



2024:DHC:920



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

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*Reserved on: 23.01.2024**Pronounced on: 08.02.2024*+ **BAIL APPLN. 4096/2023****JEENA**

..... Petitioner

Through: Dr. L.S. Chaudhary, Dr. Ajay Chaudhary, Ms. Chanchal Sharma, Ms. Kavita Krishnia and Mr. Anirudh Sharma, Advs.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Hemant Mehla, APP for State with Mr. Dipanshu Meena, Adv. with SI Rachna Police Station Civil Lines

CORAM:**HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present petition has been filed by the petitioner seeking regular bail in FIR No. 14/2016 under Sections 366/376/120B/343 IPC read with Section 4/6 of POCSO Act. Subsequently, the chargesheet was filed under Sections 366/376D/343/109/372/328/120B IPC read with Sections 4 and 6 of POCSO Act registered at PS Civil Lines.

2. The case of the prosecution as borne out from the status report filed in the connected matter i.e. Bail Appln. 1299/2023 listed as item 11 on

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23.01.2024 alongwith the present case, is that on 14.01.2016, the aforementioned FIR was registered on the basis of the statement of Ms. 'J'. In her statement she alleged that she lived in West Bengal with her mother and one boy, namely, Suraj whom she was in contact through telephone took her to Mumbai, where he committed sexual assault upon her. She further alleged that Suraj then took her to Delhi and kept her in one lady's house, who was later identified as co-accused Sani. Suraj left her there stating that he was going for work and he will come after a month and marry her.

3. During the course of investigation, another victim 'B' who had been recovered from G.B. Road revealed that the co-accused Devi @ Jarina and her husband, namely, Nikhil had forcibly sent her to G.B. Road where she was forced by Jeena (the petitioner herein) to establish sexual relations with men and would take money for the same. The present petitioner was thus, arrested on 16.01.2016.

4. Dr. Chaudhary, the learned counsel appearing on behalf of the petitioner submits that the offences for which the petitioner is being tried entails punishment upto maximum 10 years except for the offences under Section 376D IPC and Section 6 of POCSO Act.

5. He further submits that the allegation of rape is against co-accused Nikhil. Further, as per the Aadhar Card, attached by police with the victim impact report, date of birth of prosecutrix 'B' is 29.10.1996, thus, she was more than 19 years 2 months of age at the time of alleged incident (16.01.2016). Hence, the offence under POCSO Act is not attracted against the petitioner.

6. He further submits that co-accused Sani and Nikhil, have already been granted bail by the learned Trial Court *vide* order dated 09.02.2018 and



25.02.2019, respectively. He submits that co-accused Nikhil, has been granted bail despite there being specific allegation of committing rape and him being duly identified. He submits that similar charges have been framed against all accused. It is thus, urged that on the ground of parity the petitioner is also entitled to the bail.

7. He submits that CFSL report has not supported the case of the prosecution, as no semen or DNA profile of male origin could be detected on the articles/cloths of the prosecutrix, sent to the lab. He submits that PW-7 in her MLC had reported that after the last incident, she had neither taken bath nor changed her clothes. She also admitted this fact in her cross-examination.

8. He further contends that the petitioner being a woman is also entitled to the benefit of first proviso to Section 437(1) CrPC. He submits that the petitioner is in judicial custody for past more than 08 years and she cannot be detained for an indefinite period to await the outcome to trial, the conclusion of which is likely to take some more time.

9. In the backdrop of aforesaid facts, it is urged by the learned counsel that the petitioner may be enlarged on bail.

10. *Per contra*, the learned APP has argued on the lines of the common status report filed in the connected matter. He submits that the allegations against the petitioner are serious in nature and both the prosecutrix have supported the allegations against the petitioner.

11. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the record.

12. It is not in dispute that the petitioner was arrested during investigation when victim 'B' was rescued. The role ascribed to the present petitioner is that the victim 'B' was left by co-accused Jarina with the petitioner and she



had been forcing the petitioner into the work of prostitution.

13. In so far as the allegation of rape is concerned, the same is only against co-accused Nikhil, who has already been enlarged on bail *vide* order dated 25.09.2019. Further, co-accused Sani has also been enlarged on bail.

14. The probative value of the material like Aadhar Card and the CFSL report will be considered by the learned Trial Court but still the age of the victim as borne out from the Aadhar Card, which indicates her age to be 19 years 02 months at the time of alleged incident (16.01.2016), cannot be negated altogether at this stage. The said Aadhar Card, if proved on record, has the potential of probabilizing the defense of the petitioner that the offence under the POCSO Act is not attracted.

15. It is also not in dispute that the petitioner is a woman, therefore, she is also entitled to the benefit of the first proviso of Section 437 IPC, which enables the learned Magistrate to release an accused of a serious offence punishable with death or imprisonment for life; or imprisonment for seven years or more, if he/she is under the age of 16 years or is a woman or is sick or infirm. The Hon'ble Supreme Court in ***Satender Kumar Antil Vs. CBI***¹, has laid down that the benefit of the said proviso can undoubtedly be extended to the accused even by the Court of Sessions and the High Court while considering the bail of the accused under Section 439 CrPC. The relevant paragraphs of the decision read as under:

“78. Section 437 of the Code empowers the Magistrate to deal with all the offences while considering an application for bail with the exception of an offence punishable either with life imprisonment or death triable exclusively by the Court of Sessions. The first proviso facilitates a court to conditionally

¹ (2022) 10 SCC 51



release on bail an accused if he is under the age of 16 years or is a woman or is sick or infirm, as discussed earlier. This being a welfare legislation, though introduced by way of a proviso, has to be applied while considering release on bail either by the Court of Sessions or the High Court, as the case may be. The power under Section 439 of the Code is exercised against an order rejecting an application for bail and against an offence exclusively decided by the Court of Sessions. There cannot be a divided application of proviso to Section 437, while exercising the power under Section 439. While dealing with a welfare legislation, a purposive interpretation giving the benefit to the needy person being the intendment is the role required to be played by the court. We do not wish to state that this proviso has to be considered favourably in all cases as the application depends upon the facts and circumstances contained therein. What is required is the consideration per se by the court of this proviso among other factors.”

(emphasis supplied)

16. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be awarded to him. Detention is not supposed to be punitive or preventive. The petitioner who is facing incarceration for past more than 08 years cannot be kept in custody for indefinite period in the facts and circumstances of the present case to await the outcome of trial, which is not likely to be concluded anytime soon.

17. It is also noticed that the petitioner is a permanent resident of New Delhi and it is not the case of the prosecution in the status report that she is a flight risk. It is also not the case of the prosecution that the petitioner has a criminal record. There is also no possibility of the prosecutrix being influenced by the petitioner, in the event she is enlarged on bail, as the



testimonies of the prosecutrix stands recorded. Accordingly, the petitioner satisfies the triple test for grant of bail.

18. Considering the aforesaid circumstances and the long incarceration of the petitioner, I am of the view that the petitioner is entitled to grant of regular bail. Accordingly, the petitioner is admitted to regular bail subject to his furnishing a Personal Bond in the sum of Rs.15,000/- and one Surety Bond each of the like amount to the satisfaction of the learned Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) The petitioner shall not leave the NCR without permission of this Court and shall ordinarily reside at the address as per prison records/as mentioned in the petition;
- b) Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- c) The petitioner shall furnish to the IO/S.H.O P.S: Civil Lines, a cell-phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- d) The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to the complainant or any of the prosecution witnesses or other persons acquainted with the facts of the case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

19. The petition stands disposed of.

20. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not



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be construed as an expression of opinion on the merits of the case.

21. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.
22. Order *dasti* under signatures of the Court Master.
23. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J.

FEBRUARY 08, 2024/N.S. ASWAL

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