Meanwhile, one person namely Ashu Bhaiya knocked at the door and the Applicant/Petitioner asked the victim/ complainant to wear his clothes and hide in the bathroom. But the victim/ complainant ran towards his home, and in crying state he told everything to his father, who called the Police and informed about the incident.

2. Thereupon, on the statement of victim, the present case vide FIR no. 354/2022 dated 18.02.2022 under section 8/12 POCSO Act was registered at PS Mahendra Park, Delhi by SI Ashok and the investigation was taken up (True copy of FIR is annexed as annexure 'A').

3. The counselling and MLC of victim vide MLC no. 193558 dated 19.02.2022 was got done at Babu Jagjivan Ram Hospital, Delhi before registration of FIR. On the MLC, the doctor wrote "A/H/O sexual assault as told by, Perianal region- Linear Abrasion above Anal opening 3 * 0.2 cm. " During the internal medical examination, the doctor seized the clothes of victim and Perianal swab sample of victim which was deposited into Malkhana by the IO which were later sent to FSL, Rohini for the examination. (True copy of MLC is annexed as annexure "B")."

3. Learned counsel appearing on behalf of the applicant submits that the victim, examined as PW-1 before the learned Trial Court has not supported the case of the prosecution and has denied the incident. It is further pointed out that the victim has also denied the clothes alleged to have been seized by the Investigating Officer as belonging to the present victim. It is submitted that the victim, in his cross-examination before the learned Trial Court, has



denied the entire prosecution case and as pointed out hereinabove, the victim has also denied the seizure of articles which were sent to the FSL during the course of the investigation. It is further submitted that the present applicant has been in judicial custody since 19.02.2022 and the material witnesses in the present case have been examined and the trial is likely to take some time.

4. *Per contra*, learned APP for the State, on instructions from the Investigating Officer, submits that medical evidence on record supports the case of the prosecution, as pointed in the status report quoted hereinabove. The MLC and subsequent results from the FSL support the case of the prosecution *qua* the present applicant.

5. Learned counsel appearing on behalf of the complainant (victim's father) is present alongwith the complainant and the victim in person.

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

7. In his examination before the learned Trial Court, the victim does not support the case of the prosecution. The victim has gone on record to deny the entire incident. It is a matter of record that the victim has denied the clothes alleged to be belonging to him, seized by the Investigating Officer. At this stage, the testimony of the victim cannot be ignored for the purpose of present application. As per the nominal roll dated 01.01.2024, the present applicant has been in custody since 19.02.2022 and has undergone 1 year 10 months and 10 days in judicial custody.

8. In view of the facts and circumstances of the present 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 two sureties 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.
9. The application is allowed and disposed of accordingly.
10. Pending applications, if any, also stand disposed of.
11. Needless to state that nothing stated hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of disposal of the present application.
12. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
13. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MARCH 05, 2024/sn