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

+ **BAIL APPLN. 2675/2023**

MOHD MADNI

..... Applicant

Through: Mr. Satish Pandey, Ms. Mausami Mishra, Mr. Jay and Mr. Danish Saifi, Advocates

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Ajay Vikram Singh, APP for the State with SI Chanchal PS Amar Colony

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

22.11.2023

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1. The applicant vide the present application under Section 439 of the Code of Criminal Procedure, 1973 seeks regular bail in FIR No.0391/2020 dated 07.10.2020 registered under Section(s) 363/376/376AB/377 of the Indian Penal Code, 1860 and under Section 6 of the Protection of Children from Sexual Offences Act, 2012 at PS.: Amar Colony, South-East District, Delhi.

2. The present FIR came to be registered on the complaint of the mother of the victim, alleging that, on 06.10.2020, her daughter, aged around 5 years, had been raped by the applicant herein. Pursuant to the registration of the FIR, the applicant was arrested on 07.10.2020.

3. Learned counsel for the applicant submits that the applicant has been falsely implicated in the present FIR; and that, with regards to the

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age of the victim, there are material contradictions in what has been stated by the victim in her statement recorded under Section 164 of the CrPC and what had been stated by the mother of the victim in the FIR; and that as per the FSL report, there is no sexual offence committed upon the victim; and that the victim had herself failed to identify the applicant during the stage of prosecution evidence and *lastly* that since the police investigation has already been completed and as the testimony of the victim has already been done, there is hardly any chance of the applicant tampering with the evidence or threatening the witnesses and as such, the applicant ought to be released on bail.

4. This Court, vide its order dated 11.08.2023, issued notice and called for the Status Report. Nominal Roll was also requisitioned from the concerned Jail Authorities.

5. As per Nominal Roll, as on 23.09.2023, the applicant has been in judicial custody for a total period of 2 years, 11 months and 17 days. Further, the overall jail conduct of the applicant has been ‘*Unsatisfactory*’ and he has been granted punishment of ‘*Mulakat Stopped*’ on two occasions for recovery of prohibited items from his possession.

6. Learned APP for the State, while opposing grant of bail submits that the present FIR involves the commission of an heinous offence upon a girl child of only 5 years of age; and that the victim, in her testimony, has supported the case of the prosecution and during investigation, has correctly identified the applicant through the witness room and *lastly* that since the trial is yet to conclude and crucial witnesses are yet to be examined, therefore, releasing the applicant on bail could lead to



tampering of the evidence or threatening of the witnesses.

7. This Court has heard the learned counsel for the parties and has perused the documents on record.

8. While considering granting bail to the applicant, this Court has to keep in mind that the present proceedings are pertaining to the heinousness of an offence under Section(s) 363/376/376AB/377 of the IPC and Section 6 of the POCSO Act relating to a minor girl aged only about 5 years. It is also to be borne in mind that the applicant is not a rank outsider but in fact was the neighbor of the victim and the victim used to play with his kids in the same neighborhood.

9. A perusal of the records also reveals that both the victim as well as her mother i.e. the complainant, in their respective statements recorded under Section 164 of the CrPC have not only named the applicant but also proceeded to detail the commission of the offence as it transpired. So much so, the victim, during the stage of prosecution evidence, had detailed the entire sequence of events entailing the alleged offence by specifically naming and attributing a role to the applicant. It is also a matter of fact that during investigation, the applicant was correctly identified by the victim through the witness room.

10. Lastly, the conduct of the applicant as per the Nominal Roll, although involving only one incident, also does not exude confidence in this Court for releasing the applicant on bail at this stage, considering that there may be chances for his tampering with the evidence as witnesses remained to be examined as yet.

11. It is felt that the aforesaid facts coupled with the grievousness of the offences including the severity of the punishment, if convicted, are all



sufficient for this Court to deny bail to the applicant at this stage.

12. In any event, the broad conditions laid down by the Hon'ble Supreme Court in Re.: *Prasanta Kumar Sarkar vs. Ashis Chatterjee* (2010) 14 SCC 496 and *State of Uttar Pradesh vs. Amaramani Tripathi* (2005) 8 SCC 21 and *Deepak Yadav vs. State of Uttar Pradesh* (2022) 8 SCC 559] for granting bail to any accused like the applicant are as under:-

- a. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- b. nature and gravity of the accusation;
- c. severity of the punishment in the event of conviction;
- d. danger of the accused absconding or fleeing, if released on bail;
- e. character, behaviour, means, position and standing of the accused;
- f. likelihood of the offence being repeated;
- g. reasonable apprehension of the witnesses being influenced; and
- h. danger, of course, of justice being thwarted by the grant of bail

13. Accordingly, considering the factual position and the settled position of law qua the factors to be taken into consideration while granting bail to an accused like the applicant, this Court has no hesitation in dismissing the present bail application thereby denying bail to the applicant in the above terms.

14. The application is accordingly dismissed.



15. Needless to mention, observations made, if any, are purely for the purposes of adjudication of the present application and shall not be construed as expressions on the merits of the matter.

SAURABH BANERJEE, J

NOVEMBER 22, 2023/Pt