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

+ **BAIL APPLN. 4/2024**

FAHIM PARVEZ

..... Petitioner

Through: Mr. Rajat Katyal, Mr. Mayank Punia,
Mr. Manu Pratap Singh and Mr. Rahul Sambher,
Advocates

versus

STATE NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Yudhvir Singh Chauhan, APP for
State with SI Omkant Yadav, PS: Hauz Qazi.
Complainant in person.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

15.03.2024

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1. This is an application preferred on behalf of the Applicant Fahim Parvez S/o Lt. Md. Parvez, under Section 439 Cr.P.C. seeking regular bail, in case FIR No.201/2022 dated 16.08.2022 under Section 354 IPC and Section 10 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') registered at PS: Hauz Qazi. Subsequently, Charge Sheet was filed wherein Sections 323/509 IPC were added.
2. Case of the prosecution is that a complaint was received in PS Hauz Qazi by the Complainant, wherein she alleged that on 15.08.2022, her brother-in-law (Devar) took her daughter at the third floor of their house and when they came back, her daughter told her that Applicant attempted inappropriate acts on her. He tried to remove her clothes and touch her



inappropriately on her shoulder and stomach and also forcibly kissed on her cheek. Upon receipt of the complaint, DCW Counsellor was called and counselling of the victim was done. During counselling also, victim narrated the incident to the Counsellor. During investigation, Applicant was arrested on 16.08.2022 and was sent to judicial custody on 17.08.2022. Statement of the victim was recorded under Section 164 Cr.P.C., wherein she corroborated the contents of the complaint. Age of the victim was verified from her first attended school and was found to be 25.08.2013. Therefore, the victim was 9 years old on the date of the incident. After completion of investigation, charge sheet was filed. After the incident, father of the victim expired on 23.11.2022. Charges were framed under Sections 354A/509 IPC and Sections 10/12 of POCSO Act, vide order dated 23.09.2023. Child victim has been examined as PW-1 and the cross-examination is over. Mother of the victim has been examined as PW-2 and Uncle of the child victim has been examined as PW-3.

3. Learned counsel for the Applicant argues that Applicant is innocent and has been falsely implicated on account of a family dispute between Complainant's family and his family relating to share in the property. Even on the date of the alleged incident, a complaint was made by the Complainant on account of a quarrel that had taken place due to misuse of an electricity switch and the complaint is clearly motivated.

4. It is further urged that the alleged offences carry maximum punishment up to 7 years and Applicant is already undergone 01 year 07 months in judicial custody. The guidelines have been laid down by the Supreme Court in *Arnesh Kumar v. State of Bihar and Another*, (2014) 8 SCC 273 and were reiterated by this Court in *Amandeep Singh Johar v.*



State of NCT of Delhi and Another, 2018 SCC OnLine Del 13448. In Satender Kumar Antil v. Central Bureau of Investigation and Another, (2022) 10 SCC 51, the Supreme Court observed that non-compliance of guidelines formulated in *Arnesh Kumar (supra)* will enure to the benefit of the accused in his release on bail.

5. It is contended that there are serious contradictions in the testimony of PW-2, mother of the victim and the statement of PW-1, the victim, both with regard to the time and place of the incident as well as the alleged acts. PW-1 has stated that the Applicant and her mother had acrimonious relationships. Moreover, testimonies of all public witnesses have been recorded and there is no chance of the Applicant tampering with evidence and/or threatening or intimidating material witnesses. Applicant has clean antecedents and was never involved in any other case prior to the present case, which is based on false and motivated allegations.

6. Learned APP strenuously opposes the application on the ground that Applicant is the real uncle (*chacha*) of the victim and father of the victim has expired on 23.11.2022 and prior to the arrest of the Applicant, he and his family were residing in the same house as the victim and the Complainant and thus there is threat to the life and liberty of the Complainant and the victim both. The same concern is voiced by the Complainant, who is present in Court.

7. In response to the opposition by the State and the Complainant, learned counsel for the Applicant undertakes that the Applicant would not reside in the house bearing No.1887, 1st floor, Gali Katra Kaji Bazar, Sirkiwala, Hauz Qazi, Delhi-110006, where he was residing prior to the arrest and would shift residence to another place, but this would be without



prejudice to his rights to contest the civil suit pending between the parties with respect to the shares in the aforementioned property. Applicant will file an affidavit to this effect and will not take a plea subsequently that the present undertaking to shift from the aforementioned property was without his consent and/or knowledge.

8. I have heard learned counsel for the Applicant, learned APP for the State and the Complainant, who is present in person and is identified by the Investigating Officer SI Omkant Yadav, PS: Hauz Qazi.

9. The Applicant has been charged for offences under Sections 354/323/509 IPC and Section 10 of POCSO Act and has been in judicial custody since 16.08.2022. None of the offences, with which the Applicant is charged, carry a punishment of more than 7 years. As per the latest nominal roll, Applicant has undergone 01 year and 07 months in judicial custody. His antecedents are clean and jail conduct is 'satisfactory'. All material public witnesses including the victim, her mother, the Complainant and uncle have been examined. Trial is not likely to conclude in near future. In my view, the Applicant has made out a case for grant of regular bail.

10. Accordingly, it is directed that the Applicant shall be released on regular bail, subject to his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the Trial Court and further subject to the following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court;
- ii. He shall provide his mobile number to the IO concerned and keep the same active at all times and shall not change the number without prior intimation to the IO and the Trial Court;



- iii. He shall furnish his permanent residential address to the concerned IO and shall intimate the IO as well as the Trial Court by filing an affidavit regarding any change in his residential address;
- iv. He shall appear before the Trial Court as and when the matter is taken up for hearing unless exempted by the Trial Court;
- v. He shall not indulge in any criminal activity or contact the victim, her mother or the victim's siblings or any witness and/or any other person associated with the present case in any manner whatsoever;
- vi. He shall report to concerned IO once a month on every third Monday at 2:00 PM; and
- vii. He shall file an affidavit of undertaking before the Trial Court, within one week of his release, undertaking that he will not reside in house bearing No. 1887, 1st floor, Gali Katra Kaji Bazar, Sirkiwala, Hauz Qazi, Delhi-110006 *albeit* it is open to the Applicant to contest any litigation with respect to the said property in the civil Court. The affidavit will also contain undertaking that the Applicant will not reside within 01 km of the residence of the victim and will not contact the victim or the Complainant either in and around the residence or in the school where the victim studies or while she is on her way to the school, in any manner whatsoever. The affidavit shall also contain an undertaking that the Applicant will not take a plea that the undertaking has been given to the Court today without his consent and/or knowledge.



11. It is made clear that if the affidavit is not filed within the timelines granted by the Court and/or the Applicant violates any condition of grant of bail, it would be open to the State and/or the Complainant to file an application for cancellation of the bail. Additionally, the Beat Constable of the area will provide his mobile number to the Complainant and it will be open to her to contact the Beat Constable in case any assistance is required.

12. Nothing stated in this order shall tantamount to an expression on the merits of the case.

13. Application stands disposed of.

14. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

MARCH 15, 2024/kks