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

+ **BAIL APPLN. 3310/2022**

ANKIT BHANDARI

..... Petitioner

Through: Mr N Hariharan, Sr. Adv. with Mr Piyush Pahuja, Mr Bharat Dubey, Mr Siddharth S Yadav, Mr Punya Rekha Angara, Mr Prateek Bhalla and Mohd. Qasim, Adv.

versus

STATE OF NCT DELHI & ANR.

..... Respondents

Through: Ms Nandita Rao, ASC for State with Mr Amit Peswani, Adv.
W/SI Manisha, PS-Punjabi Bagh

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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10.11.2022

CRL.M.A. 22759/2022

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

BAIL APPLN. 3310/2022

1. This is an application seeking grant of anticipatory bail in FIR No. 422/2022 dated 22.06.2022, under Sections 376(D)/328/120-B IPC read with Sections 6/17/21 POCSO Act, registered at Police Station-Moti Nagar.

2. As per the FIR, the prosecutrix alleged sexual abuse by Vishal & Puneet. It is stated that the prosecutrix was a Class 12 student and was a friend of the applicant. On 16.05.2022, the applicant wanted to take her to Pacific Mall and on the way he said that he had some work. The applicant and his friend Puneet took the **prosecutrix** to M-Block, DLF Flat, Moti Nagar wherein a person, named, Deepak opened the door. The applicant and Puneet started having hukka and the applicant told the prosecutrix to go to another room as

she was allergic to fumes of the hukka. Subsequently, two persons Vishal and Joy arrived at the scene and offered a drink to the prosecutrix. After consuming the cold drink, the prosecutrix started feeling heavy and unwell and hence laid down. Thereafter Deepak got Aloo Puri for her. After consuming a bit of Aloo Puri, she felt nauseous. Subsequently, Joy and Vishal came to the prosecutrix's room and it is stated that they committed sexual assault on the prosecutrix. After the two people left, the prosecutrix called the applicant who came after 2/3 minutes and told him that she was feeling unwell. The applicant took her to a doctor in a private clinic and informed her mother and the mother also arrived. Thereafter the prosecutrix was referred to a lady doctor. Since the applicant was taking her Class 12th examination and her father had recently expired, she did not register an FIR till her class 12th papers were over. After 10.06.2022, the prosecutrix had been calling the applicant but could not connect with him. She contacted Puneet and thereafter registered the FIR.

3. Mr Hariharan, learned senior counsel in support of the application has stated that there are no allegations of Section 376-D IPC against the applicant. As far as abetment is concerned, he states that abetment can only be against Joy who held the feet of the prosecutrix when she was allegedly sexually assaulted. He further states that as per status report, the applicant has joined investigation and there is no need for any custodial interrogation especially in view of the fact that no role has been assigned to him by the prosecutrix. He further states that a bare perusal of the FIR shows that the prosecutrix did not divulge that she was sexually assaulted by Joy and Vishal and in fact he was the one who helped the prosecutrix by taking her to the doctor. As and when he got to know about the incident, he was so upset and depressed that he even attempted suicide.

4. Mr Hariharan further states that a bare perusal of the aforesaid facts clearly show that no prima facie case has been made out against the applicant.

He has also drawn my attention to a letter dated 31.08.2022 addressed to the learned Sessions Judge wherein she states that she does not think that the applicant is guilty of any offence and does not want any action against the applicant.

5. Per contra, Ms Rao, learned ASC has stated that it is a case where the applicants have approached the Courts with unclean hands. She states that the applicants have stated before the learned Sessions Court that they were present at the flat but “after sometime” they went out. She states that the same was totally contradicted by the CCTV footage which shows that the applicant was present throughout at the said flat.

6. She has also filed a status report. In the status report it has been mentioned as under:

(i) As per the statement of the prosecutrix under Section 161 Cr.PC, she and the applicant, named, Ankit had a plan to visit Pacific Mall on 16.05.2022. However, Ankit called her to come near Hanuman Mandir, and when she reached there, it was found that the applicant was present with his friend, named, Puneet and after sitting in the car, the applicant Ankit told her that he has some work at DLF, Moti Nagar, so they went to DLF, Moti Nagar first. Thereafter, they were to go to the Pacific Mall.

(ii) The prosecutrix has stated that she wanted to report the matter to the Police, but the applicant was not available and after repeated efforts, she was able to contact Puneet. Subsequently, both of them refused to give her any details of the co-accused, named, Vishal, Karan @ Joy. Even prosecutrix had disclosed about the sexual assault to both the applicants immediately after the incident, but they did not report the matter to the Police.

(iii) From the CCTV footage obtained from DLF, it was revealed that the applicant, Puneet and the prosecutrix came to DLF at 2:30 PM. The co-accused Karan @ Joy and Vishal came to DLF at around 3:58

PM.

(iv) As per CDR report, Vishal and Karan @ Joy left from DLF, Moti Nagar at 5 PM and Ankit, Puneet and prosecutrix left for DLF, Moti Nagar at 5:19 PM.

(v) The applicant had invested an amount of Rs. 1.5 crores in IPL match through *Satta* through Vishal and Karan @ Joy and lost the amount in betting. He wanted to invest another amount of Rs. 50 lakhs.

7. On 12.07.2022, Court granted interim protection to the accused persons, during which they joined investigation, however, on 23.07.2022, the anticipatory bail was dismissed and thereafter, the applicant has not joined investigation. NBWs and the proceeding under Section 82 have been initiated. The applicant has applied for cancellation of Section 82 and NBW proceedings which is pending before the learned Sessions Court.

8. I have heard Mr. Hariharan, learned senior counsel for the applicant and Ms. Nandita Rao, learned ASC for the State.

9. In the present case, the FIR is under Section 376(D)/328 IPC and Section 6/ 17 of the POCSO Act. Section 17 of the POCSO Act is punishment for abetment and reads as under:-

“17. Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

Explanation. -- *An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.”*

10. Section 16 of the POCSO Act defines abetment of an offence and reads as under:-

“A person abets an offence, who--

***First.**--Instigates any person to do that offence; or*

***Secondly.**--Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or*

***Thirdly.**--Intentionally aids, by any act or illegal omission, the doing of that offence.*

***Explanation I.**--A person who, by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.*

***Explanation II.**--Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.*

***Explanation III.**--Whoever employ, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.”*

11. In the present case, the applicant was a known friend of the prosecutrix. The main accused persons, Karan @ Joy and Vishal were not friends of the applicant, but were person to whom he had lost huge sums of money in *Satta*. It is difficult to understand why the applicant would go

with his friend to the house of Vishal and Karan @ Joy and wait for them for over an hour and a half without them being present. There is no satisfactory explanation for the same.

12. The applicant was sitting in the room next to the one where the prosecutrix was lying down. The applicant could not be ignorant of the fact that Vishal and Karan @ Joy went to the room where the prosecutrix was lying. The incident took place in the adjacent room and the applicant would have heard the prosecutrix. This is clear from the fact that the prosecutrix called out for the applicant and he came after 2 – 3 minutes. It is difficult to understand what prevented the applicant to not interfere during the incident.

13. When the prosecutrix told the applicant that she was feeling unwell, the applicant took her to the Doctor which was almost an hour away. The applicant did not report the matter to the Police, even after the applicant was informed of the incident of sexual assault. The said fact is also stated in the status report.

14. All these circumstances, *prima facie* lead to an inference that the applicant was facilitating acts of sexual assault on the prosecutrix. The fact that the prosecutrix has not made any allegations against the applicant or had written a letter to the learned Sessions Judge, is not of much relevance as the prosecutrix was a minor, being less than 18 years old and had recently lost her father.

15. The order dated 23.07.2022 passed by ASJ-01, West, Special Court under the POCSO act, THC, Delhi is correct in holding that non reporting of an offence of sexual assault of a minor is an offence under the POCSO act.

16. I am of the view that in a case containing such serious allegations, this court should exercise restraint in exercising its jurisdiction in granting protection against arrest.

17. The Supreme Court in *Sumitha Pradeep v. Arun Kumar C.K.*, 2022 SCC OnLine SC 1529 while dealing with the matter of anticipatory bail in POCSO cases, in which chargesheet was filed opined:

“16. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial

interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

Emphasis supplied

18. For the aforesaid reasons, I do not find any merit in the application and the same is dismissed.

19. The status report submitted is taken on record.

JASMEET SINGH, J

NOVEMBER 10, 2022

sr/ms

Click here to check corrigendum, if any