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

+ **CRL.M.C. 7340/2024, CRL.M.A. 28000/2024**

STATE OF NCT OF DELHI

.....Petitioner

Through: Mr. Sanjeev Bhandari, Ld. ASC along with Ld, ASC for State with Ms. Charu Sharma, Mr. Arjit Sharma, Mr. Vaibhav Vats and Mr. Nikunj Bindal, Advocates and with Insp. Sunjay Sharma and Insp. Harpal Singh and SI Nitesh Sharma.

versus

AMANJOT SINGH NARANG

.....Respondent

Through: Mr. Prashant Mendiratta, Mr. Shikhar Sareen, Ms. Somyashree, Ms. Neha Jain and Ms. Aditi Chaudhary, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **17.09.2024**

CRL.M.A. 28001/2024 (Seeking Exemption)

1. Allowed, subject to just exceptions.
2. The application is accordingly disposed of.

CRL.M.C. 7340/2024

3. A Petition under Section 528 BNSS has been filed on behalf of the petitioner seeking quashing of Order dated 24.08.2024 passed by learned ASJ (POCSO), New Delhi in Bail Matter 2343/2024 in FIR No.74/2024 dated 16.07.2024 under Section 376AB IPC and Section 6 POCSO Act, P.S.



Defence Colony, New Delhi.

4. It is submitted that the FIR was registered on 16.07.2024 in which the Statement of the Prosecutrix was recorded on 17.07.2024 and the investigations were initiated to ascertain the age of the victim and collect the requisite documents. The Investigating Officer visited the house of the respondent/accused on 20.07.2024, but he was not found present in his house. On 23.07.2024 on receiving information that he was in Pune, a raid was conducted in Pune, but the respondent was not found there. Thereafter, efforts were made for tracing of the accused, when on 29.07.2024 an approval was sought to open the Look Out Circular and on 30.07.2024 NBWs were issued against the accused.

5. Immediately thereafter, on the next day i.e 31.07.2024 an Anticipatory Bail Application under Section 482 BNSS was filed on behalf of the respondent and Interim protection was granted with directions to join the investigation, vide Order dated 01.08.2024.

6. An issue was raised in regard to maintaining the Anticipatory Bail Application in an offence under Section 376 AB IPC in terms of Section 438(4) CR.P.C. The issue of maintainability was decided on 09.08.2024 by holding that the Anticipatory Bail Application was maintainable.

7. The accused subsequently joined investigations but the I.O observed that he was not cooperating, eventually the Chargesheet has been filed in the Court on 14.09.2024 which is listed today i.e. 17.09.2024 at 02:00 P.M for consideration/cognizance.

8. Learned counsel for the State is aggrieved by the observations made by the Court in its Order dated 24.08.2024 that the Commissioner of Police may transfer the investigations to an independent Agency.



9. Learned counsel has argued that this direction is ambiguous to the extent that the Commissioner of Police is heading the entire Delhi Police and what is intended to imply by the words “Independent Investigating Agency” is not clear as any Agency in the Delhi Police would be under the Supervision of the Commissioner of Police. Once, the Commissioner of Police himself has been directed to monitor the investigations, there cannot be any question on the fairness of the investigations. Moreover, the Complainant has not made any complaint or raised any issue in regard to the independent investigations being carried out by the Delhi Police.

10. Learned counsel on behalf of the State further submits that though the issue of maintainability of the Anticipatory Bail Application in the offence under Section 376AB IPC was challenged by the Complainant and has been considered by the Co-ordinate Bench of this Court in its Order dated 03.09.2024, but it does not restrict the right of the State to challenge the Order dated 09.08.2024 determining the maintainability of the Anticipatory Bail Application, it being a question of law which State intends to challenge in future.

11. **Learned counsel on behalf of respondent** has stated that these issues already stand adjudicated in the two Orders by the Co-ordinate Bench of this Court, as already mentioned above, and there is no merit in the present application. Learned counsel for the respondent has further refuted that he has not joined in the investigations and not cooperated in the investigations.

12. **Submission heard.**

13. Learned Prosecutor on behalf of the State is right in stating that all the Investigating Agencies like DIU, Crime Branch, Special Cell are all headed by the Commissioner of Police and it is not understandable as to what is



intended by “Independent Investigating Agency”. If it is any Agency outside the purview of Delhi Police, then it is either the State Government, Central Government, Supreme Court or the High Court in exercise of the jurisdiction under Article 226 and Article 32 respectively who can so direct the investigations to be carried out by an “Independent Investigating Agency” outside the purview of Delhi Police.

14. It is quite evident from the phraseology used by he learned ASJ in her Order dated 24.08.2024 that by “Independent Investigating Agency” it was intended that if the circumstances so warrant, the investigations may be carried out by any other Agency outside the District Police, which may be DIU, Crime Branch, Special Cell or such other Agency under the Commissioner of Police. Any other interpretation would nullify the Order of the learned ASJ.

15. It is hereby clarified that in any case the Commissioner of Police has no jurisdiction to direct that the investigations be carried out by any Agency outside the purview of Delhi Police.

16. With these observations the present petition is hereby disposed of along with the pending application.

NEENA BANSAL KRISHNA, J

SEPTEMBER 17, 2024/va