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

+ **BAIL APPLN. 3130/2024**

SALIM KHAN

.....Petitioner

Through: Mr. Ayub Khan, Mr. Shan
Muhammed, Ms. Rozi Khan, Ms.
Diksha, Ms. Aatika and Mr. Asim
Krimani, Advocates

versus

THE STATE THROUGH SHO PS SOUTH ROHINI

.....Respondent

Through: Ms. Richa Dhawan, APP for the State
with SI Ravindra

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

16.12.2024

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1. The instant bail application under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter as the “Code”) [now under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter as the “BNSS”)] has been filed on behalf of the petitioner/applicant seeking grant of regular bail in the case arising out of FIR No. 419/2022 registered at Police Station - South Rohini, Delhi for the offences punishable under Sections 468/471/34/120B/174A/201/370/420 of the Indian Penal Code, 1860 (hereinafter as the “IPC”) and Sections 81/87 of Juvenile Justice Act, 2015 (hereinafter as the “JJ Act”).

2. The brief facts of the case, as per the aforesaid FIR, are that the investigating agency caught the accused persons i.e., Dr. Sanjay Mallik, Ms. Ashu Saini, Ms. Rakhi and Ms. Rehnuma, in the act of attempting to sell a baby girl to one of their alleged customers. Accordingly, the instant FIR was registered against the accused persons. During the investigation, the police



found that the said accused took the help of the applicant herein for the commission of the said offence. Thereafter, a supplementary chargesheet was filed against the applicant and he was arrested on 27th July, 2023. Aggrieved by the same, the applicant filed the instant application seeking the grant of regular bail.

3. Learned counsel appearing on behalf of the applicant submitted that the applicant is an innocent person and has not committed any offence as alleged in the supplementary chargesheet dated 29th August, 2022.

4. It is submitted that the applicant was not named in the aforesaid FIR as he was not involved in the alleged commission of offence. It is further submitted that as per the contents of the FIR, one accused person namely Dr. Sanjay Malik made a deal of selling the baby girl to one of his customers for an amount of Rs. 1,10,000/-. Therefore, no allegations were leveled against the applicant as per the aforesaid FIR.

5. It is submitted that during the investigation, the investigating officer alleged that the video of the birth of the said newborn baby girl was forwarded by co-accused Dr. Sanjay Malik to the applicant herein, thereby falsely alleging the involvement of the applicant in the instant case. However, it is submitted that no reply to the said video and details of the address were given by the applicant.

6. It is further submitted that the applicant was wrongly arrested by the investigating agency on 27th July, 2023 and has been in judicial custody since then i.e., for a period of more than 17 months. It is further submitted that the co-accused in the instant case were already enlarged on bail and hence, the applicant may also be given such liberty.



7. It is further submitted that the applicant is a permanent resident of Delhi and therefore, will not be a flight risk.

8. On instructions, learned counsel for the applicant submitted that the applicant shall abide by all the terms and conditions as imposed by this Court on the applicant while granting the bail.

9. In view of the foregoing submissions, it is prayed that the instant application may be allowed and bail may be granted to the applicant.

10. *Per contra*, learned APP for the State vehemently opposed the instant application and submitted that the charges levelled against the applicant are serious in nature, hence, does not require any concession from this Court.

11. It is submitted that a secret information has been received by the investigating agency regarding the selling of a baby child and accordingly, laid a trap near Bikaner Sweets, Sector -3, Rohini Ring Road Mall, wherein three women accused and Dr. Sanjay Malik were arrested. It was later revealed in the investigation that one of the women accused, Ms. Rehnuma, is the mother of the said baby girl and wanted to get rid of the baby as she was unmarried. Therefore, the accused decided to commit the said offence by selling the baby girl to one of their customers.

12. It is submitted that during the investigation, the mobile phone of Dr. Sanjay Malik was seized and it was observed that the video of the said baby girl was forwarded to the applicant. Thereafter, the mobile phones of three women accused were seized, wherein it was observed that the applicant herein has forwarded the said video along with certain documents to them. It is submitted that when the applicant herein was apprehended, it came to the investigating agency's knowledge that the applicant destroyed his mobile



phone and therefore, the same was not recovered by the investigating agency.

13. It is further submitted that there was an exchange of 95 phone calls between Dr. Sanjay Malik and the applicant herein between 1st June, 2022 and 29th August, 2022, thereby establishing a strong relationship between them. It is submitted that the applicant is a master mind behind the commission of the offence, along with Dr. Sanjay Malik and therefore, the applicant herein played a significant role in attempting to sell the baby girl.

14. It is submitted that the applicant was involved in making forged documents, wherein the names of the parents of the baby girl were changed in order to sell the baby in a considerable period of time. Furthermore, Dr. Sanjay Malik was in regular contact with one of the women accused, Ms. Ashu Saini, on 29th August, 2022, the day on which they were apprehended by the police officials.

15. It is further submitted that the applicant is involved in similar nature of cases and has been involved in making forged documents and is running a racket of selling newborn babies.

16. It is submitted that the applicant has already been declared as Proclaimed Offender (PO) by the investigating agency. Therefore, given the foregoing submissions, it is prayed that the applicant is not entitled for any relief as prayed for and the instant application may be dismissed.

17. In reply to the arguments advanced by the learned APP for the State, learned counsel for the petitioner further submitted that there is a discrepancy in the contents mentioned in the chargesheet and supplementary chargesheet filed by the investigating agency, whereby in the former it was stated that the video and other documents were sent by the applicant to the



co-accused before the commission of the offence, whereas in the latter, it was mentioned that the said video and documents were sent after the commission of the offence.

18. At this stage, learned APP for the State clarified, on instructions, that there is typographical error in the dates mentioned in the supplementary chargesheet, wherein an inadvertent error was made in mentioning the date of the commission of the offence as 23rd October, 2024 instead of 23rd August, 2024.

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

20. Before going into the facts of the instant case, it is pertinent to mention the case of ***P Chidambaram vs Central Bureau Of Investigation, AIR 2019 SC 5272***, wherein the Hon'ble Supreme Court listed out the factors to be taken into consideration while granting bail. However, it is pertinent to note that the said list is not exhaustive in nature. The relevant paragraph of the same is as follows-

“21. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:

- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;*
- (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;*
- (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;*
- (iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;*
- (v) larger interest of the public or the State and similar other*



considerations.

[Vide Prahlad Singh Bhati v. State (NCT of Delhi) [Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280 : 2001 SCC (Cri) 674] .]”

21. Adverting to the instant case, this Court has perused the contents of the Status Report filed by the State. Upon perusal of the same, it is an admitted fact that the three women accused along with Dr. Sanjay Malik were apprehended by the investigating agency after conducting a raid. It was further observed that all the accused persons were caught red-handed, however, the applicant herein evaded arrest as he was absconding.

22. It is also an admitted fact that the mobile phones of all the accused persons i.e., Dr. Sanjay Malik and the three women accused, were seized by the investigating agency.

23. It is observed that during the investigation, it was found out that Dr. Sanjay Malik contacted the applicant herein for arranging a needy family for selling the baby girl and has accordingly, forwarded the video and requisite documents to the applicant. It further came to the knowledge of the investigating agency that the applicant herein faced difficulty in selling the said baby girl, who was born to Ms. Rehnuma, to a Muslim community family and therefore, changed the names of the parents of the said baby girl to those belonging to Hindu community so as to sell the baby within a considerable period of time.

24. As per the Status Report, the applicant has forwarded the video of the baby girl as well as the requisite documents from his mobile phone to the three women co-accused. However, the applicant's mobile phone was not



recovered by the investigating agency as the same was destroyed by the applicant.

25. At this juncture, this Court has also perused the charges levelled against the applicant and is of the view that they are serious in nature. Moreover, as per the Status Report, the applicant played a significant role in commission of the offence by managing to forge the documents of the newborn baby in order to sell her in the market. This Court has also taken into consideration that the applicant is involved in other similar nature of cases and has been declared a PO.

26. Therefore, taking into account the foregoing discussion alongwith the seriousness of the offence, alleged role played by the applicant and law laid by the Hon'ble Supreme Court, this Court is not inclined to grant regular bail to the applicant.

27. Accordingly, the instant application, being devoid of any merit, is dismissed along with the other pending applications, if any.

28. It is made clear that the observations made herein, touching upon the merits of the case, are purely for the purpose of deciding the question of granting regular bail to the applicant, which shall not be construed as an expression of observations on the merits of the case.

CHANDRA DHARI SINGH, J

DECEMBER 16, 2024
gs/mk

Click here to check corrigendum, if any