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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 79/2025 & CRL.M.A. 550/2025

SHUAIB KHAN

.....Applicant

Through: Mr. Mohd. Suza Faisal and
Mr. Mohd. Kashif, Advs.

versus

STATE OF NCT DELHI

.....Respondent

Through: Mr. Ritesh Kumar Bahri,
APP for the State with SI
Nikita, PS Bhajanpura.
Ms. Sunita Arora, Adv.
(DHCLSC) for the victim
along with the victim /
complainant in person.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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29.04.2025

1. The present application is filed seeking grant of regular bail in FIR No. 591/2019 dated 15.11.2019 registered at Police Station Bhajan Pura for offences under Sections 376/506 of the Indian Penal Code, 1860 ('IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO').

2. The FIR was registered on a complaint given by the prosecutrix. It is alleged that on 06.11.2019 when the mother of the prosecutrix had gone to Rampur, the applicant who is stated to be the step father of the prosecutrix, forcibly established sexual relations with the prosecutrix, and also threatened her of dire consequences should she disclose the same to anyone. It is alleged that thereafter on 07.11.2019 as well, the applicant attempted to forcefully establish sexual relations with the

BAIL APPLN. 79/2025

Page 1 of 5



prosecutrix.

3. The present case was initially registered under the provisions of POCSO. However, upon a conduction of enquiry, the learned Trial Court *vide* order dated 31.05.2024 concluded that the prosecutrix was not a child at the time when the alleged offence was committed.

4. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that there exist several contradictions in the statement of the prosecutrix including contradictions in relation to the time period during which the alleged incident occurred. He submits that the applicant has been languishing in custody since 16.11.2019 and the trial is not proceeding. He submits that the trial would take a considerable period of time, and prays that the applicant be enlarged on bail.

5. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that the allegations against the applicant are grave in nature. He submits that the prosecutrix, in her complaint and her statement under Section 164 of the Code of Criminal Procedure, 1973 ('CrPC') specifically alleged that she was sexually assaulted by the applicant. He submits that the allegations made by the prosecutrix have been duly corroborated by her mother. He consequently prays that considering the gravity and nature of the offence and in view of the specific allegations against the applicant, the present application be dismissed.

6. I have heard the counsels and perused the material on record.

7. It is settled law that the Court, while considering the



application for grant of bail, ~~was to~~ keep certain factors in mind, such as: (i) the nature or gravity of the offense; (ii) the character of the evidence and circumstances unique to the accused; (iii) the likelihood of the accused evading justice; (iv) the potential impact of the release on prosecution witnesses and its societal repercussions; and (v) the probability of the accused engaging in tampering.

8. It has been held in a catena of judgments that while considering an application of the accused seeking bail, the Court would not be justified in going into evidence on record at such depth so as to ascertain probability of conviction of the accused as the same is a matter of trial.

9. The grant of bail should not be arbitrary or whimsical. Being conscious of the fact that individual liberty holds immense significance, it is incumbent upon the Courts to examine and evaluate, albeit briefly, factors such as the *prima facie* case, the nature and severity of the crime and the accused's likelihood to tamper with evidence, among other considerations as noted above.

10. In the present case, the allegation against the applicant is that the applicant being the step father of the prosecutrix forcibly entered into sexual relations with the prosecutrix on several occasions.

11. The learned counsel for the applicant contends that there exist certain discrepancies in relation to the time period during which the alleged incident was committed. It has been contended that on one hand it is the case of the prosecution that the alleged incident took place in the year 2019, however, on the other hand upon the examination of the prosecutrix as a court witness, she stated that she did not remember the date or year when the first



incident of rape was committed, and that she also stated that the first incident took place 3 years ago. It is further pointed out that in her examination in chief, the prosecutrix stated that the first incident of rape was allegedly committed in the year 2018. It has been contended that the prosecutrix has given different versions in relation to the time period during which the applicant allegedly committed the offence. It is the contention of the learned counsel for the applicant that the benefit of such discrepancies should be afforded to the applicant.

12. It is pertinent to note that the Hon'ble Apex Court in several judgements has cautioned against delving into the question of credibility/reliability of the witnesses at the stage of grant of bail. In the present case, the allegations against the applicant *prima facie* are serious in nature. From a perusal of the FIR, the statement of the prosecutrix under Section 164 of the CrPC and her evidence, it is apparent that the prosecutrix has categorically alleged that the applicant had sexually assaulted her. Further, the mother of the prosecutrix has also supported the case of the prosecution. Minor discrepancies in the statement of the prosecutrix in relation to the time period during which the alleged incident was committed is a subject matter of trial and would be considered at the stage of final arguments. The same, in the opinion of this Court, cannot be made a ground to enlarge the applicant on bail at this stage.

13. It has further been contended that the applicant has been languishing in custody for the last more than 5 years, and that the trial has unduly been delayed. On being pointedly asked, it is informed that the trial has been proceeding in a speedy manner, and that 7 out of 14 witnesses have already been examined. Thus, in the opinion of this Court, it cannot, at this stage, be presumed



that the trial will not conclude in a timely manner.

14. It is pertinent to mention that while deciding the question of bail, 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 and its impact on society.

15. Accordingly, taking into account the submissions made by the learned counsel for the parties, and material available on record, this Court is of considered opinion that *prima facie*, there are serious allegations against the applicant which at this stage cannot be said to be without any material.

16. Therefore, considering the gravity of the offence and the facts as discussed above, this court is not inclined to grant bail to the applicant at this juncture.

17. The learned Trial Court is requested to expedite the trial and conclude the examination of witnesses to ensure that justice is served in a timely manner.

18. 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.

19. In view of the above, the present bail application is dismissed. Pending application also stands disposed of.

AMIT MAHAJAN, J

APRIL 29, 2025