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

+ BAIL APPLN. 2505/2023

FARZAN @ NEEL CHOUDHARY

..... Petitioner

Through: Mr. Ashu Kumar Sharma, Ms. Pooja Arora & Ms. Deepti Bhardwaj, Advocates.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP for the State with SI Amit Kumar, P.S. Govind Puri.
Ms. Astha, Advocate for complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

31.10.2023

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1. The present application under Section 439 read with Section 482 of the CrPC seeks regular bail in case FIR No. 728/2022 under Sections 376/370/370(A)/109 of the IPC, Section 79 of the Juvenile Justice (Care and Protection) Act, Sections 6/17 of the POCSO Act and Sections 3/4/5/6 of the Immoral Trafficking Prevention Act registered at PS Govind Puri.

2. The case of the prosecution, *qua* the applicant, as stated in the status report dated 02.10.2023 authored by Inspector Jagdish Yadav, SHO PS Govind Puri is as under:

“Accused persons namely Farzan @ Neel Choudhary and Gaurav Gupta are friends and both of them lived in Sangam Vihar. Gaurav



Gupta was boyfriend of victim 'K' and used to go to meet her at Gali No. 7, Flat No. 784, 2nd Floor, TKD Extn. i.e. place of incident. Farzan and Gaurav were aware that 'K' was doing prostitution work under the guidance of Madhumita Mishra @ Priya who used the said address as brothel. Accused Gaurav Gupta along with Farzan used to go and meet 'K' at the said address and Gaurav also made physical relations with 'K' (age-17 Years). Initially, both of them used to go as customers but later they started bringing clients and accused Madhumita also paid them commission for this. Accused Farzan @ Neel Choudhary was arrested and chargesheet u/s 109 IPG, 79 JJ Act, 4 ITP Act da, 17 POCSO Act. CDR of the contact No. of Farzan i.e. 8882044874 was obtained and it was found that he was in regular contact with accused Madhumita Mishra @ Priya having contact Nos. 9958568806 & 9821422312.”

3. Learned counsel for the applicant submits that no specific allegations in the FIR have been made *qua* him. It is submitted that even in the statements of the victims recorded under Section 164 of the CrPC, no allegations have been made against the applicant. Learned counsel for the applicant further submits that allegations against the latter were made only in the statement of the victims recorded subsequently under Section 161 of the CrPC, however, even as per those statements, no offence is made out against the applicant.

4. It is submitted that the victims were working at the place where they were found and his friend and co-accused Gaurav used the applicant's mobile phone to chat with the victim 'K', who also admitted that she was in a relationship with the said co-accused Gaurav. It is submitted that during the course of investigation, it has come on record the victim 'K' was a major when she was recovered.

5. Learned counsel for the applicant submits that the latter is a 19 year old boy with clean antecedents. It is submitted that the applicant was arrested on 12.10.2022 and has been in judicial custody since 13.10.2022. It



is submitted that the investigation in the present case is complete, the chargesheet stands filed and no useful purpose will be served by keeping the applicant in judicial custody any further.

6. *Per contra*, learned APP for the State assisted by learned counsel for the complainant opposes the present application. It is submitted that the applicant was arrested pursuant to a secret information received regarding a prostitution racket being run by co-accused Madhumita. It is submitted that the applicant was arrested from the premises at the time when both the victims were found. It is submitted that the allegations against the applicant are grave and serious in nature.

7. It is submitted that the applicant and co-accused Gaurav are friends. They were aware about the fact that victim 'K' was involved in prostitution at the instance of co-accused Madhumita. Learned APP further submits that the applicant and co-accused Gaurav used to visit the spot and Gaurav established physical relations with 'K'. It is further submitted that initially, both of them used to visit the premises as customers, but later they started bringing in more clients and also received commission from co-accused Madhumita in that regard.

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

9. On a pointed query from this Court regarding the specific evidence available against the applicant, learned APP for the State submits that Call Detail Records of the applicant and co-accused Madhumita reveal that they were in regular touch with each other.

10. The applicant has not been named in the FIR, nor has he been specifically named by either of the victims in their statements under Section 164 of the CrPC. As far as the fact that the applicant was arrested from the



spot is concerned, this Court is of the opinion that any explanation regarding the applicant's presence is a matter of trial and can be established by leading evidence in that regard.

11. The investigation of the case, *qua* the applicant is complete and the chargesheet stands filed. The applicant has no previous involvements. As per the nominal roll dated 02.08.2023, the applicant has been in custody for 09 months and 17 days and no useful purpose will be served by keeping the applicant in custody any further.

12. In totality of the facts and circumstances of the case, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 25,000/- with two sureties 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 witnesses in any manner.
13. The application is allowed and disposed of accordingly.
14. Pending application, if any, also stand disposed of.



15. Needless to state that nothing stated hereinabove is an opinion on the merits of the case.
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

OCTOBER 31, 2023/bsr