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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 4060/2024

PANKAJ

.....Petitioner

Through: Mr.Abhay Kumar, Mr.Surendra
Kumar and Mr.P.C. Jha, Advocates

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr.Nawal Kishore Jha, APP for State
with SI Jyoti, PS Tigri
Mr.Siddhant Kumar, Advocate
(*amicus curiae*) with brother of the
Victim

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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03.02.2025

1. The present petition under Section 439 of the Cr.P.C. has been filed seeking regular Bail in relation to FIR No. 426/2023 under Sections 376/363/328 of the Indian Penal Code, 1860 (IPC) and Section 6 of the POCSO Act registered at Police Station Tigri.
2. Learned counsel appearing on behalf of the petitioner submits that the victim had passed away on 09.12.2024 before her testimony could be recorded. He further submits that the only material available on record is the statement of the victim under Section 164 Cr.P.C. which is not a substantive piece of evidence and the same cannot be considered.
3. He submits that the petitioner is incarcerated since 04.11.2023 and the present matter in absence of any evidence is likely to end in acquittal.
4. He submits that there was an inordinate delay in filing of the FIR inasmuch as the incident took place in July 2023 whereas the FIR came to be registered on 13.10.2023. He further submits that the petitioner has clean



antecedents and he is not a flight risk. It is, therefore, urged that the petitioner may be enlarged on bail.

5. *Per contra*, learned APP for State has argued on the lines of the status report, which is handed over at Bar and is taken on record.

6. Mr. Siddhant Kumar, learned *amicus curiae* appointed by this Court also stated that the victim has passed away and her death has been verified. He fairly submits that apart from the statement of the victim under Section 164 Cr.P.C. there is no other material on record.

7. The brother of the victim is also present in Court and on a query posed by the Court, he states that the family does not wish to prosecute the present case.

8. I have heard the learned counsel for the petitioner and the learned APP assisted by the learned amicus.

9. It is not in dispute that the victim had passed away before her testimony could be recorded. The only incriminating material that is available is in the form of victim's statement under section 164 CrPC. There is substance in the submission of the learned counsel for the petitioner that the conviction cannot be premised on the statement under section 164 CrPC. The law is well settled that a statement recorded under Section 164, Cr.PC., can also be used like a statement under Section 161 Cr.PC, to cross-examine the maker of it and to contradict him.

10. The petitioner is already in custody since 04.11.2023 and no purpose will be served in keeping the petitioner incarcerated. That apart, the brother of the victim has also stated that his family is not interested in prosecuting the present case. It is also not the case of the prosecution that the petitioner is a flight risk.



11. Considering the aforesaid circumstances in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to bail subject to his furnishing a Personal Bond in the sum of Rs. 20,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

12. The petition stands disposed of.

13. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.

14. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

10. Order *dasti* under signatures of the Court Master.

11. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

FEBRUARY 3, 2025/SV