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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 27th AUGUST, 2024+ **BAIL APPLN. 3021/2024**

ARUN MALIK

.....Petitioner

Through: Mr. Varun Dev Mishra and Ms. Kirti Lal, Advocates

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for the State with SI Mamta, P.S: Dwarka, Sector-23 with SI Arti, P.S: Najafgarh.

CORAM:**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT (ORAL)****CRL.M.As. 25345-46/2024 (Exemption)**

Allowed, subject to all just exceptions.

BAIL APPLN. 3021/2024, CRL.M.A. 25347/2024

1. The Petitioner seeks bail in FIR No. 38/2023, dated 16.02.2023 registered at Police Station Sector 23 Dwarka, for offences under Section 376/354 IPC read with Sections 6/8 of the POCSO Act.
2. Facts, in brief, leading to the present Petition are that on 16.02.2023, a PCR call *vide* DD No.68 was received in Police Station Sector-23 Dwarka regarding rape with child victim. The Prosecutrix 'G', who was about 14 years old at the time of registration of FIR, along with her mother gave a complaint against the Petitioner herein. In the complaint, the Prosecutrix has stated that she is living with her maternal uncle and aunt since childhood. It



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is stated that she lives on the second floor with her uncle and aunt and the Petitioner herein lives on the third floor of the same building with his wife and child. It is further stated that the Petitioner's family has good relations with the uncle and aunt of the Prosecutrix. In the complaint it is stated that on 02.12.2022, when the Prosecutrix along with her family and the family of the Petitioner herein had gone to attend the wedding ceremony of the niece of friend of the Petitioner, the wife of the Petitioner herein asked the Prosecutrix to bring her lipstick from her house. It is stated that the Prosecutrix and the Petitioner herein went to Petitioner's house in his car and on their way back to the marriage function, the Petitioner herein stopped the car on an empty stretch and sexually assaulted the Prosecutrix by kissing and touching her inappropriately. It is stated that the Petitioner threatened the Prosecutrix not to tell anyone about the incident. The complaint further states that thereafter the Petitioner used to blackmail the Prosecutrix and he used to call her on the terrace of their house and used to rape her. It is stated that the Petitioner has committed rape of the Prosecutrix on six occasions. It is stated that on 15.02.2023, when the Prosecutrix was coming down from the terrace, her maternal uncle saw her and on being questioned about her whereabouts she got scared. It is stated that later on the Prosecutrix told her mother about the incident and the Police was informed. On the complaint of the Prosecutrix, the present FIR was registered against the Petitioner herein.

3. The Prosecutrix was sent to the DDU Hospital on 16.02.2023 for medical examination wherein she reiterated that the Petitioner herein used to sexually abuse her. It is stated that the Prosecutrix denied her internal medical examination. However, on 17.02.2023, a letter was written by the mother of the Prosecutrix to the SHO, Dwarka Sector 23 requesting for



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internal medical examination of the Prosecutrix stating that the Prosecutrix was scared from internal examination on 16.02.2023. Statements of the Prosecutrix and her mother were recorded under Section 161 Cr.P.C wherein they reiterated the allegations made in the complaint. The Petitioner was arrested on 17.02.2023. Statement of the Prosecutrix under Section 164 Cr.P.C was recorded wherein she corroborated the allegations. Charge-sheet has been filed against the Petitioner on 07.04.2023.

4. Petitioner filed an application for grant of bail before the learned Additional Sessions Judge, Dwarka Courts and the same was dismissed *vide* Order dated 21.04.2023.

5. Charges have been framed against the Petitioner for offences under Sections 354/376(2) IPC and Sections 6 & 8 POCSO Act.

6. Second bail application of the Petitioner was also rejected by the learned Additional Sessions Judge *vide* Order dated 11.07.2024.

7. The Petitioner has, thereafter, approached this Court by filing the present Petition.

8. Learned Counsel for the Petitioner states that the Petitioner has been falsely implicated in the present case. He further states that the Petitioner is in custody since 17.02.2023 and there is considerable delay in the trial proceedings. He, therefore, states that the Petitioner be released on bail.

9. *Per contra*, learned APP for the State strongly opposes the bail application and contends that the Petitioner is alleged of committing a very heinous and reprehensible offence and no leniency should be shown to the Petitioner. He states that the chances of the Petitioner tampering with evidence and fleeing from justice cannot be ruled out. He also states that the Prosecutrix and the mother of the Prosecutrix have supported the case of the



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prosecution.

10. Heard the Counsels and perused the material on record.

11. The parameters for grant of bail have been laid down by the Apex Court in several judgments. In Gurcharan Singh v. Delhi Administration, (1978) 1 SCC 118, the Apex Court has held as under:-

*“24. Section 439(1) CrPC of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), CrPC against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. **The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.**”* (emphasis supplied)



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12. In Ram Govind Upadhayay v. Sudarshan Singh, (2001) 3 SCC 598, the Apex Court explained the factors to be considered for granting bail, wherein the Apex Court has held as under:-

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.



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(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.” (emphasis supplied)

13. In Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., **2010 (14) SCC 496**, the Apex Court has observed as under:-

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;



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(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] .]

10. *It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In Masroor [(2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] , a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows : (SCC p. 290, para 13)*

“13. ... Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted



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particularly where the accused is charged of having committed a serious offence.”

(See also State of Maharashtra v. Ritesh [(2001) 4 SCC 224 : 2001 SCC (Cri) 671] , Panchanan Mishra v. Digambar Mishra [(2005) 3 SCC 143 : 2005 SCC (Cri) 660] , Vijay Kumar v. Narendra [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195] and Anwari Begum v. Sher Mohammad [(2005) 7 SCC 326 : 2005 SCC (Cri) 1669] .)”

14. The aforesaid principles laid down by the Apex Court have been re-stated in several other subsequent judgments, viz., Neeru Yadav v. State of U.P., (2014) 16 SCC 508; Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129 and Mahipal v. Rajesh Kumar, (2020) 2 SCC 118.

15. The facts of the case reveals that the Petitioner, who is married and has a daughter, resided on the third floor of the building where the Prosecutrix, a minor, lived with her maternal uncle and aunt on the second floor. On 02.12.2022, while going to a wedding ceremony, he forcibly kissed and touched her inappropriately and also threatened her to maintain silence about the incident. Subsequently, the Petitioner continued to coerce and assault the Prosecutrix, engaging in multiple acts of sexual intercourse on various occasions. On 15.02.2023, when the Prosecutrix was discovered by her maternal uncle descending from the terrace, she revealed the abuse to her mother, leading to a police report and the registration of the present FIR against the Petitioner.

16. Petitioner is accused of multiple counts of sexual assault and rape against a minor girl who lived in the same building. Upon conviction, the Petitioner can be sentenced minimum upto 20 years rigorous imprisonment



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which may extend upto imprisonment for life. The Prosecutrix and the mother of the Prosecutrix have supported the case of the prosecution to the hilt.

17. At this juncture, it is pertinent to quote the main objective of the POCSO Act and the reason for the enactment of this special legislation:

“An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment for Courts for trial of such offences and for matters connected or incidental thereto”.

18. In Eera through Dr. Manjula Krippendorf v. State NCT of Delhi and another, (2017) 15 SCC 133, the Apex Court had remarked on the statement and object of the POCSO Act as follows:

“20. The purpose of referring to the Statement of Objects and Reasons and the Preamble of the POCSO Act is to appreciate that the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the Preamble, it is manifest that it recognises the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and well-being are regarded as being of paramount importance at every stage to ensure the health physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The Statement of Objects and Reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the



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tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing child-friendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the POCSO Act.”

19. In view of the above, granting bail to the petitioner at this stage may lead to defeating the purpose of the objective which was kept in mind while enacting this legislation. Paramount consideration is to be given to the well-being of the child whose mental psyche is vulnerable, impressionable and in a developing stage. The long-term effects of childhood sexual abuse are, at many times, insurmountable. An act of sexual assault or sexual harassment, therefore, has the potential to cause mental trauma to the child and may dictate their thought process for the years to come. It may hinder the normal social growth of the child and lead to various psychosocial problems which could require psychological intervention. This Court cannot ignore the fact that the Petitioner and the Prosecutrix reside on the same building and if released on bail, there are high chances of the Petitioner threatening the witnesses and fleeing from justice. Further, Section 29 of the POCSO Act provides that when a person is prosecuted for committing any offence under Sections 3, 5, 7 and Section 9 of the POCSO Act, the Courts shall presume, that such person has committed the offence, unless the contrary is proved.

20. Considering the gravity of the offence and taking into account the fact that the Prosecutrix was around 14 years old at the time of the incident and



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there is a reasonable ground to believe that the Petitioner can tamper with evidence and influence witnesses, this Court is not inclined to grant bail to the Petitioner at this juncture.

21. Resultantly, the bail application is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 27, 2024

Rahul