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

+ **BAIL APPLN. 4455/2024, CRL.M.A. 36431/2024**

RAJU

.....Petitioner

Through: Mr. S.R. Kundra and Mr. H.S.
Pilaniya, Advocates.

versus

THE STATE (GOVT OF NCT OF DELHI) AND ANR

.....Respondents

Through: Mr. Sunil Kumar Gautam, APP for
State with Mr. Sandeep Kumar, SI,
PS-PIA.

+ **BAIL APPLN. 4465/2024, CRL.M.A. 36525/2024**

BADAL

.....Petitioner

Through: Mr. S.R. Kundra and Mr. H.S.
Pilaniya, Advocates.

versus

THE STATE (GOVT OF NCT OF DELHI) AND ANR

.....Respondents

Through: Mr. Sunil Kumar Gautam, APP for
State with Mr. Sandeep Kumar, SI,
PS-PIA.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

23.01.2025

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1. The present bail applications have been filed under Section 483 of



Bharatiya Nagarik Suraksha Sanhita, 2023¹ (erstwhile Section 439 Criminal Procedure Code, 1973²), read with Section 528 of BNSS (erstwhile Section 482 of CrPC), seeking grant of regular bail in FIR No. 758/2022 filed under Sections 377 and 34 of Indian Penal Code, 1860³, as well as Sections 4 and 6 of the Protection of Children from Sexual Offences, 2012⁴, registered at P.S. Patparganj Industrial Area, Delhi. Subsequently, on 29th December, 2022, in pursuance of the said FIR, a chargesheet was filed under Sections 377, 323 and 34 of IPC and Sections 4, 6 and 17 of POCSO Act.

2. The case of the prosecution, as mentioned in the Status Report dated 23rd January, 2025, is as follows:

2.1. On 17th November, 2022, a PCR call was received at P.S. Patparganj Industrial Area, which was recorded as DD No. 59 A, wherein the caller informed the police that untoward and wrongful acts were committed by some 3-4 boys against his son. After making the call, the caller, along with his son, came to the concerned police station.

2.2. On inquiry, the victim stated that on 17th November, 2022, at about 7:10 PM, he met Raju, the Applicant in BAIL APPLN. 4455/2024, at C-Block Market, Village-Ghazipur, Delhi. The victim stated that Raju then proceeded to take him to a vacant room nearby. Thereafter, Raju called Badal, the Applicant in BAIL APPLN. 4465/2024, who also lived in the same village. After some time, Badal also reached the room where Raju had taken the victim. Thereafter, Raju restrained him by holding both his hands and Badal committed a penetrative sexual assault using his private part by

¹ “BNSS”

² “CrPC”

³ “IPC”

⁴ “POCSO”



inserting it in the victim's mouth and then proceeded to forcibly put his private part in the anus because of which the victim suffered severe pain.

2.3. After sometime, his family members arrived at the spot. However, by the time they reached, both Applicants had already fled. Later, the victim narrated the entire incident to his father, who subsequently contacted the police. Acting on this information, the police apprehended Applicant Raju on 18th November, 2022, and subsequently arrested Applicant Badal on 19th November, 2022.

2.4. In the meantime, the victim, along with his father reached the police station, where the victim was subsequently sent to LBS Hospital for a medical examination. After the examination, the doctor opined that the victim was subjected to A/H/O sexual assault on 17th November, 2022, at around 8 P.M. The exhibits of the victim were also taken in police possession.

2.5. The victim's statement under Section 164 of the CrPC was recorded, wherein he reiterated the details of the incident in alignment with the statement he had previously provided to the police.

2.6. After investigation, the chargesheet was filed on 29th December, 2022. Since then, the trial has progressed, and up until now 21 witnesses have been examined. The trial is almost reaching completion and presently only cross examination of the Investigating Officer⁵ remains pending, for which the matter is listed for 07th February, 2025, before the concerned Trial Court.

3. In the above factual background, the Counsel for the Applicants make the following submissions in support of their request for grant of bail:

3.1. The Applicant Raju has been in custody since 18th November, 2021,



while Badal has been in custody since 19th November, 2021. Since then, all the material witnesses have been examined, leaving only the cross-examination of the IO pending. Hence, continued incarceration of the Applicants serves no purpose at this stage.

3.2. The Applicants are innocent persons who have been falsely implicated due to pre-existing animosity. Counsel submits that 15 days prior to the registration of the FIR, the victim had stolen Applicant Badal's mobile phone, an incident that Badal brought to the notice of the victim's family. Counsel alleges that this caused annoyance to the victim's family, who subsequently filed the present FIR to falsely implicate the Applicants.

3.3. There are material contradictions in the testimony of the victim, which do not establish the case of prosecution beyond reasonable doubt.

3.4. The FSL report submitted by the police do not disclose any incriminating evidence against the Applicants.

3.5. The Applicants have clean antecedents and no prior involvements in criminal activities. The Applicants undertake to abide by any terms and conditions imposed upon them and are willing to furnish reliable and sound surety to the satisfaction of the Court.

3.6. The Impugned Order of the ASJ, dated 16th October, 2024, denying bail to Applicants is bad in law and is liable to be set aside.

4. Mr. Sunil Kumar Gautam, APP for the State, strongly opposes the present bail application and submits as follows:

4.1. The trial is at an advanced stage, with only the cross-examination of the IO remaining. At this juncture, when the trial is nearing completion, the Applicants must await the Trial Court's decision.

⁵ ["the IO"]



4.2. The Applicants contention, based on the MLC report, that no penetrative sexual assault occurred, is immaterial at this stage. A careful perusal of the FIR and the victim's testimony provides a consistent and specific narrative implicating both Applicants in the alleged offence. Moreover, the observation which returned in the FSL report, i.e., "profile could not be generated, which may be due to degradation/inhibition of the sample" cannot be used to exonerate the accused. The absence of forensic evidence does not negate the victim's allegations, as it is well established that a conviction in cases of sexual assault can be based on the sole testimony of the victim if found credible and reliable, which, in the *prima facie* view of this Court, appears to be the case here.

4.3. The incident, as reported by the victim, was promptly registered. This means that there exists very less chances of any embellishment. Furthermore, the Applicants are also a flight risk as they are do not have any permanent address in Delhi and might threaten the Victim.

4.4. It is further submitted that the offence committed is of a heinous nature. On considering the gravity of the offence and the fact that the victim has confirmed his statement in his testimony before the Trial Court, the prosecution is likely to establish their case.

5. The Court has considered the aforementioned contentions. The testimony of the victim, which was handed across, was perused and returned to the Counsel for the Applicants. In the *prima facie* opinion of the Court, the testimony of the victim has remained consistent throughout the investigation and trial. While the Applicants have pointed out certain alleged discrepancies in the victim's testimony, these remain aspects that must be thoroughly examined during trial. At this stage, it is not for this Court to



undertake a meticulous analysis of the evidence or delve into the credibility of the prosecution's witnesses. The inquiry for deciding a bail application is confined to whether a *prima facie* case exists against the Applicants.

6. This court has in *Vikas v. State*⁶, observed that:

“...The statements of the victim are consistent and coherent and in her deposition before the Court she has corroborated her statements made earlier. The mother of the victim has also made consistent statements corroborating the statement of the victim and has also explained the reason for not allowing internal medical examination of the victim, during her examination-in-chief. At this stage it is not open to the court to examine or evaluate the evidence lest it prejudices the case of either party, on merits.”

[Emphasis added]

7. Furthermore, the Kerala High Court in the case of *Sobin Varghese v. State of Kerala*⁷, faced a similar circumstance, wherein the medical examination did not show any signs of recent or past sexual assault. Nonetheless, the Court considered the gravity of the allegations and the age of the victim, and noting that the victim had categorically implicated the accused, denied bail.

8. In the present case, the contention of the Applicants that there was no penetrative sexual assault disclosed in the MLC and FSL report and that there were no injuries found on the private part of the victim, is *prima facie* irrelevant at this stage. The absence of injuries or forensic evidence does not necessarily undermine the prosecution's case, as the victim's testimony, coupled with other circumstantial evidence, can form the basis for conviction. The FIR, the victim's statements recorded under Section 164 of CrPC, and the deposition before the Trial Court are all consistent and specific, and *prima facie* establish the involvement of the Applicants in the

⁶ See *Vikas v. State* MANU/DE/1919/2020

⁷ Bail Appln. 625 of 2018 (Kerala HC)



alleged offence.

9. The Court deems it appropriate to refer to the judgment of the Supreme Court in *X v. State of Rajasthan & Anr.*,⁸ wherein the Court has made observations regarding grant of bail in cases involving serious offenses. The relevant portion of the said judgment is as follows:

“14. Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.

15. Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.

16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.”

[Emphasis Supplied]

10. The trial, as noted above is at an advanced stage, with only the examination of the IO remaining. The victim has already been examined, and his testimony forms a critical component of the prosecution’s case. The Applicants’ reliance on alleged contradictions in the victim’s statements does not, at this stage, provide sufficient grounds to warrant their release on bail. As is consistently held by the Supreme Court, minor discrepancies or

⁸ SLP(Cr.) No. 13378/2024, decided on 27th November, 2024.



inconsistencies in the testimony of a witness, unless they are material and strike at the root of the case, cannot form the sole basis for granting bail, especially in cases involving heinous offences. The contradictions pointed out by the Applicants can be better assessed during the final adjudication of this case. The settled principle of law is that such issues must be scrutinized comprehensively at trial and not at the stage of bail, where the inquiry is limited to determining *prima facie* involvement.

11. In light of the foregoing, taking into consideration the nature and gravity of the offence, the victim's tender age of 13 years at the time of offence and the fact that the trial is nearly at its conclusion, the present bail applications are dismissed.

12. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and shall not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

SANJEEV NARULA, J

JANUARY 23, 2025

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