



2024:DHC:6864



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

Date of decision: 28th AUGUST, 2024

IN THE MATTER OF:

+ **BAIL APPLN. 2/2024**

SABIB

.....Petitioner

Through: Mr. Sheel Pathak, Advocate.

versus

THE STATE GOVT OF NCT OF DELHIRespondent

Through: Mr. Tarang Srivastava, APP for the State.

Ms. Urvashi Jain, Advocate for Complainant (Hemant Singh)

SI Madhuri, PS P. P. Pur and SI Ankita, PS Safdarjung Enclave

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court seeking Bail in FIR No.250/2023, dated 12.08.2023, registered at Police Station Pul Prahlad Pur for offences under Sections 376/366 IPC and Section 6 of the POCSO Act.
2. The facts of the case discloses that the said FIR was lodged on the complaint of the mother of the victim, who stated that she got married to the Petitioner herein on 27.10.2013 and out of the said wedlock she has one daughter, who is about 8 years old and one son, who is about 6 years old. In the complaint it is stated that the Petitioner used to drink and when she used to stop him, he used to beat her. It is stated that several complaints have been filed by the Complainant against her husband and several attempts have been made to resolve the disputes. It is stated that on 11.08.2023 at



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about 11 PM, the Petitioner came home from work and asked the Complainant for dinner. It is stated that the daughter and son of the Complainant were sleeping in one room at that point of time. It is further stated in the complaint that when the Complainant was waiting for the Petitioner with dinner in another room, the son of the Complainant came inside the room and stated that the Petitioner had sent him from the other room. It is stated that when the Complainant went to the other room where her daughter was sleeping, she found that the Petitioner herein has laid the victim on top of him and he had taken out her undergarments. It is stated that the Petitioner has also taken out his undergarments and was trying to insert his private part in the private part of the victim. It is stated that the Complainant took away the victim from the Petitioner and on enquiring from the victim she found that the Petitioner herein used to insert his fingers and his private part in her private parts for the past 5-6 months and he used to cover her mouth with his hands so that she cannot scream. The victim also told her mother, the Complainant, that the Petitioner also used to put his private part in her mouth. On the complaint of the mother of the victim, the present FIR was lodged. The Petitioner was arrested on 13.08.2024.

3. Counselling and medical examination of the victim was conducted at the AIIMS, Delhi, wherein the victim told the doctors that she has been sexually assaulted by the Petitioner herein, who is her father, on multiple occasions since February, 2023 and the Petitioner used to put his private part in the vagina, anus and mouth of the victim. The victim has also stated that the Petitioner also used to put his fingers in the vagina and anus of the victim.

4. Statement of the victim was recorded under Section 164 Cr.P.C



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wherein she reiterated whatever was told by the Complainant to the Police.

5. Charge-sheet has been filed. Petitioner filed applications for grant of bail on two occasions but both the applications have been dismissed by the Trial Court vide Orders dated 16.10.2023 and 24.11.2023. Petitioner has, thereafter, approached this Court by filing the present Petition seeking bail.

6. Learned Counsel for the Petitioner has taken this Court through the MLC of the victim to contend that the genital examination of the child was normal and her hymn was found intact and no injuries have been found in the genitals of the victim. He has also taken this Court through the cross-examination of the victim wherein it is stated that the house had two rooms and the victim, her mother and her brother used to sleep in one room while the Petitioner used to sleep in another room. He contends that since the house was small and the mother of the victim and the victim used to sleep in the same room, it is not possible that the Petitioner to commit the alleged offence. He states that there are matrimonial disputes between the Petitioner and his wife and the entire case has been woven by the Complainant, i.e. the mother of the victim, only to implicate the Petitioner herein. He, therefore, states that the Petitioner be granted bail.

7. *Per contra*, learned APP for the State and the learned Counsel for the Prosecutrix vehemently opposes the bail application on the ground that the Petitioner is accused of committing a very heinous offence under Section 6 of the POCSO on her own daughter and, therefore, he does not deserve any leniency from this Court.

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

9. The parameters to be considered for grant of bail have been succinctly laid down by the Apex Court and the Courts have to see the following



aspects before allowing or rejecting a bail application:

- a. nature and gravity of the charge;
- b. severity of the punishment in case of conviction;
- c. reasonable apprehension of witness being influenced;
- d. prima facie or reasonable ground to believe that the accused had committed the offence;
- e. character, behaviour, means, position and standing of the accused;
- f. danger of justice being thwarted by grant of bail.

(Refer: Ram Govind Upadhyay vs. Sudarshan Singh and Others, (2002) 3 SCC 598 and Prasanta Kumar Sarkar vs. Ashis Chatterjee and Another, (2010) 14 SCC 496)

10. In the present case, the Petitioner is alleged of having committed a very heinous offence on her own daughter.

11. Section 6 of the POCSO Act prescribes the punishment for aggravated penetrative sexual assault and provides for punishment with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of the accused. A person accused of aggravated penetrative sexual assault can also be sentenced to death.

12. Petitioner in the present case is the father of the victim and the acts alleged against the Petitioner comes within the definition of aggravated penetrative sexual assault under Section 5(n) of the POCSO Act. A reading of the complaint given by the Complainant to the Police, the statement given by the victim to the doctors, statement of the victim given to the Magistrate under Section 164 Cr.P.C and deposition of the victim in her cross-



examination shows that the stand of the victim has been consistent. At this juncture, this Court is not examining the excruciating details and the inconsistencies which are pointed out by the learned Counsel for the Petitioner as it will have the effect of affecting the case on either side. This Court only has to see as to whether, *prima facie*, the offence is made out against the Petitioner or not. All the inconsistencies and minute details which are pointed out by the learned Counsel for the Petitioner would be a matter of trial. 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.

13. In light of the above, the argument of the learned Counsel for the Petitioner that the present FIR has been lodged by the Complainant because of matrimonial discord with the Petitioner herein, cannot be accepted by this Court. In the opinion of this Court, a mother would not put the life of her own daughter to jeopardy and make her suffer an investigation and questioned by the Magistrates and Lawyers in Court, only to get even with her husband.

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 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 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



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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

16. With these observations, the petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 28, 2024

Rahul