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

+ **BAIL APPLN. 3357/2024**

SHIV SHANKAR

.....Petitioner

Through: Mr. Anil Kumar Singh, Adv.

versus

THE STATE GNCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for the State
with SI Sanjeev Lehri, PS: Burari.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

18.10.2024

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1. This petition has been filed seeking regular bail in FIR No. 254/2016, under Sections 376/506/363/302/34 IPC & Sections 4/6 POCSO Act PS Burari, Delhi.
2. As per the Nominal Roll, the petitioner has been in custody since 24th July, 2016 which amounts to about 8 years 2 months of custody. There are no previous involvements. The petitioner has not sought any interim bail in this period of 8 years. The jail conduct has been satisfactory.
3. As per the case of the prosecution, on 17th May, 2016, the mother of victim submitted a complaint against accused persons stating that her daughter was again kidnapped by accused persons on 15th May, 2016. This FIR was registered under Sections 363/506/34 IPC. After investigation, additional Sections 376/302 IPC and Sections 4/6 POCSO Act were added.
4. On 26th May, 2016, victim was taken for medication examination at



Aruna Asaf Ali Hospital, where it is noted that the victim went away from home on 15th May, 2016 and returned home on 26th May, 2016 as told by the patient herself. No history of physical and sexual assault was noted and she refused for gynaecological examination. It was further noted, that no fresh external injuries are seen at the time of the examination. Since the victim refused to go to her parental home, after counselling and medical examination she was kept in *Kilkari Rainbow Home* for the intervening night of 26th & 27th May, 2016. Thereafter, she was produced before the CWC, Mukherjee Nagar but her parents did not appear before the CWC, despite notice. Finally, her parents met her on 31st May, 2016 and she was handed over to the parents. After about a month in June 2016, she was admitted under MLC No.128042 by her father where history of sexual assault was noted. On 08th July, 2016, the IO recoded her statement where she stated that accused persons had kidnapped her and kept her at some unknown place and raped her. Thereafter, her health deteriorated and she failed to recover and passed away on 24th July, 2016.

5. As per the FSL report, on examination of viscera, no poisons, alcohol and other alkaloids etc. could be detected. The *post mortem* report stated that the death had occurred due to septicaemia and delayed complication of some corrosive substance ingestion. Accordingly, Section 302 was also added subsequently.

6. Counsel for the petitioner states that a prior FIR was registered being No.1553/2015 on basis of similar circumstances where the victim had gone away with the petitioner but based on statements of victim, petitioner had been acquitted.

7. As regards the present FIR, he states that the victim had herself refused



to go home with her parents, there was no history of physical and sexual assault recorded on 26th May, 2016 and she had stated herself that she had gone away from home on 15th May, 2016.

8. Further, on 27th May, 2016, her statement under Section 164 Cr.P.C. was recorded stating that she had left on 15th May, 2016 at about 3:00-4:00 P.M., since there were troubles at home and the parents of Shiv Shankar/petitioner had in fact taken her to the police station. However, she states that nothing wrong had happened with her and she wants to close this case.

9. Even before the DLSA Counsellor, the victim did not allege anything against anyone and that was mentioned in the report. It was noted in the report that she needs more cooperation from her parents.

10. It is further pointed out that the parents refused to come and collect the victim but finally on 31st May, 2016, they did so at the insistence of the CWC. The death due to alleged corrosive substance ingestion cannot be attributed to the time that she was allegedly with the petitioner, since that period was in May 2016, whereas she passed away in July 2016.

11. In these circumstances, considering that the material witnesses have already been examined, there would be no purpose for continuing the incarceration of the petitioner who has been in custody for eight years, has not sought any interim bail, has no previous involvements and the statements of the victim (now deceased) seem to suggest that nothing wrong had happened with her and she had gone at her own insistence and will. However, these are issues which will have to be ascertained during trial.

12. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the



petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

13. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

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



necessary compliance.

15. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

16. *Dasti.*

17. Order be uploaded on the website of this Court.

ANISH DAYAL, J

OCTOBER 18, 2024/MK/na