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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 4081/2023 & CRL.M.A. 33013/2023 (Delay in re-filing)

DEVENDER Petitioner

Through: Mr. Sanjeev Kumar, Advocate.

versus

STATE & ANR. Respondents

Through: Mr. Amit Ahlawat, APP for the State
with W/SI Parul, P.S. Shastri Park.
Mr. Gaurav Sharma, Advocate,
DHCLSC, for R-2

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

ORDER
10.05.2024

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1. The present application under Section 439 of the Cr.P.C. seeks regular bail in case FIR No. 418/2020, under Sections 376AB/506 of the IPC and Section 6 of the POCSO Act, registered at P.S. Shastri Park, Delhi.
2. Status report dated 25.12.2023, authored by SHO, P.S. Shastri Park, has been handed up in Court today and is taken on record. The case of the prosecution as per the said status report is as under:

“It is most respectfully submitted that on 02/09/2020, a PCR Call Vide DD No. 34A was received in PS Shastri Park regarding "sexual assault" which was marked to SI Parvesh for further enquiry. During enquiry the statement of complainant Sajda Khatoon W/O Mohd Eshaan R/O Yamuna Khadar Jhuggi, Near Gaushala, ISBT Pul Ke Niche, Shastri Park, Delhi was recorded by SI Manju who alleged in her statement that her husband works in a Gaushala in Yamuna Khadar, and she also



helps him in the work. She has four children. Her elder girl is FP(the victim), age 5 years. On 02.09.2020, when her husband went for his work and she was present at her home, her daughter FP was playing with her younger siblings near slum. At about 12:20PM, after finishing her work, when she went to see her children her eldest girl FP was missing. After this she searched her daughter in the neighbourhood and reached near the jhuggi of her neighbour Devender S/O Gyan Singh. When she went inside the jhuggi, she saw that her neighbour Devender has taken off his undergarment as well as that of her daughter's and her daughter FP was sitting in his lap. She further stated that one hand of the applicant/accused was pressing her daughter's mouth and his second hand was on the stomach of her daughter FP, who was crying. After seeing this, she shouted loudly, then Devender immediately put his clothes up and ran out from there. On this statement, above said case was registered and the investigation was taken up by SI Parvesh.

During the course of investigation, the counselling of the victim was done. The medical examination of the victim was conducted in JPC Hospital wherein the doctor opined "Only genital injury +nt S/O forceful penetration/insertion". The exhibits from the internal examination of the victim were taken into police possession through seizure memo and were sent to FSL For further analysis.

Thereafter statement U/s 164 C.r.P.C of the complainant and victim were recorded in the Hon'ble Court wherein they corroborated with the version in the FIR. The statement Us 164 CrPC of the victim and the complainant is annexed as **Annexure-A**.

The age of the victim was verified and as per school records the date of birth of the victim is 19.07.2013 and hence at the time of commission of offence the victim was minor.”

3. Learned counsel appearing on behalf of the applicant submits that the survivor in her examination before the learned Trial Court has not identified the present applicant. It is submitted that the genesis of the case is that there is monetary transaction between the applicant and the mother of the survivor and on account of the same, the present applicant has been falsely implicated. It is further submitted that as per the testimony of PW-1/complainant/mother of the survivor, the ingredients of Section 6 of the



POCSO as well as Section 376AB of the IPC is not made out. It is further submitted that contradictions have come up in the testimony of PW-2 during her cross-examination, which shows variations between her statement and the case of the prosecution. It is further submitted that the present applicant has been in judicial custody since 03.09.2020. It is therefore prayed that the present applicant may be released on bail.

4. *Per contra*, learned APP for the State, assisted by learned counsel appearing on behalf of the complainant submits that the survivor's testimony before the Court reflects that she could not identify the present applicant on account of the fact that at the date when the incident occurred, as per the survivor, the concerned person had a beard and on account of passage of time, the survivor was not able to identify the applicant.

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

6. The testimony of PW-2/complainant/mother of the survivor reflects that the present applicant has been clearly identified by her. The allegations made in the chargesheet are corroborated by the MLC of the survivor as pointed out hereinabove in the status report. Further, provisions of Section 29 of the POCSO Act will be applicable in the present case. Matter is under trial. The prosecution has cited 15 witnesses, out of which 06 witnesses have been examined, 04 witnesses have been dropped and only 05 witnesses remains to be examined.

7. In view of the above, the present application is dismissed and disposed of accordingly.

8. The learned Trial Court is requested to expedite the hearing of the trial and complete the trial as expeditiously as possible without giving any undue adjournment to either of the parties.



9. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present application.
10. Pending application(s), if any, also stand disposed of.
11. Order be communicated to learned Trial Court for necessary information and compliance.
12. Order be communicated to the concerned Jail Superintendent for necessary information and compliance.
13. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

MAY 10, 2024/bsr

Click here to check corrigendum, if any