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

+ **BAIL APPLN. 3103/2024
SHAHRUKH**

.....Petitioner

Through: Mr. Bipin kumar jha adv. Mr. Adeel Siddiqui, Adv. Mr. Asha Ram Sharma Adv. Ms. Komal Jha, Adv and Ms. Kanchan Adv.

versus

STATE (GOVT. OF NCT DELHI)Respondent

Through: Mr. Hemant Mehla, APP for State with PSI Ritu Jaglan, PS: Subhash Place.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

30.09.2024

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1. This petition has been filed seeking regular bail in FIR no. 818/2021 registered at PS Subhash Place under Sections 363/376 of IPC and Section 4 POCSO Act.
2. As per the case of the prosecution, on 1st November, 2021, mother of the victim reported to PS Subhash Place that her daughter, aged about 17 years, 6 months, left her house along with her cousin sister on 31st October, 2021, around 2 p.m. and did not return home. On this basis, the FIR was registered under Section 363 IPC.
3. Subsequently, on 2nd November, 2021, the mother produced the victim at the police station. The victim was examined by the counsellor. She then alleged that there had been a sexual assault with her. She was taken for



medical examination. However, she refused internal examination.

4. Trial has commenced. The testimonies of the victim, her mother, brother and sister have now been recorded.

5. Counsel for petitioner points out to the testimony of PW-1, the victim, who states that she had gone with her cousin and friend to NSP market where they were there till about 9 o'clock. Since she got late, she was scared of calling her father. Her friend and her cousin left her. She called her friend, the *petitioner herein*, and asked him to drop her home. However, he offered that he can go to his place instead. As per PW-1, he apparently took her to a hotel where she states that he forced himself on her. Subsequently, at 4 o'clock in the morning, she went to the park near the Metro Station of Adarsh Nagar and, thereafter, when she came home, the mother took her to the police station where she was taken for medical. When she was asked by the NGO counsellor, she told her situation.

6. In the cross examination, she states that she had not told her parents that the petitioner was her friend. She confirms that after her cousin and friend left, the petitioner came to meet her. She stated that she had called the petitioner using the phone of guard at that place. She went along with the petitioner on his bike and reached Adarsh Nagar at about 10 p.m., where the petitioner's house was located.

7. Further, in her cross examination, she stated that she did not raise any hue and cry in the hotel and petitioner had stated that since it is late at night, he will drop her at home in the morning. She denies the suggestion that petitioner had not forced himself upon her.

8. She further stated that at 10 a.m., petitioner dropped her at the Metro Station but she did not tell her friends or the family about the said incident.



Only when she was taken to the police station by her mother did she make the allegation.

9. Counsel for petitioner points out that the material witnesses have been examined and the petitioner has been in custody since 14th February, 2022. The petitioner was the friend of the victim, belonged to a different faith and he had been falsely implicated in the matter. The victim was more than 17 and half of years of age, on the date of the incident, and she knew him well. Petitioner had himself been called by her at the place, where he was trying to make her secure, and the allegation had been made subsequently at the behest of the family of the victim, being an inter-faith relationship.

10. Considering the testimony of the prosecutrix, the attendant facts and circumstances, and the submissions of the petitioner's counsel, this Court is of the opinion that the petitioner is entitled for bail, the material witnesses having been examined and the petitioner already having been in custody for 2.5 years.

11. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind bars for an indefinite period. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.



- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
 - iv. Petitioner shall join investigation as and when called by the IO concerned.
 - v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
 - vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.
12. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.
13. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
14. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.
15. Order be uploaded on the website of this Court.

ANISH DAYAL, J

SEPTEMBER 30, 2024/RK