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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 4803/2024

MANISH TANWAR

.....Applicant

Through: Mr. Hari Krishan and Mr.
Prashant Kumar, Advs.

versus

THE STATE GOVT. OF NCT OF DELHIRespondent

Through: Mr. Rajkumar, APP for the
State with W/SI Soni Lal,
PS Nabi Karim Delhi.
Mr. Girish Kumar, Adv.
for the complainant /
victim.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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24.12.2024

CRL.M.A. 39155/2024 (exemption from filing certified copies of annexures)

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

BAIL APPLN. 4803/2024

3. The present application is filed seeking pre-arrest bail in FIR No. 454/2024 dated 30.11.2024, registered at Police Station Nabi Karim, for offences under Sections 74/75/351(3) of the Bharatiya Nyaya Sanhita, 2023 ('BNS') and Section 8 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').
4. The brief facts of the case as per the allegations are that the prosecutrix had approached her acquaintance in relation to her



poor financial condition, who ~~me~~ gave her the contact number of the applicant. When the prosecutrix called the applicant, he called her to his residence. On 30.11.2024, at around 9:30AM, when the prosecutrix reached the residence of the applicant, he allegedly told her that he will get her a job but asked as to what she could do for him. It is alleged that the prosecutrix told the applicant that she was still a minor, however, the applicant pulled her towards him forcibly, hit her chest and also touched her private parts. When the prosecutrix objected to the same, the applicant threatened her with dire harm.

5. The victim in her statement under Section 183 of the Bharatiya Nyaya Suraksha Sanhita, 2023 ('BNSS') reiterated the allegations and further stated that the applicant had inserted his finger in her private parts. Pursuant to the same, Section 64 of the BNS and Section 4 of the POCSO Act were added to the case.

6. The learned counsel for the applicant submits that the applicant is innocent and he has been falsely implicated in the present case at the instance of some *gundas* of the area, namely, Deenu and Ravinder, due to some personal animosity. He submits that the prosecutrix is related to the said Ravinder.

7. He submits that the incident is alleged to have taken place in the morning, however, the FIR was registered late at night at the instance of the prosecutrix.

8. He submits that the place of incident is alleged to be the residence of the applicant where he lives with his entire family and it is implausible that such an incident happened there in broad daylight.

9. He further submits that the CCTV Footage obtained by the prosecution is out of the area and not the relevant *gali*.



10. He submits that the applicant did not receive any notice under Section 38 (2) of the BNSS.

11. *Per contra*, the learned Additional Public Prosecutor ('APP') for the State vehemently opposes the grant of any relief to the applicant. He submits that the offence as alleged against the applicant is grave in nature and the applicant has never joined the investigation.

12. He submits that there is CCTV footage that shows the victim running from the house of the applicant.

13. He further submits that the case is still at a nascent stage and the applicant is not joining the investigation.

14. I have heard the counsel and perused the record.

15. The considerations governing the grant of pre-arrest bail are materially different than those to be considered while adjudicating application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation is carried out by the investigating agency.

16. It is trite law that the power to grant a pre-arrest bail under Section 482 of the BNSS is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of ***State of A.P. v. Bimal Krishna Kundu : (1997) 8 SCC 104***, held as under:

"8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

"5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency



of the appeal.”

9. Similar observations have been made by us in a recent judgment in *State v. Anil Sharma* [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

“The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.”

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”

17. It is the case of the prosecution that the applicant called the prosecutrix, who is a minor, to his residence under the guise of helping her secure a job, and thereafter, he sexually assaulted her and inserted his finger in her private part as well.

18. It is argued on behalf of the applicant that he has been falsely implicated due to some prior animosity and the FIR was registered belatedly at around 11:30PM even though the incident as alleged took place at around 9:30AM. It is also stated that there is no CCTV footage of the *gali*.

19. On the other hand, the learned APP states that the CCTV



Footage establishes the presence of the prosecutrix at the place of incidence. He has stressed that the prosecutrix has reiterated the allegations in her statement under Section 183 of the BNSS.

20. While the allegations and defences would be seen by the learned Trial Court, however, it cannot be ignored that the investigation is at a nascent stage in the present case.

21. Insofar as the bald averment regarding the applicant having been falsely implicated is concerned, at this stage, it cannot be presumed that the investigation is being carried out with the intention to injure or humiliate the applicant. Serious allegations have been made by a minor girl against the applicant which attracts stringent provisions of POCSO Act.

22. The nature and gravity of allegations are serious. The Investigating Agency needs to be given a fair play in the joints to investigate the matter in the manner they deem appropriate.

23. The learned APP, on instructions, has also stated that the applicant has not jointed the investigation in the present case. In such circumstances, the investigation ought not to be curtailed by passing an order granting pre-arrest bail.

24. The relief of pre-arrest bail is a legal safeguard intended to protect individuals from potential misuse of power of arrest. It plays a crucial tool in preventing harassment and unjust detention of innocent persons. However, the court must carefully balance the individual's right to liberty with the interests of justice. While the presumption of innocence and the right to liberty are fundamental principles of law, they must be considered in conjunction with the gravity of the offence, its societal impact, and the need for a comprehensive and unobstructed investigation.

25. It is also settled law that the custodial interrogation is



qualitatively more elicitation preferred than questioning a suspect who is well ensconced with a favourable order of pre-arrest bail [Ref. ***State v. Anil Sharma : (1997) 7 SCC 187***]. Granting pre-arrest bail to the applicant would undoubtedly impede the investigation. An order of bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

26. Considering the facts and circumstances of this case, this court is not inclined to grant pre-arrest bail to the applicant at this juncture.

27. The application is therefore dismissed.

28. It is made clear that the observations made in the present case are only for the purpose of considering the bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

DECEMBER 24, 2024