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

+ **BAIL APPLN. 26/2024 and CRL.M.A. 173/2024**

SACHIN@SATOO

..... Petitioner

Through: Ms. Swati Verma, Advocate.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Richa Dhawan, APP with SI
Lokendra Singh, PS: Mehrauli, for State.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

03.04.2024

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1. This application has been filed on behalf of the applicant Sachin @ Satoo S/o Dhyan Singh under Section 439 Cr.P.C. seeking regular bail in case FIR No.158/2017 dated 14.03.2017 registered under Section 363 IPC at PS: Mehrauli. Subsequently, Section 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') were added.
2. Status Report has been filed on behalf of the State. Case of the prosecution is that present FIR was registered on a complaint made by father of the victim alleging that on 14.03.2017 at around 07:30 AM, his daughter left the home for dropping his son to the school, but did not return home. He searched for her in the neighbourhood and enquired from the relatives but there was no clue. On 18.03.2017, the victim along with the applicant, aged 22 years were recovered from Haridwar and recovery memo was prepared. Victim was taken for medical examination on 18.03.2017. As per the MLC, victim had taken an auto after dropping her brother and met the applicant,



from where they both left for Haridwar. Marriage was solemnized between the two and they had physical relationship on 14.03.2017 twice and again on 16.03.2017 twice, willingly. As the victim was a minor, aged about 13 years and 10 months at the time of incident, her counselling was done and Section 376 IPC and Section 6 of POCSO Act were invoked.

3. It is further stated in the status report that applicant was arrested on 19.03.2017 and his medical examination was conducted at AIIMS Hospital along with a potency test. Statement of the victim was recorded under Section 164 Cr.P.C., in which she supported her earlier version before the Doctor. Applicant was produced before Court on 20.03.2017 and during two days' police remand, he was taken to Haridwar on 21.03.2017, to verify the register entry of the hotel where he had stayed with the prosecutrix. Register entry confirmed their stay in the hotel and later applicant was remanded to judicial custody. On 20.04.2017, the school pasting file of the victim was taken on record and it was found that her date of birth was 05.05.2003. It is stated that 10 material witnesses have been examined, which include the prosecutrix, her father and other relatives.

4. Learned counsel for the applicant states that applicant is in judicial custody since 19.03.2017 and all material witnesses have been examined. Applicant is a young boy and comes from a very poor family with no criminal antecedents. Both his parents have expired and he has the responsibility of a younger brother and a younger sister. Since material witnesses have been examined, there is no possibility of the applicant tampering with evidence and/or threatening the witnesses.

5. It is further urged that there is a serious discrepancy with respect to the age of the victim. Prosecution has failed to bring on record any cogent



evidence to conclusively prove the age of the victim. The dates of birth mentioned in the School Transfer Certificate, Aadhar Card, statement of the victim under Section 161 Cr.P.C, communication sent by the school, MLC and the statement of the victim under Section 164 Cr.P.C. are at variance with each other. To resolve this material contradiction, summons were sent to the Principal of the school, where the victim allegedly studied, but as per the report filed on behalf of the State before the Trial Court, the school had closed down in 2019 and the Principal has expired. Thus, the correct age of the prosecutrix, on the date of the incident, is itself under suspicion. Case of the prosecution that applicant forcibly took the prosecutrix to Haridwar in a bus, married her at Ganga ghat and took her to a hotel, where he made physical relationships with her, cannot be believed. It is a matter of common knowledge that any public transport, public ghat or a hotel, would be crowded and if the applicant was forcibly taking the prosecutrix, she had enough opportunity and occasions to make noise and seek help, which was admittedly not done, even going by the prosecution case and the evidence led so far. Testimony of PW-7 Vipin Kumar does not inspire confidence. No credible evidence was led to prove the stay of the applicant with the prosecutrix at the hotel either in the form of entry register, tariff payment vouchers, CCTV footage etc. In fact, PW-7 stated in his examination-in-chief that he had made an entry at serial No. 175 on 14.03.2017, when applicant and the prosecutrix came to his hotel and represented themselves to be a married couple, but in the cross-examination, he stated that he had not recorded any entry at serial No. 175 in the register. Thus, there is no primary evidence against the applicant linking him to the alleged offence.



6. Ms. Richa Dhawan, learned APP opposes the application on the ground that the allegations against the applicant are grave and serious. Applicant enticed the prosecutrix, taking advantage of her age and took her to Haridwar and committed rape on her. There is substantial evidence on record in the form of testimony of the prosecutrix, who has supported the prosecution case and it is a settled law that if evidence of the prosecutrix is of a sterling quality, the same can be safely relied upon by the Court without corroboration. Merely because the applicant is a young boy cannot be a ground for granting bail, particularly, when he has committed a heinous crime.

7. Heard learned counsel for the Applicant and learned APP for the State.

8. The offences alleged against the Applicant include Section 6 of the POCSO Act and therefore, in view of the impact of Section 29 of POCSO Act, threshold of satisfaction required is higher. In ***Dharmander Singh v. State (NCT of Delhi), 2020 SCC OnLine Del 1267***, a Co-ordinate Bench of this Court considered the effect of Section 29 of the POCSO Act while deciding the application for bail at the post-charge stage and observed as under:-

“74. As always, when faced with such dilemma, the court must apply the golden principle of balancing rights. In the opinion of this court therefore, at the stage of considering a bail plea after charges have been framed, the impact of section 29 would only be to raise the threshold of satisfaction required before a court grants bail. What this means is that the court would consider the evidence placed by the prosecution along with the charge-sheet, provided it is admissible in law, more favorably for the prosecution and evaluate, though without requiring proof of evidence, whether the evidence so placed is credible or whether it ex facie appears that the evidence will not sustain the weight of guilt.”

(emphasis supplied)



9. The Court also enumerated some of the factors, illustratively, that ought to be considered when deciding a bail application at the post-charge stage, which are as follows:-

“77. Though the heinousness of the offence alleged will beget the length of sentence after trial, in order to give due weightage to the intent and purpose of the Legislature in engrafting section 29 in this special statute to protect children from sexual offences, while deciding a bail plea at the post-charge stage, in addition to the nature and quality of the evidence before it, the court would also factor in certain real life considerations, illustrated below, which would tilt the balance against or in favour of the accused:

- a. the age of the minor victim : the younger the victim, the more heinous the offence alleged;*
- b. the age of the accused : the older the accused, the more heinous the offence alleged;*
- c. the comparative age of the victim and the accused : the more their age difference, the more the element of perversion in the offence alleged;*
- d. the familial relationship, if any, between the victim and the accused : the closer such relationship, the more odious the offence alleged;*
- e. whether the offence alleged involved threat, intimidation, violence and/or brutality;*
- f. the conduct of the accused after the offence, as alleged;*
- g. whether the offence was repeated against the victim; or whether the accused is a repeat offender under the POCSO Act or otherwise;*
- h. whether the victim and the accused are so placed that the accused would have easy access to the victim, if enlarged on bail : the more the access, greater the reservation in granting bail;*
- i. the comparative social standing of the victim and the accused : this would give insight into whether the accused is in a dominating position to subvert the trial;*
- j. whether the offence alleged was perpetrated when the victim and the accused were at an age of innocence : an innocent, though unholy, physical alliance may be looked at with less severity;*
- k. whether it appears there was tacit approval-in-fact, though not consent-in-law, for the offence alleged;*
- l. whether the offence alleged was committed alone or along with other persons, acting in a group or otherwise;*



m. other similar real-life considerations.

78. The above factors are some cardinal considerations, though far from exhaustive, that would guide the court in assessing the egregiousness of the offence alleged; and in deciding which way the balance would tilt. At the end of the day however, considering the myriad facets and nuances of real-life situations, it is impossible to cast in stone all considerations for grant or refusal of bail in light of section 29. The grant or denial of bail will remain, as always, in the subjective satisfaction of a court; except that in view of section 29, when a bail plea is being considered after charges have been framed, the above additional factors should be considered.”

10. There is no doubt that the allegations against the applicant are serious and grave and this Court is also conscious that at this stage, Court cannot enter into appreciation of the evidence led before the Trial Court, but it is equally settled that Court can look into the evidence to take a *prima facie* view if the charge is supported by any evidence. In the instant case, counsel for the applicant has raised a serious doubt on the age of the prosecutrix and the documents placed on record including the testimonies do indicate that the dates of birth of the prosecutrix mentioned in different documents and/or her statements under Sections 161 and 164 Cr.P.C. do not match. There is contradiction in the testimony of PW-7 with regard to the register entry of the applicant and the prosecutrix at the hotel in Haridwar. There is merit in the contention of the applicant that if the applicant was forcibly taking the prosecutrix to Haridwar or if he had kept her in the hotel against her wishes, there was enough opportunity for her to have raised a hue and cry while she was travelling to Haridwar in a crowded bus or was at the Ganga ghat or at the hotel. In the status report, reference is made to the medical examination of the prosecutrix conducted on 18.03.2017, wherein prosecutrix had stated that she had left with her boyfriend for Haridwar on 14.03.2017, where she married him and they had physical relation on 14.03.2017 twice and again



on 16.03.2017 twice, willingly. In the statement under Section 164 Cr.P.C., she reiterated her earlier statement. Thus, it does appear that there was some relationship between the applicant and the prosecutrix before they proceeded to Haridwar. In my considered view, having examined the testimonies of the witnesses, to the limited extent, as mentioned above, applicant has succeeded in crossing the higher threshold required as per the decision of this Court in ***Dharmander Singh (supra)*** and has made out a case for grant of regular bail.

11. Moreover, all material witnesses have been examined including the prosecutrix. Thus, there is no possibility of the applicant tampering with evidence or threatening or intimidating material witnesses. Summons were sent several times to the Principal of the school, where the prosecutrix had studied but the report filed by the State before the Trial Court, pertaining to the summons, shows that the school had closed down in 2019 and the then Principal has expired. Only formal witnesses remain to be examined and the trial is not likely to conclude soon. Nominal roll indicates that applicant has been in custody since 22.03.2017 and he is not involved in any other case. Applicant's jail conduct is 'satisfactory'. In my view, applicant cannot be kept in judicial custody indefinitely when he has already suffered incarceration for more than 07 years.

12. In view of the aforesaid facts and circumstances, it is directed that the applicant be released on bail subject to his furnishing personal bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the Trial Court, of which one surety will be by a person who is permanent resident of Delhi. Release on bail will be 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 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;
 - v. He shall not indulge in any criminal activity or communicate with or contact directly or indirectly the prosecutrix and/or any other prosecution witness; and
 - vi. He shall report to the IO on every third Monday at 11:00 AM.
13. Needless to state that any observation in the present order will not tantamount to expression of opinion on the merits of the case.
14. Bail Application stands disposed of. Pending application also stands disposed of.
15. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

APRIL 03, 2024
B.S. Rohella/shivam