

Miss G. (Minor) Through Her Mother vs State Of Nct Of Delhi & Anr on 13 May, 2020

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ Crl.M.C. 1474/2020
MISS G. (minor) THROUGH HER MOTHER Petitioner
Through: Ms. Tara Narula, Advocate with
Ms. Kavita Mahajan from HAQ
Centre for Child Rights
Versus

STATE OF NCT OF DELHI & ANR Respondents
Through: Ms. Meenakshi Dahiya, Additional
Public Prosecutor for State

CORAM:
HON'BLE MR. JUSTICE BRIJESH SETHI

ORDER

% 13.05.2020 Court hearing convened via video-conferencing on account of COVID-19.

Crl.M.A. ----- (to be numbered by the Registry) Vide this application, exemption is sought to deposit court fee with the undertaking that the same shall be deposited within 72 hours of Court resuming normal functioning.

The application is allowed as prayed for, with direction to deposit the requisite court fees within three days of Court resuming normal functioning.

The application is disposed of.

Crl.M.A. 6331/2020 (exemption) Allowed, subject to all just exceptions.

Crl.M.A. 6332/2020 (exemption) Exemption is allowed subject to placing on record affidavit of petitioner and vakalatnama of counsel for the petitioner within 30 days of Court resuming normal functioning.

Application is disposed of.

Crl.M.C. 1474/2020 & Crl.M.A. 6330/2020 (for interim relief) This petition is preferred through natural guardian, mother of the victim in FIR No.753/2017, registered at police station Jamia Nagar, New Delhi for the offences under Section 376 IPC and Section 4 of The Protection of Children from Sexual Offences Act, 2012, who is aggrieved of the order dated 5th May, 2020 passed by the learned Sessions Judge vide which accused has been released on interim bail for one month without issuance of notice of the application.

Notice.

Ms. Meenakshi Dahiya, learned Additional Public Prosecutor for respondent No.1/State accepts notice and seeks time to file reply to the petition.

Let reply to this petition be filed by respondent No.1/State within a week.

Let notice of this petition be issued to the second respondent/ accused through the Investigating Officer as well as via e-mail, to his counsel representing before the learned trial court.

Learned counsel for the petitioner submits that the impugned order of 5th May, 2020 granting interim bail to the accused has been passed by the learned Sessions Court in a routine manner and is not only bad in law but it also suffers from procedural lapse on the part of the Sessions Court, as the same has been passed without issuance of notice to the complainant of FIR and thereby, denying the opportunity of hearing. Learned counsel for the petitioner submits that w.e.f. 21st April, 2018, Section 439 of the Code of Criminal Procedure, 1973 stood amended by the Criminal Law (Amendment) Act, 2018 (No. 22 of 2018) vide which it has been mandated that the presence of the informant or any person authorized, shall be obligatory at the time of hearing of the application for bail to the person under Sections 376/ 376(3)/ 376-AB/ 376-DA and 376-DB IPC. She has drawn attention of this Court to the order dated 25th November, 2019, passed by a Division Bench of this Court in W.P.(C) No. 5011/2017, Reena Jha & Anr. Vs. Union of India & Ors. whereunder the Practice Directions dated 24th September, 2019 of the Hon'ble High Court of Delhi with respect to aforesaid have been extracted and directed to be circulated amongst the learned District Judges.

Learned counsel for the petitioner next submits that the Hon'ble Division Bench by its order dated 27th January, 2020 in the aforesaid writ petition was further pleased to direct that the aforesaid directions shall stand extended to the matters pertaining to cases under The Protection of Children from Sexual Offences Act, 2012 and a direction was issued to the District Judges, National Commission for Protection of Children Rights ('NCPCR') and State Commission for Protection of Children Rights ('SCPCR') to strictly comply with the same. It is submitted that in utter violation of the aforesaid directions, District Courts at Delhi are passing bail orders without adhering to the mandatory requirement of issuance of notice to the complainant/ first informant or authorized person in the first instance.

Learned counsel for the petitioner further submits that the learned trial court has passed the impugned order ignoring the fact that the victim and her family are living in the vicinity of the accused and enlargement of accused on interim bail is a threat to their lives. Attention of this Court has been also drawn to paragraph No. 12 of Hon'ble Supreme Court's decision in Neeru Yadav Vs. State of U.P. (2014) 16 SCC 508 to submit that if in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail, have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. A prayer is also made to direct respondent/State to provide protection to the victim and her family members.

Lastly, it is urged by learned counsel for the petitioner that order granting interim bail to the petitioner be set aside and directions issued by the Division Bench of this Court in its orders dated 25 th November, 2019 and 27th January, 2020 be brought to the notice of the learned District and Sessions Judges, so that the same can be circulated to learned judicial officers dealing with such kind of cases.

Learned Additional Public Prosecutor for respondent/State submits that the aforesaid Practice Directions dated 24th September, 2019 and directions of this Court in W.P.(C) No. 5011/2017, Reena Jha & Anr. Vs. Union of India & Ors. dated 25th November, 2019 and 27th January, 2020 are being followed by the prosecution in its true letter and spirit and these directions will also be brought to the notice of the Investigating Officers concerned for strict compliance thereof.

Heard.

Perusal of impugned order of 5th May, 2020 reveals that it has been passed by the learned Duty Additional Sessions Judge in the presence of learned Additional Public Prosecutor for State but without informing the complainant, who is the mother of the victim in this case. The Courts are no doubt bound to follow the Practice Directions dated 24 th September, 2019 and directions of this Court in W.P.(C) No. 5011/2017, Reena Jha & Anr. Vs. Union of India & Ors. dated 25th November, 2019 and 27th January, 2020.

Since it is submitted by the learned counsel for the petitioner that number of courts are not following the above directions, let the learned Registrar General of this Court once again circulate the Practice Directions No. 67/Rules/DHC dated 24th September, 2019 and directions of this Court in W.P.(C) No. 5011/2017, Reena Jha & Anr. Vs. Union of India & Ors. dated 25th November, 2019 and 27th January, 2020 to all the learned District & Session Judges in Delhi, who will bring the same to the notice of the criminal courts dealing with matters of sexual offences under Sections 376(3), 376-AB, 376-DA and 376-DB of Indian Penal Code and the courts dealing with cases under The Protection of Children from Sexual Offences Act, 2012, under their respective jurisdiction. The learned Registrar General, however, shall ensure that the name of the judicial officer against whose order the present petition has been filed, does not figure anywhere while circulating the directions.

Since the petitioner has also sought protection from the accused, let mobile number of Beat Constable, W/ASI, Division Officer as well as SHO be provided to the first informant/petitioner forthwith so that in case of any exigency, the concerned officials can be contacted.

List on 22nd May, 2020.

A copy of this order be uploaded on the website forthwith.

BRIJESH SETHI, J MAY 13, 2020 r