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

+ **BAIL APPLN. 4114/2023**

SURYABHAN TIWARI

..... Petitioner

Through: Mr. Suraj Prakash Sharma, Advocate
(through VC).

versus

STATE NCT OF DELHI AND ANR.

..... Respondents

Through: Mr. Mukesh Kumar, APP for the
State with SI Pooja, P.S. Narela.
Ms. Sukriti Pratap, Adv. for
complainant/victim alongwith victim
in person.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER
11.01.2024

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1. The present application under Section 439 Cr.P.C. seeking regular bail in case FIR No. 517/2021 under Sections 354/376(3)/376(2)(f) & (n) IPC and Sections 6/10 of POCSO Act, registered at Police Station Narela.
2. The case of the prosecution as per the status report dated 08.01.2024 authored by Insp. Rajesh Kumar, SHO/PS Narela, Delhi is as under:-

“1. Briefly stated the facts of the case are that on 25/11/2021, on the statement of victim ‘P’ D/o ‘S’ a case FIR no.517/2021 U/s 354/376 IPC and 6 POCSO act was registered in PS Narela in which she stated that whenever the victim was alone at home, the accused Suryabhan (father of the victim) sexually assault her by touching her breast. In 2021 before the occasion of diwali the accused Suryabhan raped her. She further mentioned that he raped



her 3-4 times whenever he found the victim alone at home. The victim didn't told this incident to her mother as she thought that no one will believe her.

2. The medical examination of the victim was conducted in SHRC Hospital, Narela and her internal examination was also done and the samples were send to FSL. Statement of victim was recorded u/s 164 CrPC in which she doesn't supported her previous statement.

3. The accused Suryabhan was arrested on 25/11/21 and was sent to J/C. The chargesheet of the above mentioned case has already been filed and is pending before the Hon'bel court in which the NDH is 15/03/24.

4. The accused has applied for bail in the Honb'ble High Court vide Bail Application No.354/2023 which was withdrawn as dismissed on 17/03/23 and his 5 bail applications has been dismissed from the Hon'ble Trial Court.

5. As per the FSL result the The biological stains present on the source of exhibit 4a (pyjama of victim) are from the source of exhibit 1 (blood sample of accused) and the mixed biological stains present on the source of exhibit 4c (underwear of victim) are from the source of exhibit 1 (blood sample of accused) and exhibit 3o1 (blood sample of victim).”

3. Learned counsel for the applicant draws the attention of this Court to the statement of the victim under Section 164 of the Cr.P.C. wherein she categorically denied the allegations made by her in the FIR and stated that she had made these allegations against him at the instance of her elder sister. The victim in her statement before the learned Trial Court as PW-1 stated that she gave her complaint against the applicant on account of her sister, who had married against the wishes of her parents. The mother of the victim examined as PW-2 also did not support the case of the prosecution.

4. It is further pointed out that the victim did not identify the clothes seized during the investigation in the FIR.



5. *Per contra*, learned APP for the State, on instructions of the Investigating Officer submits that the allegations in the FIR is serious in nature and therefore, the present bail application may be dismissed.

6. The complainant is present in Court alongwith counsel. Learned counsel for the complainant present in Court, on instructions submits that latter stands by her testimony recorded before the learned Trial Court.

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

8. The present FIR was registered on 25.11.2021 and subsequent thereto on 26.11.2021, the statement of the complainant was recorded under Section 164 of the Cr.P.C. wherein she denied the allegations made by her in the FIR. Her examination before the learned Trial Court also did not support the prosecution case on any aspect.

9. Nominal roll dated 30.12.2023 has been received from Superintendent, Central Jail No.04, Tihar, New Delhi reflects that applicant is in custody since 25.11.2011 and has undergone sentence of 2 years, 1 month and 4 days as on 28.11.2023

10. In totality of the facts and circumstances, 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.
- 11. The application is allowed and disposed of accordingly.
 - 12. Pending application, if any, also stand disposed of.
 - 13. Needless to state that nothing stated hereinabove is an opinion on the merits of the case.
 - 14. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
 - 15. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

JANUARY 11, 2024/nk