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

+ **BAIL APPLN. 296/2022**

RAHUL

..... Petitioner

Through: Mr. Girish Chander, Mr. Prakash
Jha and Mr. Lochan, Advocates.

versus

STATE

..... Respondent

Through: Mr. Amit Chadha, APP for the
State with SI Sarla Ashava, PS-
Kirti Nagar.
Ms. Aishwarya Rao, Advocate for
the prosecutrix.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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09.05.2022

1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 ["CrPC"], wherein the applicant seeks regular bail in connection with FIR No. 334/2019, dated 03.10.2019, registered at Police Station- Kirti Nagar, under Sections 342/376(2)(n)/506 of the Indian Penal Code, 1860 ["IPC"] and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ["POCSO Act"].
2. I have heard Mr. Girish Chander, learned counsel for the applicant, Mr. Amit Chadha, learned Additional Public Prosecutor for State, and Ms. Aishwarya Rao, learned counsel for the prosecutrix.
3. The allegation in the FIR is that, the appellant, who lives in the

same vicinity, and is a friend of the brother of the prosecutrix, used to come to her house, and allured her with outings to several places in Delhi. It is alleged that, on 20.06.2019, he committed rape upon the prosecutrix on the assurance that he will marry her. It is further alleged that on 28.06.2019 also, the accused took her to his *jhuggi*, and committed rape upon her. The statement of the prosecutrix has been recorded under Section 164 of the CrPC wherein she has corroborated the aforesaid version.

4. The applicant was arrested on 05.10.2019, and remains in judicial custody since 06.10.2019. The chargesheet has since been filed, and charges under Sections 342/376(2)(n)/506 of the IPC and Section 6 of the POCSO Act have been framed against the applicant. The trial is in progress, and the prosecutrix and her father have been examined. Mr. Chadha, upon instructions from the Investigating Officer [“IO”], who is present in Court, states that only four formal witnesses, all of whom are police officers, are yet to be examined.

5. Mr. Chander submits that the alleged incident which was complained of by the prosecutrix, was a result of a love affair between the applicant and her. He states that the prosecutrix was a few days short of 17 years of age on the date of the alleged incident, her date of birth being 15.07.2002, and the applicant-accused was 18 years 4 months old when the alleged incident took place. Mr. Chander submits that the applicant’s fourth bail application was rejected by the Sessions Court on 04.12.2021, when the prosecutrix was present, and stated that she had no opinion on the bail application of the accused.

6. Ms. Rao, submits, upon instructions from the prosecutrix, and her

mother, that the victim opposes the grant of bail to the applicant. She states that the applicant is a resident of the same locality as the prosecutrix, and she apprehends threats to her well being.

7. Mr. Chander states that, to allay this apprehension of the prosecutrix, the applicant's parents have rented a property (*H.No. E-1/1, 1st Floor, Street No.11, Bharat Vihar, Begumpur Extension, Begumpur, Delhi-110086*), which is not located in the same area, and the appellant will reside there, if released on bail. He has handed over a copy of the rent agreement dated 26.04.2022, which is taken on record. Mr. Chander submits that the said rent agreement was handed over to the IO in advance.

8. Mr. Chadha confirms that this fact has been verified. The verification report of IO has found the rent agreement to be genuine and the applicant's mother is living there since 26.04.2022. A copy of the said report is also taken on record.

9. As far as bail in cases under the POCSO Act is concerned, the judgment of this Court dated 22.09.2020, in BAIL APPL. 1559/2020 [*Dharmander Singh @ Saheb vs. The State (Govt. of NCT of Delhi)*], lays down that, the provisions of Section 29 of the POCSO Act, when applied at the stage of bail, require a higher threshold for an accused to be entitled to bail. Certain factors have been enumerated by the Court, albeit not exhaustive, which would aid the Court in determining whether to grant bail to the accused. These factors are stated in paragraph 77 of *Dharmander Singh* (supra) which reads as follows:-

“77. Though the heinousness of the offence alleged will beget the length of sentence after trial, in order to give due

weightage to the intent and purpose of the Legislature in engrafting section 29 in this special statute to protect children from sexual offences, while deciding a bail plea at the post-charge stage, in addition to the nature and quality of the evidence before it, the court would also factor in certain real life considerations, illustrated below, which would tilt the balance against or in favour of the accused :

a. the age of the minor victim : the younger the victim, the more heinous the offence alleged;

b. the age of the accused : the older the accused, the more heinous the offence alleged;

c. the comparative age of the victim and the accused : the more their age difference, the more the element of perversion in the offence alleged;

d. the familial relationship, if any, between the victim and the accused : the closer such relationship, the more odious the offence alleged;

e. whether the offence alleged involved threat, intimidation, violence and/or brutality;

f. the conduct of the accused after the offence, as alleged;

g. whether the offence was repeated against the victim; or whether the accused is a repeat offender under the POCSO Act or otherwise;

h. whether the victim and the accused are so placed that the accused would have easy access to the victim, if enlarged on bail : the more the access, greater the reservation in granting bail;

i. the comparative social standing of the victim and the accused : this would give insight into whether the accused is in a dominating position to subvert the trial;

j. whether the offence alleged was perpetrated when the victim and the accused were at an age of innocence : an innocent, though unholy, physical alliance may be looked at with less severity;

k. whether it appears there was tacit approval-in-fact, though not consent-in-law, for the offence alleged;

l. whether the offence alleged was committed alone or along with other persons, acting in a group or otherwise;

m. other similar real-life considerations.”

10. Applying these factors to the present case, it appears that the prosecutrix and the applicant were known to each other, being the residents of the same locality, and were proximate in age. The applicant himself was also 18 years of age at the time of the alleged incident. There is no material to suggest that the applicant was in a position to exercise any particular coercion or intimidation upon the prosecutrix.

11. The applicant has already spent more than two years in custody. The evidence of the prosecutrix and her father have already been completed. As submitted by Mr. Chadha, it appears that only formal witnesses are yet to be examined.

12. The apprehension expressed by the prosecutrix in respect of the applicant's residence in her neighbourhood is also allayed by the statement of Mr. Chander that the applicant will reside at the new rented accommodation, which has been taken on record.

13. Having regard to all these factors, it is directed that the applicant be released on bail in connection with FIR No. 334/2019, dated 03.10.2019, registered at Police Station- Kirti Nagar, under Sections 342/376(2)(n)/506 of the IPC and Section 6 of the POCSO Act, subject to the following conditions:-

- a. The applicant will furnish a personal bond in the sum of ₹ 20,000/-, with one surety in the like amount, from a blood relative, to the satisfaction of the Sessions Court.

- b. The applicant will reside at the premises mentioned in the rent agreement dated 26.04.2022 (*H.No. E-1/1, 1st Floor, Street No.11, Bharat Vihar, Begumpur Extension, Begumpur, Delhi-110086*). It is stated by Mr. Chander that at least one of the applicant's parents will reside with him at the said address. In the event of any change in the applicant's address, the applicant will give prior information of the same to the IO and the Sessions Court.
 - c. The applicant will give his mobile number to the IO, and ensure that the mobile number is kept in working condition and is operational at all times.
 - d. The applicant will drop a location pin on Google Maps to ensure that his exact location is with the IO at all times
 - e. The applicant, or his family members, will not contact the prosecutrix or any member of her family. Mr. Chander states that the applicant will not enter the jurisdictional area of the police station where the prosecutrix resides.
 - f. The applicant will not tamper with the evidence, directly or indirectly, in any manner.
 - g. The applicant will appear before the Sessions Court on each and every date of hearing, unless specifically exempted by the Sessions Court, in exceptional circumstances.
14. Needless to say that, in the event of violation of any of the aforesaid conditions, the bail granted to the applicant is liable to be cancelled.
15. The Sessions Court is requested to make every effort to conclude the trial as expeditiously as possible and practicable.

16. It is made clear that any observation made in this order is only for the purpose of disposal of the present application, and will not prejudice the parties at the trial.
17. A copy of this order be communicated electronically to the concerned Jail Superintendent forthwith for information.
18. A copy of this order also be given *dasti*.
19. The application is disposed of in these terms.

PRATEEK JALAN, J

MAY 9, 2022
'vp'/

Click here to check corrigendum, if any