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

+ **BAIL APPLN. 4004/2024**

ASHIK

.....Petitioner

Through: Mr.Lokesh Kumar Mishra, Mr.
Devansh Sehgal, Mr. Haider Khan
and Mr. Faraz Khan, advts.

versus

STATE (GNCT OF DELHI) AND ANR.

.....Respondents

Through:

Mr.Mukesh Kumar, APP for State
and W/SI Sanju Kumar, PS Pallam
Village.

Mr. (Appearance not given), Adv. for
complainant.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

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19.11.2024

CRL.M.A. 33027/2024 (exemption)

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

BAIL APPLN. 4004/2024

3. Present petition has been filed seeking grant of regular bail in case FIR No.0438/2024 under Section U/s 137(2) BNS at PS Palam Village on the ground that the petitioner is in custody since 22.08.2024. The chargesheet has been filed under Sections 137(2)/65(1) BNS & Section



6/21 of POCSO Act.

4. Learned counsel submits that there are inconsistencies in the statement of the prosecutrix which entitles the petitioner to be admitted to bail. Learned counsel submits that in the statement under Section 164 Cr.P.C. the prosecutrix has not made any allegation against the petitioner. In their statement recorded under Section 164 Cr.P.C. was on 12.08.2024 and in order to frustrate the same the investigation officer recorded the statement of prosecutrix under Section 161 Cr.P.C. on 22.08.2024 wherein the prosecutrix alleged that the petitioner made physical relations with the prosecutrix. Learned counsel submits that the practice of recording the statement under Section 161 Cr.P.C. after the statement under Section 164 Cr.P.C. is totally illegal and unwarranted.
5. Learned APP for the State has opposed the bail application on the ground that the 13 year old minor girl was sexually exploited by the petitioner. Learned APP submits that even at the time of MLC which was prepared on 10.08.2024, when the prosecutrix/victim was recovered it was recorded that the petitioner had sexual intercourse with the victim on 05.08.2024 in a hotel (Mahavir Enclave). Learned APP submits that subsequently statement under Section 161 Cr.P.C. had to be recorded by the Investigation Officer in the peculiar facts and circumstances and there was no intention to frustrate the statement recorded under Section 164 Cr.P.C. Learned APP has also submitted that the FSL report is also pending.
6. Learned counsel for the complainant has also vehemently opposed the bail application. Learned counsel submits that there are glaring



deficiencies in the investigation conducted by the police. It has been submitted that the prosecutrix, who was a minor, had to be accompanied by her guardian at the time of making of the statement or conducting of the medical examination in accordance with law which was not done by the investigation officer.

7. Learned APP submits that even the victim was beaten black and blue by the Investigation Officer. It has also been submitted that the victim was kidnapped in a car and no investigation has been conducted in regard to that. Learned counsel submits that his application for further investigation is pending and there are very serious allegations therefore the bail may not be granted.
8. There is no doubt that in the serious cases and that too particularly in the POCSO, when there are allegations of sexual assault of a minor child, the Court has to be very sensitive and careful while dealing with the question of bail. However, at the same time, the Court has to be cautious and alert about the liberty rights of an individual. The detention during the investigation of the trial cannot be in the form of punitive detention. In the present case, the FIR was lodged on the complaint being made by the mother of the prosecutrix/victim wherein she alleged that her daughter 'A' aged 14 years went to tuition and has not returned home. On 10.08.2024, the victim came to the police station along with one lady Sonia. The medical examination was conducted where the MLC states that the victim had sexual intercourse with her boyfriend on 05.08.2024. However, her statement under Section 164 Cr.P.C. was recorded on 12.08.2024 wherein she stated as under:



IN THE COURT OF MS. ABHILASHA SINGH, JMFC (MAHILA COURT)-01
SOUTH WEST DISTRICT, DWARKA COURTS, NEW DELHI
FIR No. 658/24 PS. Palam Village U/s 137(2) B.N.S. Date: 12/8/24
Statement U/s 183 BNSS of Victim Page No.

महोदय को मंदिर में ही लड़ाई हो गई
जिसमें उन्होंने मुझे 2 चोटें मारीं। मैं गुस्से
में था कि मैंने उसे 2 चोटें - 2 Mahavir Enclave
में मारीं। मैं गुस्से में था कि मैंने उसे 2 चोटें
मारीं। मैंने गुस्से में ही उसे मारा। मैंने उसे
Park में गुम्बद्वारा तो Park में ही
मारीं। मैंने सगरपुरा में ही मारीं। एक अन्य
महोदय 2 मुझे Police Station चले गए।

RO & AC

(ABHILASHA SINGH)
JMFC (Mahila Court)-01/SW/Dwarka Courts
South West District, Court No. 313
Dwarka Courts, New Delhi

It is also necessary to reproduce the proceedings conducted by Ld. JMFC, Mahila Court-01, South West District, Dwarka Courts, New Delhi.



प्राथमिक अदालत, नया पंच, ५१
Judicial Magistrate, First Class
बलिया-पंचमण्डल, कोर्ट नं. ३१३
South-West District, Court No. 313
हनुका बाजार, नई दिल्ली
Dwarka Courts, New Delhi

The Order is downloaded from the DHC Server on 21/11/2024 at 12:18:12



recorded correctly and in accordance with the procedure is a matter of trial which has to be seen by the Ld. Trial Court. However, this Court fully endorses the submissions of learned counsel for the petitioner that the practice of recording statement under Section 161 Cr.P.C. by the IO after the recording statement under Section 164 Cr.P.C. cannot be approved except in the exceptional circumstances.

11. As far as the allegations which have been made by the learned counsel for the complainant and the fact that further investigation is required to be conducted, this Court would insist upon the Investigation Officer to conduct the fair investigation swiftly in accordance with the law. If any new material surfaces the state or the complainant will always have a right to move an appropriate application for cancellation of bail.
12. In the facts and circumstances, the petitioner is admitted to bail on furnishing a personal bond of Rs. 20,000/- with one surety of the like amount to the satisfaction of the concerned learned trial court, subject to the verification of address and subject to the following further conditions:
 - a) the Petitioner shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
 - b) the Petitioner shall not directly or indirectly make any inducement, threat or promise to prosecutrix/victim or any person acquainted with the facts of the case;
 - c) the Petitioner shall provide his/her mobile number(s) to the Investigating Officer and keep it operational;



- d) In case of change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

13. The application stands dispose of.

DINESH KUMAR SHARMA, J

NOVEMBER 19, 2024
RB/AR/KR..