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

Date of decision: 11<sup>th</sup> SEPTEMBER, 2024

IN THE MATTER OF:

+ **BAIL APPLN. 3160/2024**

**SHANKAR HIRACHAND KADAM**

.....Petitioner

Through: Mr. Jitendra Kumar Singh and Mr.  
Manish Kumar, Advocates.

versus

**THE STATE OF NCT DELHI (THROUGH SHO HAUZ KHASH) &  
ANR.**

.....Respondents

Through: Mr. Shoaib Haider, APP for the State.  
SI Anju, PS Hauz Khas

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT (ORAL)**

1. Petitioner has approached this Court seeking bail in FIR No.277/2023, dated 25.07.2023, registered at Police Station Hauz Khas, for offences under Section 376 IPC and Section 6 of the POCSO Act.
2. The present FIR was registered on the complaint of the Prosecutrix, who is the step-daughter of the Petitioner herein. In the complaint it was stated by the Prosecutrix that she lives in a rented house along with her mother, the Petitioner herein and her younger brother. It is stated that the mother of the Prosecutrix works as a house help and his step-father works in a mobile shop. In the complaint the Prosecutrix further stated that she is a student of class 6<sup>th</sup> and was about 13 years old at the time of the incident. It is stated that about 4-5 days prior to the registration of the FIR, the mother



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of the Prosecutrix was not at home. It is stated that the Prosecutrix asked the Petitioner herein to give her mobile phone to which the Petitioner herein asked the Prosecutrix to let him touch her and then only he will give her the mobile phone. It is stated that in spite of saying no, the Petitioner herein touched the Prosecutrix inappropriately and then removed his clothes and the clothes of the Prosecutrix and raped her. It is stated that the Petitioner herein has raped the Prosecutrix multiple times. It is stated that due to fear, the Prosecutrix did not tell about the incident to anyone. However, the Prosecutrix told about the incident to her mother on 25.07.2023 and the present FIR was registered.

3. The Prosecutrix was sent to the AIIMS for medical examination wherein she reiterated that the Petitioner herein used to sexually abuse her. Statements of the Prosecutrix was recorded under Section 161 Cr.P.C wherein she stated that her mother had gone to work five days ago when her father closed the doors and pulled her towards him and took her clothes off and raped her. It is stated that after committing rape, the Petitioner herein asked the Prosecutrix to wash off the bed sheet and gave her a pink tablet to eat. It is stated that thereafter, the Petitioner went to work. It is stated that when the mother of the Prosecutrix returned home, she enquired about the wet bed-sheet and asked the Prosecutrix if the Petitioner has done anything with her to which the Prosecutrix lied to her mother. However, the brother of the Prosecutrix told her mother about the incident. It is stated that when confronted, the Prosecutrix told everything to her mother and the FIR was lodged.

4. The Petitioner was arrested on 26.07.2023.

5. Statement of the Prosecutrix under Section 164 Cr.P.C was recorded



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wherein she corroborated the allegations. Charge-sheet has been filed against the Petitioner on 22.09.2023.

6. Petitioner filed an application for grant of bail before the learned Additional Sessions Judge, Saket Courts and the same was dismissed *vide* Order dated 23.04.2023.

7. Charges have been framed against the Petitioner for offences under Sections 354A-354B/376(2)(f)/376AB IPC and Sections 6 & 10 POCSO Act.

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

9. 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 26.07.2023. He states that the Prosecutrix has already been examined and there is no apprehension of the Petitioner influencing the witnesses or tampering with evidence. He states that the mother of the prosecutrix has turned hostile and has not supported the case of the prosecution. He, therefore, states that the Petitioner be released on bail.

10. *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, if convicted, the Petitioner can be sentenced to life imprisonment and, therefore, the chances of the Petitioner fleeing from justice and tampering with evidence cannot be ruled out.

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

12. 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;*

*(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 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] .)”*

13. 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.

14. The facts of the case reveal that the Petitioner, who is the step-father



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of the Prosecutrix, is accused of raping the Prosecutrix multiple times in their rented home while the mother of the Prosecutrix was away. The prosecutrix, who is a minor, initially concealed the abuse due to fear but eventually disclosed it to her mother and the present FIR got registered. The Prosecutrix has been consistent in all her statements and, therefore, there is a *prima facie* ground to believe that the Petitioner has committed the offence.

15. Petitioner is accused of multiple counts of sexual assault and rape against her own minor step-daughter which according to this Court is a very heinous crime. Upon conviction, the Petitioner can be sentenced minimum upto 20 years rigorous imprisonment which may extend upto imprisonment for life and, therefore, the chances of the Petitioner fleeing from justice cannot be ruled out. This Court cannot ignore the fact that the Petitioner is the step-father of the Prosecutrix and if released on bail, there are high chances of the Petitioner threatening the witnesses, more particularly when the mother of the Prosecutrix has turned hostile. 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.

16. This Court vide Judgment dated 28.08.2024 passed in **BAIL APPLN. 2/2024** in the case of Sabib vs. The State Govt of NCT of Delhi has observed as under:

*“14. POCSO Act has been brought to protect the children from sexual assault, harassment and exploitation. In Eera through Dr. Manjula Krippendorf v. State NCT of Delhi and another, (2017) 15 SCC 133, while remarking on the statement and object of the*



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*POCSO Act, the Apex Court has observed as under:*

*“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 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.”*

*(emphasis supplied)*

15. In view of the above, granting bail to the



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*Petitioner, who is accused of committing the offence on her own daughter, 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 is 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.”*

The aforesaid observations apply directly to the present case as well.

17. Considering the gravity of the offence and taking into account the fact that the Prosecutrix, who is the step-daughter of the Petitioner herein, was around 13 years old at the time of the incident and there is a reasonable ground to believe that the Petitioner has committed the offence and can threaten or cause harassment to the prosecutrix, if enlarged on bail, this Court is not inclined to grant bail to the Petitioner at this juncture.

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

**SUBRAMONIUM PRASAD, J**

**SEPTEMBER 11, 2024**

*Rahul*