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

+ **BAIL APPLN. 1373/2024**

WASIF

.....Petitioner

Through: Mr. Jitendra Sethi, Senior Advocate
with Mr. Hemant Gulati and Mr.
Shobit Dimri, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh, APP for the
State.
SI Surabhi Upadhyay, PS Sarita Vihar.
Mr. Harsh Prabhakar (DHCLSC) with
Mr. Anirudh Tanwar, Advocates for
victim alongwith father of the
survivor.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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13.02.2025

1. This hearing has been done through hybrid mode.
2. The present application under Section 439 of the CrPC has been filed seeking regular bail in case FIR No. 576/2023, under Sections 354A/342/506 of the IPC and Section 10 of the POCSO Act, 2012, registered at PS Sarita Vihar.
3. The case of the prosecution against the present applicant, as per the status report dated 11.12.2024 authored by Inspector Jeet Singh, SHO, PS Sarita Vihar, is as under: -

“1. It is most humbly submitted that on 09/11/ 2023, a PCR call vide DD no 112A, regarding Jasola Vihar pocket 12 LIG flats age 11 years, Aam Aadmi party Se Lok Sabha Adyaksha Rajesh Rana Ne Bataya ki 11 Saal ki bachi ke saath sexual assault karni ki koshish ki hai or thane wale



complaint nahi likh rhe hain."was received in PS Sarita Vihar.

2. After receiving the said call IO/ASI Ramesh Chand reached at Pocket 12, Jasola Vihar, New Delhi, wherein complainant Mr NK stated that on evening of 9/11/2023, her daughter V" age 10 years went to park Pocket 12, Jasola Vihar, New Delhi, where she met accused Wasif s/o Wasir Ahmcd who had threatened her daughter and had taken her at his House No.244 A, pocket 12 Jasola Vihar, New Delhi, where accused Wasif molested her. Complainant also stated that earlier the accused tried to give money to her daughter, but she had never taken it from him.

3. As per content of the complaint, the present case was registered under section 354A/342/506 IPC and 10 POCSO Act. Medical examination of the victim was done from AIIMS Hospital vide MLC No. 8015/2023. On 10.11.2023 statement u/s 164 CrPC of the victim was got recorded . On 10/11/ 2023. ASI Ramesh Chand arrested accused Wasif S/o Wasir Ahmad and after medical examination the same was produced before the Hon'ble Court and sent to JC.

4. During investigation, CCTV camera was found to be installed in front of the Park Pocket 12 from where the accused has taken the victim. A notice u/s 91 CrPC was served to PWD office ITO, New Delhi to provide the CCTV footage and after analysing the CCTV footage, It has been seen that on 9/11/2023 at 6:52 pm, the accused is going from there towards his home and victim is also following him."

4. Learned Senior Counsel appearing on behalf of the applicant submits that as per the FIR which was registered on the complaint of survivor's father, it is stated that on 09.11.2023 at about 07:30 PM, the present applicant had enticed his daughter and taken her to his flat bearing No. 244A pocket 12 Jasola Vihar, New Delhi and tried to molest her and when the survivor resisted by making hue and cry, neighbours saved her and handed over the present applicant to the police. It is further stated in the complaint that earlier also the applicant had tried to entice the survivor by trying to give her money. It was further alleged that when the survivor refused to take money, he used to threaten her of dire consequences. It is pointed out that during his examination before the learned Trial Court the father of the survivor (PW-2) has narrated a different story, wherein he had stated that in the night of 09.11.2023 when



he came back from office, he saw his daughter crying and his wife trying to console her. He further stated that his daughter had informed him that the applicant had met her in the park where she was playing and after pressing her mouth with his hands took her to his room from the back passage of the colony. The flat number stated by the PW-2 in his testimony recorded before the learned Trial Court was 344 A LIG Flats, Jasola Vihar, New Delhi. He further stated that thereafter he alongwith his wife and daughter (survivor) went to the address told by the latter and found the flat to be locked. On enquiry being made from the neighbours, it was told that four boys were residing in the said flat as tenants. It is further recorded that while they were standing outside the flat, the present applicant came-by and his daughter (survivor) started shivering and after seeing him, she pointed out towards him as the person who had committed the alleged act on her. It was further stated that the applicant was apprehended by the public persons who gathered at the spot, and thereafter, he was handed over to the police. It is submitted that the aforesaid two versions of PW-2 are at complete variance to each other.

5. It is pointed out that the location where the alleged act has been committed has never been investigated. Attention of this Court was drawn to the site plan prepared by the Investigating Officer, which just shows 'Point A' to be the place where the alleged act was committed, however, no address or any other detail was mentioned therein. It is pointed out that, as per the personal search memo and arrest memo, the applicant has been shown as a resident of House No. 17-A, Pocket-12, DDA Flats, Jasola Vihar, New Delhi. Learned Senior Counsel has further submitted that the site plan prepared by the Investigating Officer was not at the instance of the survivor or the complainant. Learned Senior Counsel has then pointed out that in her



statement under Section 164 of the CrPC, the survivor has not made any allegations with respect to provision of Section 10 of the POCSO Act. The statement under Section 164 of the CrPC of the survivor was recorded on 10.11.2023 which does not state anything about the concerned person either touching her breasts or lifting her shirt as the case has been made out in the chargesheet. English translation of the statement of the survivor under Section 164 of the CrPC reads thus: -

“Yesterday at about 6.30 I was going to the Park alongwith my friends and for taking a break from there I went for drinking water. There one Uncle came and he put his hand on my mouth and caught hold of my hand and put me towards his flat to deserted street. He closed the main door as there were 2 doors. He took me in a middle room and he took a Machine on my back from which a sound of Beep came. Thereafter he gave me Rs.200 and told me not to disclose to anyone; otherwise he will kill me. When I started weeping, he let me go and thereafter I went to my house.”

6. It is submitted that even the machine which was alleged to be applied on the waist (back) of the survivor has not been recovered. It is further strenuously argued that the location of the alleged offence has never been investigated. It has further been argued that CCTV footage placed on record by the prosecution shows the survivor was following a person who has not been identified. Attention of this Court was drawn to the Court observation made by the learned Trial Court on 20.08.2024 during the recording of statement of survivor/PW-1 wherein it has been recorded as under: -

“Court observation: Neither the face of victim nor the fact of accused is visible in the segment which is played i.e. from segment 18:52:32 to 18:52:37. Witness after seeing the footage, witness identifies herself as the child seeking walking behind the accused in the footage”

7. It is further submitted that the material witnesses, i.e., survivor/PW-1,



her father/PW-2 and her mother/PW-3, have been examined and prosecution has cited 30 witnesses. It is pointed out that the applicant has been in custody since 10.11.2023 and no useful purpose will be served by keeping him in further custody, and therefore, bail may be granted.

8. *Per contra*, learned APP for the State, assisted by learned counsel appearing on behalf of the survivor, has submitted that prior to recording of the statement of the survivor under Section 164 of the CrPC, she was taken for medical examination and in her MLC, the allegations with respect to the sexual assault by being touched on her back (waist) with some vibrating instruments and touching her breasts “above clothes” have been mentioned. It is further submitted that considering the age of the survivor who was ten-year-old, this discrepancy should not be given much weightage. It is further submitted that so far as the identity of the present applicant is concerned, the survivor has clearly identified the applicant during her testimony recorded before the learned Trial Court, and therefore, any discrepancy in the investigation with respect to the spot of the alleged incident will not be a material defect. It is further submitted that CCTV footage showing the survivor following a person also corroborates the case of the prosecution.

9. Heard learned counsel for the parties and perused the record.

10. Admittedly, the case of the prosecution from the inception had been that the incident had occurred at Flat No. 244 A pocket 12 Jasola Vihar, New Delhi and number of the said house has been mentioned as 344A LIG Flats, Jasola Vihar, Delhi in the testimony of the PW-2. However, the fact remains that the site plan is totally silent with respect to the location of the spot where the alleged incident took place. The applicant as per the prosecution itself has been shown as a resident of House No. 17-A, Pocket-12, DDA Flats, Jasola



Vihar, New Delhi. It is also a matter of record that in the CCTV footage played before the learned Trial Court, the identity of the person whom the survivor is following has not been established. On a pointed query from the Investigating Officer who is present in Court today, it was stated that no machine was recovered which was allegedly applied on the back (waist) of the survivor. The statement of the survivor recorded under Section 164 of the CrPC is at variance with her testimony given before the learned Trial Court as well as statement to the police. The overall effect of these contradictions and variance in the testimony as well as the defects in investigation as pointed out by the learned Senior Counsel is matter of trial which shall be determined by the learned Trial Court after completion of the evidence at appropriate stage.

11. The prosecution has cited 30 witnesses and out of them, only 4 have been examined so far. The applicant has been in custody since 10.11.2023 and is not stated to be involved in any other previous offence.

12. In totality of the facts and circumstances of the present case, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 50,000/- with one surety of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions: -

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
- ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- iii. The applicant shall appear before the learned Trial Court as and



when the matter is taken up for hearing.

iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.

v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.

13. The application is allowed and disposed of accordingly.

14. Pending applications, if any, also stand disposed of.

15. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case and any observations made herein are only for the purpose of the present bail application.

16. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.

17. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

FEBRUARY 13, 2025/sn

[Click here to check corrigendum, if any](#)