



\$~4

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

+ **BAIL APPLN. 3565/2024**

MD ISHRAIL THROUGH PAROKARPetitioner

Through: Mr. A.K. Pathak and Ms. Aarushi
Siwan, Advocates.

versus

STATE NCT OF GOVT. OF DELHI & ANR.Respondents

Through: Mr. Aman Usman, APP for State
with SI Shivali, PS Keshav Puram.
Ms Shivangi, Adv. for Ms. Tara
Narula, Adv. (DHCLSC)

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

%

09.12.2024

1. This petition has been filed seeking regular bail in FIR No.926/2022, registered at P.S Keshav Puram under Sections 376/363/506 IPC & Section 6 of POCSO Act. As per nominal roll, petitioner was arrested on 4th October 2022, and has been in custody for the last 2 years. Petitioner has no previous involvement and his jail conduct has been satisfactory.
2. Case of prosecution is based on a complaint lodged by the complainant on 27th September 2022 regarding missing of her daughter, aged 16 years. Victim was searched but could not be found. On 3rd October 2022, complainant went to the police station along with her daughter and recorded her statement that she was with the petitioner who made forcible physical relations with her.
3. Victim was sent for a medical examination but she refused the same. Pursuant to investigation, a charge sheet was filed; all material witnesses



have been examined including the victim, the mother and the person who had pointed out the place where the petitioner and victim were. 15 witnesses have been arrayed and only 5 witnesses have been examined and official witness are still to be examined.

4. Counsel for petitioner has contended that *firstly*, there is a delay of 27 days in filing the police complaint as the victim went missing on 21st August 2022, complaint was filed only on 27th September 2022 by the mother; *secondly*, victim in her statement recorded under Section 164 Cr.P.C. as also in her testimony (cross-examination) had deposed that she and petitioner were known to each other for the last about 4-5 years; *thirdly*, as per the statement of landlady of the premises where victim and petitioner were staying, she stated that she had given the room to petitioner and the girl (victim) was with him, whom she stated that was his wife and that the girl was quiet and was not talking; *fourthly*, victim on an earlier occasion had fled away from her home without informing anyone and FIR No.573/2020 was registered at P.S Keshav Puram at the behest of her sister; later, it was found that victim had run away by herself; *fifthly*, marriage of victim was fixed by her mother with one Arman, against her wishes and had given Rs.1lakh to him, therefore, victim wanted to escape and sought the help of petitioner who hid her in order to avoid the marriage.

5. On these aspects, petitioner's counsel relies on statements of victim and her mother recorded under Section 164 Cr.P.C. as also the testimony that now stands recorded.

6. Counsel appearing for prosecutrix, however, contends that the victim's testimony is consistent with her statement recorded under Section 164 Cr.P.C., where and states that there is a presumption under Section 29



POCSO which would go against accused-petitioner, as also there is an allegation for an offence under Section 506 IPC of intimidation.

7. She relies on the decision of the Supreme Court in ***X v. State of Rajasthan***, 2024 INSC 909 dated 27th November 2024, and contends that the Supreme Court has observed that grant of bail based on deposition of the victim will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim, and the trial be allowed to reach its conclusion.

8. The said decision of the Supreme Court has been perused and it is noted that in that case the victim was yet to be examined and the mother, who was an eyewitness, had also not been examined. Bail had been granted by the High Court based on inconsistencies in the statement of victim recorded under Section 164 Cr.P.C. The Supreme Court, while considering the overall facts and circumstances, did not disturb the order of the bail granted by the court but directed that the accused would not enter the village where the complainant was residing, till the completion of trial. Accused was asked to furnish a new address to the IO and other conditions were imposed as well.

9. Besides, the Supreme Court in ***Rup Bahadur Magar @ Sanki @Rabin v. The State of West Bengal*** in SLP(Crl) No. 11589/2024, held that bail cannot be denied solely on the ground that the trial can be in a time bound schedule. The Court further emphasized that Courts nor the Supreme Court should not impose time-bound schedules for the completion of trials. Relevant paragraph is extracted as under:

“We have repeatedly observed that while rejecting bail applications, the High Courts are passing the orders directing disposal of trials within a time schedule. Apart from the fact that such directions are contrary to the law laid down by the Constitution Bench in the case of High Court Bar Association, Allahabad vs. State of U.P. & Ors.1,



such orders put undue pressure on the Trial Courts which are already flooded with a lot of work. Unless the factual situation is extraordinary and exceptional, the High Courts should refrain from passing such orders, as held by the Constitution Bench in the aforesaid judgment.”

(emphasis added)

10. In ***Prabhakar Tewari v. State of UP &Anr***, 2020 SCC Online SC 75, the Supreme Court underscored a significant principle in the context of bail applications. The Court elucidated that the gravity and seriousness of the alleged offences, alongside the pendency of criminal cases, cannot solely constitute a basis for the denial of bail. This ruling emphasizes that the mere existence of serious charges and pending cases should not be prejudicially weighed against the accused in deciding bail applications. The Supreme Court's stance reinforces the importance of considering the individual merits of each case and upholding the principles of justice and fairness in the adjudication of bail matters. Relevant paragraph is extracted as under:

“6. In the case of Mahipal Vs. Rajesh Kumar @ Polia &Anr. (Criminal Appeal No.1843 of 2019) decided on 5th December, 2019, a coordinate Bench of this Court has discussed the scope of jurisdiction of the appellate Court in setting aside an order of granting bail. The two key factors for interfering with such an order are non-application of mind on the part of the Court granting bail or the opinion of the Court in granting bail is not borne out from a prima facie view of the evidence on record. In the case of Maulana Mohammed Amir Rashadi vs. State of Uttar Pradesh and Another [(2012) 2 SCC 382], a two Judge Bench of this Court declined to interfere with an order of the High Court granting bail to an accused having considered the factual features of that case.

7. On considering the submissions of the learned counsel for the parties. Having regard to the circumstances of this case, in our opinion, there has



been no wrong or improper exercise of discretion on the part of the High Court in granting bail to the accused. The factors outlined in the case of Mahipal (supra) for testing the legality of an order granting bail are absent in the order impugned. The materials available do not justify arriving at the conclusion that the order impugned suffers from non-application of mind or the reason for granting bail is not borne out from a prima-facie view of the evidence on record. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail..

(emphasis added)

11. Considering overall facts and circumstances of this matter where testimonies of victim and her mother-complainant have been recorded, as well as other material witnesses, and considering that petitioner had been in custody for 2 years, the trial will take time to conclude, and the petitioner has no previous involvements; also taking into account contentions of petitioner's counsel, in particular relating to issue of prior relationship and delay in filing of a missing complaint by the mother, besides other facts and circumstances as noted above, without expressing view on merits of the matter, this Court is of the view that the petitioner is entitled to grant of bail.

12. However, as per the nominal roll, petitioner is a resident of a *Jhuggi* in Keshav Puram / Tri Nagar. The victim lives apparently in the vicinity.

13. Counsel for petitioner states that petitioner shall make arrangements for a different residence which is not proximate to the victim's place of stay.

14. Accordingly, apart from other conditions as detailed below, bail is granted to petitioner subject to additional condition that petitioner will provide his new address to the IO at the time of his release from the jail.



The IO will verify the said address. Further the petitioner will not contact with complainant or prosecutrix or any of their family member, directly or indirectly or will not enter into the vicinity of their residence.

15. 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 as also the new 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 will mark presence physically before the concerned I.O. every first and third Monday of every month at 4p.m. and will be not kept waiting for more than an hour.
- vii. 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.



16. Needless to state, 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.
17. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
18. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.
19. Order be uploaded on the website of this Court.

ANISH DAYAL, J

DECEMBER 9, 2024/sm/tk