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

Date of decision: 20th SEPTEMBER, 2024

IN THE MATTER OF:

+ **BAIL APPLN. 3396/2024**

SURYA PRAKASH PAL

.....Petitioner

Through: Mr. B.S. Chauhan, Advocate.

versus

STATE GOVT. OF NCT DELHI

.....Respondent

Through: Mr. Shoaib Haider, APP for the State.
SI Umesh Dalal, PS Mundka

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

CRL.M.A. 28450/2024 (Exemption)

Allowed, subject to all just exceptions.

BAIL APPLN. 3396/2024

1. Petitioner has approached this Court seeking bail in FIR No.126/2021, dated 25.02.2021, registered at Police Station Mundka, for offences under Sections 376/34 IPC and Section 6 of the POCSO Act.
2. The said FIR was registered on the Complaint of the victim, who is a child studying in 6th standard. In the complaint the victim has stated that he lives with his parents, who work in a godown in Mundka. The victim has further stated in the complaint that in the evening of 24.02.2021 when he was playing outside the godown, the accused Rahul, who is an egg-seller, asked the victim to play with him. It is stated that the said Rahul took the victim to the bushes nearby where the Petitioner herein was also present. It



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is stated in the complaint that Rahul forcefully committed penetrative sexual assault on the Victim and, thereafter, the Petitioner herein who was present with Rahul took the victim to a truck nearby and he also committed penetrative sexual assault on the Victim. It is further stated in the complaint that when the victim tried to raise an alarm, the Petitioner herein threatened the victim with dire consequences. It is further stated in the complaint that about three days prior to the incident on 24.02.2021 also Rahul had committed penetrative sexual assault on the victim but out of fear he had not disclosed the same to anyone. It is stated that on 24.02.2021, after the assault, when the victim was crying out of pain and when his mother asked him as to why he was crying he told about the incident to his parents and his sister called the Police. The Police took the victim to the hospital and the present FIR was registered.

3. The Petitioner herein and Rahul were arrested on 26.02.2021. Statement of the victim under Section 164 Cr.P.C was recorded wherein he reiterated the contents of the FIR.

4. Charge-sheet for offences under Sections 377/506/34 IPC and Section 6 of the POCSO Act has been filed against the Petitioner and the co-accused.

5. Victim, his parents and his sister have been examined. Rahul, who is a child in conflict with law (CCL) has been sent for trial to Juvenile Justice Board.

6. The Petitioner herein filed an application seeking bail before the Trial Court and the same has been dismissed *vide* Order dated 22.07.2024. Petitioner has, thereafter, approached this Court seeking bail.

7. This Court has gone through the depositions of PW-3, who is the



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father of the victim; PW-4, who is the mother of the victim and PW-5, who is the sister of the victim. In all the three depositions, the witnesses have stated in unison that the victim has reported that the Petitioner herein and co-accused Rahul have committed penetrative sexual assault on the Victim on 24.04.2021. The Petitioner has been identified by the father of the victim.

8. Learned Counsel for the Petitioner states that the Petitioner is in custody since 26.02.2021 and more than three years have passed. He states that all the public witnesses have been examined and, therefore, there is no danger of the Petitioner influencing the witnesses or tampering with evidence and, therefore, no fruitful purpose would be served in keeping the Petitioner in incarceration. He has also taken this Court through certain discrepancies in the statement of the mother and sister of the victim regarding the number of siblings of the victim. Learned Counsel for the Petitioner also states that the Petitioner has old parents to look after and he has two daughters to be taken care of and in view of the fact that all the material witnesses have been examined, the Petitioner be released on bail.

9. Per contra, learned APP for the State opposes the present Bail application contending that the Petitioner is accused of committing a very heinous offence and on conviction the Petitioner can be sentenced for life. He states that there is *prima facie* material against the Petitioner showing that he has committed the offence and, therefore, bail ought not to be granted to the Petitioner.

10. Heard the Counsel for the Petition and the learned APP for the State and perused the material on record.

11. In Ram Govind Upadhyay v. Sudarshan Singh, (2001) 3 SCC 598, the Apex Court explained the factors to be considered for granting bail,



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wherein the Apex Court has held as under:-

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused



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beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.” (emphasis supplied)

12. In Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., **2010 (14) SCC 496**, the Apex Court has observed as under:-

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;



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(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] .]

10. *It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In Masroor [(2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] , a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows : (SCC p. 290, para 13)*

“13. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.”

(See also State of Maharashtra v. Ritesh [(2001) 4 SCC 224 : 2001 SCC (Cri) 671] , Panchanan Mishra



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v. Digambar Mishra [(2005) 3 SCC 143 : 2005 SCC (Cri) 660] , Vijay Kumar v. Narendra [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195] and Anwari Begum v. Sher Mohammad [(2005) 7 SCC 326 : 2005 SCC (Cri) 1669] .)”

13. The aforesaid principles laid down by the Apex Court have been re-stated in several other subsequent judgments, viz., Neeru Yadav v. State of U.P., (2014) 16 SCC 508; Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129 and Mahipal v. Rajesh Kumar, (2020) 2 SCC 118.

14. 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. The Victim, his parents and his sister have stated that the victim has categorically named the Petitioner herein as the person who had committed the offence of penetrative sexual assault on him. On the other hand, the Petitioner has not been able to show anything to the contrary.

15. This Court vide Judgment dated 28.08.2024 passed in **BAIL APPLN. 2/2024** in the case of Sabib vs. The State Govt of NCT of Delhi has observed as under:

“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



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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,



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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 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.”

The aforesaid observations apply directly to the present case as well.

16. Material on record shows that the Trial Court, while hearing the bail application of the Petitioner herein, has interacted with the victim and the victim has opposed the bail of the Petitioner herein. The Petitioner is accused of committing a very heinous offence and the evidence does *prima facie* indicate that the Petitioner has committed the offence. The chances of the Petitioner threatening the witnesses and causing harm to the victim, if released on bail, also cannot be ruled out.

17. Upon conviction, the Petitioner can be sentenced minimum up to 10 years rigorous imprisonment which may extend up to imprisonment for life and, therefore, the chances of the Petitioner fleeing from justice or harming himself cannot be ruled out.

18. In view of the above, the bail application is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 20, 2024

Rahul