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

+ BAIL APPLN. 3708/2024

SHIVAM

....Applicant

Through: Mr. Pritish Sabharwal with
Mr. Sharad Pandey,
Advocates (Through
V.C.).

versus

STATE GOVT OF NCT OF DELHIRespondent

Through: Mr. Naresh Kumar
Chahar, APP for the State.
SI Meetu Yadav (P.S.
G.K.-I).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **14.10.2024**

CRL.M.A. 30808/2024 (exemption from filing certified copies of annexures)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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1. The present application is filed seeking grant of regular bail in FIR No. 413/2020 dated 20.12.2020 registered at Police Station Greater Kailash for offences under Sections 376D/342/34 of the Indian Penal Code, 1860 ('IPC') and for offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').
2. Briefly stated, the prosecution's case is that the victim aged about 16 years, who was employed as a domestic worker, was asked by the co-accused – Sahil, during the night to deliver his jacket. The co-accused was employed at a nearby residence to



the one where the victim worked. After delivering the jacket, the victim accidentally left her earplugs in Sahil's room. Shortly thereafter, Sahil called her again to retrieve the earplugs, and around 11:00 PM, she returned to his room. It was there that the applicant, along with three other co-accused individuals, allegedly, gang-raped the victim.

3. Chargesheet in the present case has been filed for offences under Sections 376D/342/34 of the IPC and under Section 6 of the POCSO Act.

4. The learned counsel for the applicant submits that applicant is innocent and has been falsely implicated in the present case. He submits that there are serious doubts in the version of the statements of the victim in so far as she had not named the applicant specifically for committing the alleged offence.

5. He submits that no DNA report has been placed on record to support the case of the prosecution to establish the fact that the alleged offence had taken place. Furthermore, the oral, vaginal, and vulvar swabs of the victim have all been inconclusive against her allegations.

6. He submits that the prosecutrix had specifically stated that accused – Sahil had tried to sexually abuse her in her MLC on 20.12.2020. She further stated that four other people had tried assaulting her but only accused – Sahil succeeded.

7. He submits that the victim did not name the applicant specifically for committing the alleged offence in her statement recorded under Section 164 of the CrPC.

8. He states that the application filed by the applicant seeking grant of regular bail was dismissed as withdrawn by order dated 13.03.2024 by this Court with the liberty to approach the Court



after exhaustion of 5-6 months. Subsequently, the bail application moved before the learned Trial Court was dismissed by order dated 23.09.2024.

9. He submits that the applicant has been in custody for more than 3 years and no useful purpose will be served in keeping him in further incarceration.

10. *Per Contra*, the learned Additional Public Prosecutor for the State opposed the grant of the bail to the applicant and submits that serious allegations have been levelled against the applicant. He states that only one witness remains to be examined and rest are formal witnesses. He further submits that the prosecution evidence is likely to conclude in 2-3 months.

11. He submits that discrepancy in the complaint and statement of the victim under Section 164 of the CrPC can be explained during the trial.

12. It is undisputed that long period of incarceration of an undertrial prisoner falls foul of Article 21 of the Constitution of India.

13. However, at the same time, it cannot be ignored that punishment prescribed for offences under Section 376D of the IPC is imprisonment for the remainder of life.

14. At the stage of consideration of bail, the Court can only go into the question of the case being *prima facie* established for granting bail. It cannot go into the question of credibility and reliability of the statements of the victim. The same will be tested during trial. Further, no reason has been pointed out to show as to why the victim would falsely implicate the applicant.

15. The bail application filed by the applicant on an earlier occasion was dismissed as withdrawn by order dated 13.03.2024



noting that the trial was likely to conclude within a period of 5 to 6 months.

16. Concededly, the trial has not concluded as yet. However, as stated by the learned Additional Public Prosecutor for the State, the remaining prosecution evidence is likely to be completed within 2 to 3 months.

17. Serious allegations have been made against the applicant, for which the imprisonment is for the remainder of life in the case of conviction.

18. Considering that the trial is at the fag end, granting bail at this stage would jeopardise the trial.

19. Considering the severity of the punishment, the likelihood of the applicant absconding also cannot be ruled out.

20. The bail is essentially sought contending that there are certain discrepancies in the statement given by the prosecutrix at different stages. The benefit of the discrepancies as pointed out, in the opinion of this Court, cannot be granted, at this stage, while considering the application of bail and specially when the trial is likely to conclude in near future.

21. It cannot be ignored that the victim is a child aged about 16 years and as noted above, no worthy reason, at this stage, is forthcoming as to why the applicant would be falsely implicated.

22. In view of the above, this Court does not consider it apposite to entertain the present application when the trial is at a fag end.

23. The petition is disposed of with the aforesaid observations.

AMIT MAHAJAN, J

OCTOBER 14, 2024

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