

Shaveta Kataria vs State Govt Of Nct Of Delhi & Anr on 26 November, 2024

Author: Dinesh Kumar Sharma

Bench: Dinesh Kumar Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 3306/2024

SHAVETA KATARIA

Through:

STATE GOVT OF NCT OF DELHI & ANR.

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BAIL APPLN. 3339/2024

ASHISH KANSAL

Through:

STATE GOVT OF NCT OF DELHI & ANR.

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CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA
ORDER

% 26.11.2024

1. Present bail applications have been filed seeking regular bail in case FIR No.0303/2024 registered at PS Rani Bagh under Sections 376/376(C)/120/354/354D/328/323/506 IPC and 6/10/17/ of POCSO Act.

2. The present proceedings were initiated on the basis of the complaint made by the victim on 24.05.2024 who is stated to be 14 years of age wherein it was alleged that that Shekhar Kansal, a self-proclaimed spiritual Baba, and his accomplices, Shweta Katariya and Ashish Kansal, subjected her to physical and emotional abuse. It has been alleged in the complaint that the accused persons used drugs, cigarettes, and laddoos to intoxicate the complainant and her family, gaining control over them. It has further been alleged in the complaint that Shekhar Kansal (Baba) would touch the complainant inappropriately and forced her to do obscene things and petitioner- Shweta Katariya would threaten the complainant, saying she would fail in her studies if she didn't comply. The complainant was compelled to consume laddoos and barfi, which left her intoxicated and helpless. It has further been alleged that the petitioner-Ashish Kansal, who is Baba's younger brother, also abused the complainant in the same way as Baba. It has been alleged that the accused persons had access to the complainant's mobile phone and would click photos This is a digitally signed order.

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3. Pursuant to this, the victim was medically examined. The complaint dated 24.05.2024 was given to the police as per DD No.57A dated 26.05.2024 and was assigned to SI Anjali on 27.05.2024 for investigation. Investigating Officer got the medical examination got the medical examination of victim conducted from the Bhagwan Mahavir hospital, Pitampura vide MLC No.27/2024 dated 28.05.2024 and made the Rukka on the same day i.e. 28.05.2024. Pursuant to which the present 0303/2024 registered at PS Rani Bagh under Sections 376/376(C)/120/354/354D/328/323/506 IPC and 6/10/17/ of POCSO Act was lodged. During the course of the investigation, petitioners' investigation and after investigation, now the chargesheet was filed under Sections 376/376C/120B/354/354D/328/323/506 IPC and Section 6/10/17 of POCSO Act.

4. Learned counsel for the petitioner submits that on the face of it, the victim seems to have been tutored as the complaint is two page neatly typed complaint which was handed over to the police

after two days. Learned counsel submits that in fact, the accused persons and the family of the victim were known to each other for the last many years and there were some financial transactions between them. Learned counsel submits that on account of the said financial disputes, the family of the victim got the false case registered against the petitioners.

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5. Learned counsel submits that even otherwise the allegations against Shaveta Kataria is that she used to give victim intoxicated food and abated the offence of aggravated sexual assault and similarly, the allegations against Ashish Kansal is that he also started doing the same thing which Shekhar Kansal had been doing without making any specific incident.

6. Learned APP for the State has vehemently opposed the bail application. Learned APP submits that at this stage, the genuineness or authenticity of the complaint made by the victim cannot be doubted as it is matter of trial. Learned APP submits that the victim was medically examined and there also she had reiterated the allegations made in the FIR.

7. Learned APP for the State submits that the photographs placed on the record and the conversation do not relate to the offence. Learned APP further submits that if the petitioners are released on bail, they may threaten or intimidate the victim or her family members.

8. Learned counsel for the complainant has also opposed the bail application on the ground that there are serious allegations against the petitioners and since the testimony of the victim or her parents have yet to be recorded.

9. The Court at the stage of bail has primarily to see the nature of the acquisitions, gravity of the offence, possibility of accused, the witnesses being threatened or tampered, the possibility of fleeing away from the justice and other attended circumstances. The Court is at this stage cannot go into the meticulous examination on trial and only has to see the prima facie case. it is also a settled proposition that This is a digitally signed order.

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10. In *Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh* (1978) 1 SCC 240, the Supreme Court emphasized that the object of bail is to ensure the presence of the accused at trial, not to inflict punishment before conviction. Similarly, in *Sanjay Chandra v. Central Bureau of Investigation* (2012) 1 SCC 40, the Supreme Court reiterated that pre-trial detention cannot serve as a substitute for punishment, underscoring the presumption of innocence until proven guilty. In *Hussainara Khatoon v. Home Secretary, State of Bihar* (1980) 1 SCC 81, the Supreme Court held that

prolonged detention without trial violates the accused's fundamental right to a speedy trial under Article 21 of the Constitution.

11.The complaint being filed by the victim in this case on the basis of which criminal proceedings were initiated is meticulously being made with a subject and makes leveling serious allegations against the petitioners. However, the complaint is silent about the time period during which the offence was committed except that the complaint dated 24.05.2024, the complainant has stated that this had been happening for the last five-six months. Except this, there is no specific date and time of any alleged incident, if we compare this testimony with the statement recorded under Section 164 Cr.PC which was recorded on 29.05.2024, the victim gave the alleged time of offence as only in November, 2023 and December, 2023. This is an apparently marked contradictions. The allegations against Shaveta Kataria is only regarding giving intoxicating consumable and abatement of offence, the allegations against Ashish Kansal is that he also started doing the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 26/11/2024 at 22:46:24 same thing which allegedly Shekhar Kansal is doing. The Court has to restrain itself to make any comment on the merits of the case and it may prejudice the parties.

12.The petitioners are in custody since 31.05.2024.

13.IO on being asked IO states that there is no other criminal case against the petitioners.

14.Thus, without making any expression on the merits of the case, this court admits the petitioner to regular bail on furnishing a personal bond in the sum of Rs. 20,000/- with one surety of the like amount to the satisfaction of concerned learned Trial Court, subject to the verification of the permanent address and mobile number to be given and subject to following further conditions:

- a) the petitioner shall regularly appear before the IO/trial court as and when directed/required;
- b) the petitioner shall not visit the area/locality of Sainik Vihar;
- c) the petitioner shall not contact in any manner with the victim or the members of her family;
- d) the petitioner shall not go near the school or the tuition class of where the victim is studying;
- e) the petitioner shall not directly or indirectly make any inducement, threat, intimidate or tamper with any person acquainted with the facts of the case;
- f) the petitioner shall remain available on the address and the mobile number, to be given to the IO/ trial court and shall not leave the country without the permission of

the learned Trial Court;

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g) In case of a change of residential address and/or mobile number, the petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

15. In view of the above, the bail application along with pending application stands disposed of.

DINESH KUMAR SHARMA, J NOVEMBER 26, 2024 Pallavi/NA..

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