

Shamim @ Mukesh Kumar Khanna vs State Of Nct Of Delhi on 7 May, 2024

Author: Navin Chawla

Bench: Navin Chawla

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IN THE HIGH COURT OF DELHI AT NEW DELHI

BAIL APPLN. 798/2024

SHAMIM @ MUKESH KUMAR KHANNA Applicant

Through: Mr.Gaurav Tyagi, Adv.

versus

STATE OF NCT OF DELHI

Through:

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% 07.05.2024

1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for the applicant to be released on bail in FIR No.217/2022, registered at Police Station: Sangam Vihar, for offence under Sections 354/376/506 of the Indian Penal Code, 1860 (in short, 'IPC') and Sections 6/10 of the Protection of Children from Sexual Offences Act, 2012 (in short, 'POCSO').

2. It is the case of the prosecution that on 31.03.2023, a complaint was received from the victim, who was aged about 15 years, and had along with her mother visited the Police Station, stating that the applicant herein, who is her father, had touched her inappropriately on her private parts and when she objected to 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 10/05/2024 at 22:11:49 same, she was beaten and threatened by him. She stated that she was aged only 9 years at the time first such incident had taken place. She stated that on 16.05.2021, the applicant took her to the Village of her grandmother at Aligarh where he continued to develop physical relation with her on many occasions. On 22.06.2021, her mother reached at Aligarh and brought her back to their house

at Sangam Vihar. The applicant, however, threatened the victim and her mother not to register any FIR. The victim also claims to have an audio recording of the applicant admitting to his misdeeds. The applicant has been in custody since then.

3. The learned counsel for the applicant submits that the FIR has been registered pursuant to a matrimonial dispute between the petitioner and his wife. He submits that the allegation of forceful sexual relations being made by the applicant with the victim at Aligarh, stands falsified by the victim as she admits that the grandmother of the victim had only one room at Aligarh in which the grandmother, father, brother of the applicant and his children, all used to reside; and there were total 6 persons residing in one room and, therefore, the incident alleged to have taken place there cannot be so.

4. He submits that though the mother of the applicant states that she came to know of the alleged offence on 18.12.2021, the complaint in this regard was filed only on 31.03.2022 when she came to know that the applicant has married another person. He submits that this itself shows the mala fide intention behind This is a digitally signed order.

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5. He further submits that all the material witnesses already stand examined before the learned Trial Court and, therefore, there is no likelihood of the applicant tampering with the evidence.

6. On the other hand, the learned APP and the learned counsel for the victim submit that the applicant has been charged with a heinous crime. They submit that the victim has remained consistent in her statement before the learned Trial Court.

7. They further submit that mere delay in filing of the complaint leading to the registration of the FIR, cannot be fatal to the case of the prosecution especially where the victim withstood her cross-examination.

8. They submit that out of the total of 13 witnesses that were cited by the prosecution, 6 already stand examined while 2/3 witnesses have been dropped by the prosecution. Only 5 witnesses remain to be examined and the trial is likely to end very soon.

9. I have considered the submissions made.

10. In Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC129, the Supreme Court has laid down the principles that must be kept in mind by a Court while considering an application under Section 439 of the Cr.P.C.. The same are reproduced hereinunder:-

"17. While granting bail, the relevant considerations are : (i) nature of seriousness 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 10/05/2024 at 22:11:50 of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court.

18. While considering the basic requirements for grant of bail, in State of U.P. v. Amarmani Tripathi , (2005) 8 SCC 21, this Court has held as under : (SCC p. 31, para 18) "18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being tampered with; and

(viii) danger, of course, of justice being thwarted by grant of bail [Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280] and [Gurcharan Singh v. State (NCT of Delhi), (1978) 1 SCC 118].

While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant 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 10/05/2024 at 22:11:50 or refusal of bail stated in [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC] : (SCC pp. 535-36, para 11) '11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-

application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. [Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598] and [Puran v. Rambilas, (2001) 6 SCC

338)"]

19. The test to be applied for grant of bail was also considered in Jayendra Saraswathi Swamigal v. State of T.N., (2005) 2 SCC 13 , wherein it was held as under : (SCC pp. 21-22, para 16) "16. ... The considerations which normally weigh with the court in granting 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 10/05/2024 at 22:11:50 bail in non-bailable offences have been explained by this Court in [State v. Jagjit Singh, (1962) 3 SCR 622] and [Gurcharan Singh v. State (NCT of Delhi), (1978) 1 SCC 118] and basically they are -- the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case."

11. In the present case, the applicant has been charged with a grave offence. Though the applicant is in custody since 31.03.2022, the trial is at its fag end with only 5 witnesses remaining to be examined.

12. In my view, therefore, instead of releasing the applicant on bail at this stage, it would be appropriate to direct the learned Trial Court to expedite the conclusion of the trial.

13. The learned Trial Court is accordingly directed to expedite the conclusion of trial and make an endeavour to adjudicate on it within a period of six months from the date of first listing of the same before it after this order.

14. Let a copy of this order be sent to the learned Trial Court for ensuring compliance.

15. Needless to state, any observation touching upon the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the matter. This is a digitally signed order.

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16. The bail application is dismissed in the above terms.

NAVIN CHAWLA, J MAY 7, 2024 RN/RP Click here to check corrigendum, if any This is a digitally signed order.

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