

(VIA VIDEO-CONFERENCING)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 14.07.2021

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Pronounced on : 09.08.2021

+ BAIL APPLN. 28/2021

BHARAT ABHILASH

.....Petitioner

Through: Mr. Amjad Khan, Advocate.

Versus

STATE

..... Respondent

Through: Ms. Rajni Gupta, APP with SI
Amit Maan, P.S.Pashim Vihar.
Ms. Anu Narula, Adv.
(DHCLSC) for complainant.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C. seeking bail in case FIR No. 115/2018 under Sections 376/306/506/323/109 IPC read with Section 6/17 of POCSO Act registered at Police Station Mianwali Nagar.

2. Briefly stated, the facts of the case are that on 11.04.2018, DD No. 41A was received at police station Pashim Vihar West and the same was marked to ASI regarding MLC No. 5743/2018 of prosecutrix from Sanjay
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Gandhi Memorial Hospital, Mangol Puri, Delhi. It is alleged that the MLC of the prosecutrix was handed over to ASI in which doctor gave the alleged history of consumption of unknown compound and patient is drowsy and is unfit for statement. It is alleged that doctor gave a sealed exhibit of gastric leverage of prosecutrix with the sample seal which was taken by ASI through seizure memo. It is alleged that victim was found to be UTP positive and at the time of incident she was 16 years old and DOB is 02.11.2002. After that, the statement of the prosecutrix was recorded on 13.4.2018 wherein it is alleged by the prosecutrix that she was a student of class 9th and accused Ram Lal @ Ganna started talking and meeting her at her school. It is alleged that in January 2018 when her school holiday was over, the time came after about 2.15 accused Ramlal @ Ganna took her to his friend's house four times, where he had done wrong thing (rape) with her and threatened her that he will kill her parents if she told anyone about it. After that, a case under Section 376/306/506 IPC and Section 6 POCSO Act was registered at police station Paschim Vihar, Delhi, West.

3. I have heard the counsel for the petitioner and learned APP for the State.

4. It is submitted by the counsel for the petitioner that the wife of the petitioner has already been admitted to bail and he seeks parity. It is further submitted by him that the girl child of the petitioner is not keeping well, and he is one who is to support his family. It is further submitted by learned counsel for the petitioner that he has been falsely implicated in this case and

has been arrested after about 1. 7 years on the basis of improved tutored statement of the complainant. It is further submitted by the counsel for the petitioner that the name of the petitioner finds no mention in the FIR bearing no. 115/2018, and the victim in her improved statements recorded under Section 161 Cr.P.C and Section 164 Cr.P.C has implicated the petitioner and his wife falsely. It is further submitted by the counsel for the petitioner that petitioner does not even know the address of the jhuggi of the petitioner where it is alleged that she was raped by accused Ram Lal @ Ganna. It is further submitted by learned counsel for the petitioner that victim, during her examination-in-chief has not supported the case, and she was even cross-examined by learned APP. So, no reliance can be placed upon her testimony. It is further submitted that as per Section 35 of POCSO Act, the recording of evidence should have been completed within 30 days, and solely on this ground the petitioner is entitled to bail, and for this purpose, he has relied upon the judgments in the cases of *Vinay Vs. The State of Karnataka decided on 13 July 2017*; *Siddharam Satlingappa Mhetre vs. State of Maharashtra, (2011) 1 SCC 694*; *Panchhi Vs. State of UP (1998) 7 SCC 177* and *Dataram Singh Vs. State of Uttar Pradesh and Another (2018) 3 SCC 22*.

5. It is further submitted by learned counsel for the petitioner that petitioner is in judicial custody since 17.1.2020, and no useful purpose would be served by keeping in jail as the victim has already married.

6. On the other hand, learned APP has vehemently opposed the bail application and submitted that petitioner is not entitled to parity with co-accused Pooja as she was admitted to bail not on merit but only on the ground that she is a woman and mother of infant child. It is further submitted by learned APP that allegations against the petitioner are grave and serious in nature and are of gang rape of minor girl on various occasions in the jhuggi of accused Shahrukh.

7. It is further submitted by learned APP that the examination-in-chief of the victim has been recorded, and she has supported the case of the prosecution. Learned APP further submitted that no doubt the victim has been cross-examined by learned APP on certain minor points and her examination-in-chief is still continuing. He further submitted that it is evident from the cross-examination of the victim by learned APP that she was shown some Adhar Card or PAN card of the present accused for the purpose of identification. It is submitted that everyone is aware about the quality of the picture in PAN card, so it is difficult for a minor victim to identify him on the basis of the photo on Adhar Card or PAN card. It is further submitted by learned APP that she is not shown as to why at the time of examination of this victim the accused Bharat was not shown to her rather the documents with his photos were shown to her.

8. As far as contention of the counsel for the petitioner that petitioner was arrested after about 1.7 years is concerned, the same is to be totally

disallowed because as per the chargesheet he and his wife had been absconding and they could only be arrested after more than 1 ½ years.

9. As far as the testimony of the prosecutrix is concerned, she has clearly stated in her statement under Section 164 Cr.P.C that when her statement was recorded, she was not in proper sense as she has consumed pesticides which is clear from her MLC. The medical report further reveals that she was seen UPT positive vide MLC no. 67850 dated 11.4.2018, 486 (undated) and 487 dated 13.4.2018. These MLCs corroborate the version of the prosecution that in what circumstances the FIR was got lodged on 13.1.2018. The record further reveals that victim has got various throat surgeries because according to her she was so fed up with the conduct of the accused persons and took poison. Counsel for the petitioner has further submitted that in the questions put by learned APP to the victim in the cross-examination, she was not able to disclose the address of Pooja or the petitioner. However, it is worthy to note here that it is not the case of the prosecution that the victim herself visited the house of the petitioner rather the case of the prosecution is that it was the accused persons, who under threat of killing her parents, used to take her to the house of the petitioner where she was sexually assaulted. The testimony of the victim is still under progress and expressing any opinion on her testimony or rely on her incomplete testimony would not be proper.

10. As far as the contention that trial should have been concluded within time, but delay can be attributed to prevailing pandemic conditions in the

country. Since the allegations are grave and serious in nature, and are of gang rape, the bail application is dismissed accordingly.

11. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

RAJNISH BHATNAGAR, J

AUGUST 09, 2021/ib

