

(2023) 08 DEL CK 0056

In the Delhi High Court

Case No : Bail Application No. 3008 Of 2022

Sandeep Kumar

APPELLANT

Vs

State (Govt Of Nct Of Delhi) & Anr.

RESPONDENT

Date of Decision : 01-08-2023

Acts Referred:

Indian Penal Code, 1860 — Section 354, 506

Code Of Criminal Procedure, 1973 — Section 164, 439

Protection of Children from Sexual Offences Act, 2012 — Section 10, 12

Citation : (2023) 08 DEL CK 0056

Hon'ble Judges : Swarana Kanta Sharma, J

Bench : Single Bench

Advocate : Swati Verma, Manoj Pant, Ashutosh Kaushik

Final Decision : Dismissed

Judgement

Swarana Kanta Sharma, J

1. The instant application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of the applicant seeking regular bail in FIR bearing no. 496/2021, registered at Police Station Vasant Kunj, Delhi for offences punishable under Sections 354/506 of the Indian Penal Code, 1860 ('IPC') and Section 10/12 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

2. Briefly stated, the present FIR was registered on the complaint of one Ms. 'S,' aged about 12 years, in which she had alleged that one 'RS' and applicant Sandeep Kumar who resided in the same building on the third floor, used to impart tuitions to her. It was alleged that on 24.03.2021, when her mother and 'RS' had gone out to the market for shopping, the present applicant had come to her and had asked her to come to the third floor. There, he had forcefully held her hand, hugged her, and had kissed her. It is further alleged that on 01.04.2021, when the victim had come to the house of 'RS' for the purpose of tuition, in her absence, the applicant Sandeep Kumar had again committed the

same acts and the victim had run away from the spot. The applicant had threatened to spoil her career in case she would divulge it to anyone. On 09.09.2021, the victim had revealed some of the incidents to her teacher, who had then called her mother and had informed her about it. Thereafter, the victim had narrated the entire incident to her mother, and based on her statement, the present case was registered.

3. Learned counsel for the accused/applicant states that the applicant is in judicial custody since 11.09.2021 and has no criminal antecedents. It is stated that applicant is a highly educated man and has long served the noble profession of teaching and educating children since the year 2007. It is further stated that the parents of the applicant are majorly dependent upon him as his two other brothers are married and have their respective families to look after and maintain. It is argued that the allegations levelled by the victim are completely false and baseless. It is further stated that in the present case, the FSL report does not support the prosecution story and the testimony of the victim has already been recorded. Therefore, bail be granted to the present accused/applicant.

4. Learned APP for the State, assisted by learned counsel for complainant/victim, argues to the contrary and states that the victim was only 12 years of age at time of incident and considering the gravity of offence, bail be rejected.

5. I have heard arguments addressed on behalf of both sides and have perused the material on record.

6. After hearing arguments and going through the case file, this Court is of the opinion that in the present case, the victim was only 12 years of age at the time of incident, and the applicant and victim shared relationship of teacher and student. At the time of alleged incident, the applicant was about 34 years of age and was married. Despite being the teacher of the victim who was only 12 years of age, he had committed the offence of outraging her modesty, kissing, hugging, and touching her private parts. Though the FSL report could not retrieve the messages and inappropriate images sent by the applicant to the victim herein as alleged, which also can be due to some technical reasons, it will become clear only at the conclusion of trial. The victim's testimony reveals that she has supported the prosecution case in totality before the learned Trial Court. She has also supported prosecution case in her statement recorded under Section 164 Cr.P.C.

7. What adds to the seriousness and gravity of the offence is the fact that the allegations in the complaint of inappropriate touching when the victim was attending offline classes and specific instances and allegations that during the pandemic, when the classes were offline he had insisted on sexual conversations and had made inappropriate video calls wherein he used to show his private part to the victim who was only 12 years of age and had told her that in case she will reveal anything to anyone it will spoil her exams and career. Thus, it is not only

the relationship of a teacher and student that too of tender age of 12 years who was taken advantage of acts to the seriousness of the offence. As per the victim, it is only after her parents suspected and overheard the conversation between her and the accused accidentally that they were alerted about it. The victim was an innocent child who then confided in her another female teacher who had told her about good touch and bad touch and she had then narrated the entire incident to her and to her parents. With this background and the victim and other witnesses supporting the case entirely in their testimony before the learned Trial Court, this Court considering the object and intent of the act, the tender age of the victim, the conduct of the applicant of indulging in outraging the modesty of victim child, indulging in sexual conversations, taking advantage of the relationship of being a teacher and being 22 years elder to her as well as taking advantage of ignorance of the child about good touch and bad touch, not only violated the body of the victim child but also disregarded the sanctity of his relationship with the minor child of being his teacher.

8. Needless to say, the parents send their children, whether daughters or sons, to tuition centres on the trust and faith that their teachers will take care of them. In the present case, the exploitation of the minor victim by a teacher, taking advantage of her tender age, has made the offence graver and serious. Though the learned counsel for the petitioner stated that the accused be admitted to bail considering that he had served the noble profession of teaching for long time, his conduct reveals that he had neither respected the nobility of the profession or the student teacher relationship. The victim in this case was traumatized and had confided in another female teacher who had also educated the victim about good touch and bad touch and had also informed the mother of the victim. It shows the embarrassment and trauma faced by the victim that she had not been able to divulge the incident to her mother earlier as she was under fear that she will not fare well in her examination as told to her by the present applicant.

9. Thus, considering the overall facts and circumstances of the case, the gravity of offence which is reflected from the fact that the minor victim used to go for tuition at the applicant's house, this Court finds no ground for grant of bail at this stage.

10. Accordingly, the bail application stands dismissed.

11. Nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.

12. The judgment be uploaded on the website forthwith.