



\$~13

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

+ **BAIL APPLN. 4735/2024**

SHEKHAR KANSAL

.....Petitioner

Through: Mr. Rajesh Anand, Mr. Jaypreet Singh, Mr. Abhay Tripathi, Ms. Nidhi Gaur, Mr. Pawan Yadav, Mr. Anshuman Vashistha, Mr. Kushagra Yadav, Ms. Harleen Kaur, Advocates

versus

STATE NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Amit Ahlawat, APP for the State with SI Anjali, PS Rani Bagh
Mr. Arun Khatri, Ms. Shelly Dixit,
Mr. Yogesh Gahlaut, Advocates for
the Complainant

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

15.01.2025

%

1. The present application has been filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023, seeking grant of regular bail in FIR No. 0303/2024 dated 28th May, 2024, registered at PS Rani Bagh for the offence under Sections 376/376(C)/120B/354/354(D)/328/323/506 of the Indian Penal Code & Sections 6/10/17 of the Protection of Children from Sexual Offences Act, 2012.¹

Prosecution's Case

2. The case of the Prosecution is as follows:

2.1 The aforementioned FIR was registered on a complaint of the Prosecutrix

¹ "POCSO Act"



aged 14 years. The Complainant stated that the Applicant, and co-accused, Ashish Kansal and Shaveta Kataria, were known to her family for the last ten years. During this period, the Applicant administered her drugs, touched her private body parts under intoxication, and molested her, indulged in digital penetration, and gave her life threats.

2.2 The counselling of the Prosecutrix was conducted by a DCW counsellor, and a medical examination was also carried out at Bhagwan Mahavir Hospital, Pitampura, Delhi. The doctor mentioned that the Prosecutrix had alleged sexual assault by the Applicant and his brother, Ashish Kansal. It was noted that both the accused were known to her father through shared religious practices, and they had known each other for approximately ten years. Furthermore, the Applicant used to visit the Prosecutrix's home on several occasions.

2.3 In the FIR, the Prosecutrix revealed that the Applicant had introduced himself to her family as a spiritual "baba", claiming to possess special powers to bless people and resolve their life's problems. The Prosecutrix's family, believing in his purported powers, developed blind faith in him and would bow down before him. The Applicant further influenced her family by offering them cigarettes and *prashad* laced with intoxicants.

2.4 The Applicant, on a regular basis, used to touch the Applicant inappropriately on her neck, face, back, and private parts. The co-accused Shaveta allegedly forced the Prosecutrix to engage in inappropriate activities with the Applicant. Additionally, both Shaveta and the Applicant coerced her into consuming *prashad* containing intoxicants.

2.5 The co-accused, Mr. Ashish Kansal also began visiting the Prosecutrix's home and engaged in similar conduct with her. The accused persons had unrestricted access to her mobile phone, and threatened her that



if she spoke out, her photos and videos would be circulated. On one of such occasions, they snatched the Prosecutrix's phone, which continues to remain in their possession.

2.6 The accused persons also exerted pressure on the Prosecutrix's father, coercing him to transfer money into their accounts for unspecified reasons.

3. Pursuant to the aforesaid complaint, the Applicant, along with co-accused Ashish Kansal and Shaveta Kataria were arrested on 31st May, 2024. While the co-accused were subsequently released on bail, the Applicant continues to remain in judicial custody since 02nd June, 2024.

Applicant's case

4. Counsel for the Applicant states that the Applicant has been in custody since 31st May, 2024. The chargesheet has already been filed and the investigation stands concluded. In this background, he makes the following submissions:

4.1 The statement made by the Prosecutrix is false and appears to be motivated by the instigation and direction of her father. Both the Investigating Officer² and the supervisory authorities were fully aware of the content of the said statement. Moreover, the Prosecutrix and her parents have deliberately withheld relevant facts pertaining to the present case.

4.2 Prior to the month of December, 2023 the Prosecutrix was in a comfortable state of mind, and even celebrated her birthday and other social functions with the Applicant and other co-accused, pictures of which are attached as Annexure P-5 (Colly) to the Application.

4.3 As per the complaint, the alleged incident took place within the Prosecutrix's residence in the months immediately preceding the filing of the complaint. However, this assertion is patently incorrect and false.



Neither the Applicant nor the co-accused had any interaction with the Prosecutrix during the year 2024, nor did they visit her residence.

4.4 The co-accused Shaveta Kataria was subjected to sexual assault, rape and unnatural offences at the behest of the Prosecutrix's father. The Applicant and his family intervened in order to free Shaveta from the said situation. Furthermore, there are ongoing financial disputes between the Prosecutrix's father and Shaveta, in which the Applicant has been implicated. In this background, the filing of the complaint seems to be primarily motivated by the Applicant's actions to remove Shaveta from the life of the Prosecutrix's father, coupled with the turmoil stemming from the underlying financial disputes.

4.5 The Prosecutrix was found engaging in inappropriate chats with her school friend, with whom she had also shared explicit pictures. Upon discovering this, her parents became angry and began thrashing her. The Applicant stepped in to calm them down and engaged in discussions regarding the appropriate course of action with respect to the explicit images in the possession of the Prosecutrix's school friend. The Applicant also managed to pacify Prosecutrix's father, who had become furious after confronting the school friend. Following the Applicant's advice, the father decided not to pursue charges under the POCSO Act against the said boy. The Applicant played a key role in diffusing the situation, as reflected in the messages from the Prosecutrix's mother, who thanked the Applicant for his guidance and for helping protect the family's reputation.

4.6 Furthermore, the Prosecutrix and her family continued to celebrate significant events, such as birthdays and anniversaries, with the Applicant, which indicates that the Prosecutrix was not experiencing any distress or

² "IO"



trauma due to the Applicant's alleged actions. The complaint was only filed in May 2024, reaffirming that the same was motivated by financial disputes and personal resentment towards the Applicant, arising from Shaveta's decision to leave the Prosecutrix's father. This delay in filing the complaint strongly suggests that the entire cause of action is driven by *mala fide* intentions.

4.7 Based on the complaint, the Applicant, who was in Khanauri, District Sangrur, Punjab, was apprehended by the police in clear violation of the due process of law. After two days of police custody, he was remanded to judicial custody on 2nd June 2024. Furthermore, the grounds for arrest were not disclosed to him, and this omission, in itself, entitles the Applicant to be granted bail.

4.8 No inquiry or statement recording, as mandated under Section 24 of the POCSO Act, was conducted. Additionally, the inquiry required under Standing Order No. 303, dated 25th May 2019, was not carried out. Furthermore, the Applicant was never called upon or summoned to assist in the investigation.

4.9 There exist inherent contradictions between the statements of the victim and her parents, which becomes apparent upon reviewing their statements.

4.10 The IO has failed to examine crucial aspects of the case. The relevant photographs and WhatsApp chats, which were communicated to the IO, have not been considered as part of the investigation.

4.11 The co-accused, Shaveta and Ashish Kansal, who have been faced with similar allegations, have been granted bail.

Analysis

5. The Court has considered the arguments of both the counsel, and



thoroughly examined the material presented. The allegations in the FIR are of a grave and serious nature. The Prosecutrix has stated that the Applicant had been well-acquainted with her family for the past 10 years. During this time, on several occasions, he administered drugs to her, touched her private parts under intoxication, indulged in digital penetration, and gave her life threats. While it is not necessary to reiterate every allegation against the Applicant, it is imperative to note that the statement of the Prosecutrix, which led to the recording of the FIR, as well as her statement provided before the Magistrate, both outline specific details regarding the manner in which the Applicant engaged in sexual acts with her.

6. The Applicant's assertion that the allegations made in the FIR are inherently false, is in the nature of his defence, and cannot, at this stage, be relied upon to discredit the specific and detailed allegations put forth by the Prosecutrix. Furthermore, the contention that the alleged incident never occurred, and that the Prosecutrix was in a state of comfort, and regularly spent time with the Applicant during birthdays and functions, does not, in the opinion of the Court, provide a sufficient basis to doubt the credibility of the Prosecutrix's allegations.

7. The facts outlined in the FIR describe in detail the nature of the relationship between the Applicant and the family. The Prosecutrix specifically alleges that the Applicant regularly administered drugs to both her and her father. In fact, the Prosecutrix and her family held the Petitioner in high regard, addressing him as "Baba ji" and revering him to the extent of bowing before him and being encouraged to worship his photograph. This dynamic demonstrates the extent of control exercised by the Applicant over the family, suggesting the undue influence he had over the Prosecutrix and the entire household.



8. Furthermore, the Applicant's argument that the statement recorded under Section 164 Cr.P.C. is inconsistent with the statement made during the filing of the FIR, also fails to cast doubt on the veracity of the Prosecutrix's averments. The Prosecutrix's statement remained coherent, providing a detailed account of the alleged incidents. Therefore, the minor discrepancies between the statements should not, at this juncture, undermine the credibility of her allegations. Additionally, the Petitioner's claim regarding the delay between the alleged incident and the recording of the FIR, also does not provide sufficient basis to conclude that the allegations are motivated or false. In a nutshell, this stage, there is no *prima facie* evidence to suggest that the FIR has been filed solely to implicate the Applicant.

9. Lastly, the Applicant's insinuations regarding financial disputes between the Prosecutrix's father and co-accused Shaveta, and the suggestion that he has been unjustly dragged into these matters, do not warrant disregarding the Prosecutrix's claims. While the Applicant's plea that the allegations are false, supported by photographs, videos, CD recordings, and statements from the Prosecutrix's parents, may presented during the trial, these cannot, at this stage, be relied upon to entirely discredit the Prosecutrix's story. Therefore, for the purpose of considering bail, the Court does not find these assertions sufficient to dismiss the allegations made by the Prosecutrix.

10. In this regard, it must be noted that the Supreme Court, in ***Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr.***,³ delineated the following factors that the Court must consider while deciding an application for bail:

"9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with

³ (2010) 14 SCC 496.



an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674], and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688].]

[Emphasis Supplied]

11. The aforesaid decision was relied upon by the Supreme Court in a recent judgement in ***Bhagwan Singh v. Dilip Kumar alias Deepu alias Deepak and Anr.***⁴ while dealing with an appeal related to cancellation of bail in a POCSO matter, whereby the Court remarked as follows:

“12. The grant of bail is a discretionary relief which necessarily means that such discretion would have to be exercised in a judicious manner and not as a matter of course. The grant of bail is dependant upon contextual facts of the matter being dealt with by the Court and may vary from case to case. There cannot be any exhaustive parameters set out for considering the application for grant of bail.”

[Emphasis Supplied]

12. It is noted that the allegations set forth in the FIR, as well as the Prosecutrix’s statement recorded under Section 164, are comprehensive and specific, primarily directed against the Applicant. While the Applicant asserts that the co-accused have been granted bail, it is pertinent to emphasize that the specific and direct attribution of the allegations to the

⁴ 2023 INSC 761.



Applicant precludes any claim to bail based on parity. Furthermore, it is pertinent to highlight that the Prosecutrix was a minor, aged 14 years, at the time the alleged offence occurred, while the Applicant was approximately 28 years of age, thus resulting in a significant age difference of about 14 years. Additionally, the Applicant was revered as “Baba Ji” by the Prosecutrix’s family and had been acquainted with them for over 10 years, making frequent visits to their residence. Given this long-standing relationship, there exists a reasonable possibility that he may have easy access to the Prosecutrix and her family.

13. Therefore, in light of the aforementioned facts and circumstances, taking into account the sensitive nature of the offence, the age of the Prosecutrix, and the degree of control allegedly exercised by the Applicant over both the Prosecutrix and her entire family, the Court finds no grounds to grant bail at this stage.

14. In light of the foregoing, the present application is dismissed.

15. Needless to state, any observations concerning the merits of the case are solely for the purpose of deciding the question of grant of bail and shall not be construed as an expression of opinion on the merits of the case.

SANJEEV NARULA, J

JANUARY 15, 2025/ab