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(2022) 05 DEL CK 0344

In the Delhi High Court

Case No : Bail Application No. 577 Of 2022

Satyender Srivastav — APPELLANT

Vs

State Of Nct Of Delhi — RESPONDENT

Date of Decision : 18-05-2022

Acts Referred:
Indian Penal Code, 1860 — Section 323, 342, 363, 373, 376, 420, 468, 471
Code Of Criminal Procedure, 1973 — Section 164
Protection of Children from Sexual Offences Act, 2012 — Section 6

Citation : (2022) 05 DEL CK 0344

Hon'ble Judges : Talwant Singh, J

Bench : Single Bench

Advocate : Ajit Kumar Thakur, Neelam Sharma, Arvind Kumar

Final Decision : Dismissed

Judgement

Talwant Singh, J

1. This is an application for regular bail in case FIR No.379/2019 under Section 363 IPC registered with P.S. K.N. Katju Marg, New Delhi.

2. The case of the applicant is that he has been falsely implicated in the present case and has been arrested on 10.01.2021 and since then he is in jail; he is entitled to bail on the ground of parity as co-accused has already been released on bail on 24.05.2021 and main accused Mithlesh Kashyap has been granted interim bail by the Court of learned ASJ.

2.1 The case of the prosecution is stated to be that father of the victim lodged the FIR on 23.09.2019 alleging that his daughter had not returned home on 22.09.2019 and he doubted that someone may have kidnapped her hence case under Section 363 was registered at PS K.N. Katju Marg, Delhi. The accused Mithlesh took the prosecutrix to her home and confined her there for a long time, where she was sexually exploited by Mithlesh Kashyap, who was involved in a prostitution racket. Mithlesh Kashyap used to call many persons at her house like

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co-accused Mukesh and present applicant.

2.2 The case of the applicant is that the he had gone there only 2-3 times. Co-accused Mukesh has taken prosecutrix to his house from the house of Mithlesh Kashyap on the assurance of getting married with her. The applicant has no role in the activities of Mithlesh, prosecutrix and co-accused Mukesh @ Vikky. He had only availed the services of the prosecutrix 2-3 times like other customers and prosecutrix had admitted in her statement that number of persons used to come to avail prostitutional services at the house of accused Mithlesh Kashyap. Even as per the story narrated by the victim, the main accused is Smt. Mithlesh Kashyap, who was apprehended.

2.3 Statement of the prosecutrix was recorded under Section 164 Cr.P.C. The present applicant was arrested. Charge-sheet stands filed on 04.02.2021. The TIP was not conducted and the present applicant was arrested only on the basis of suspicion and surmises and he is stated to be in jail since 10.01.2021. His bail application has already been rejected by learned ASJ on 23.01.2022. The applicant is aged about 45 years having wife and school going children; he was running a small factory for his livelihood; nowadays there is no earning member in the family; no custodial interrogation is required; hence the bail has been prayed.

3. Notice was issued. Status report has been filed. It has been stated that present petitioner had earlier approached this Court by filing the bail application No. 1908/2021, which was dismissed as withdrawn on 09.08.2021 after some arguments. Regular bail was granted to co-accused Mukesh @ Vikky in view of the role attributed by the victim. Mukesh @ Vikky who in fact had helped the victim to come out of the house of Mithlesh Kashyap and moreover, Mukesh @ VIkky was suffering from 70% physical disability, so there cannot be any parity with Mukesh @ Vikky. Co-accused Mithlesh is only on interim bail on medical grounds.

3.1 Case is stated to be at the stage of arguments on the point of charge. The bail application has been strongly opposed on the ground that material prosecution witnesses, including the victim, are still to be examined and considering the gravity and seriousness of the offence there being every likelihood of threatening and influencing the material witnesses by applicant at this stage.

4. I have heard arguments. Learned counsel for the petitioner has reiterated that both the co-accused are on bail. The present petitioner has no role in bringing the victim to the premises of Mithlesh and he was only a customer; the petitioner has clean antecedents; the daughter of the petitioner is of marriageable age and the trial will take long time as even charge has not been framed, so he has prayed for grant of bail.

5. On the other hand, learned APP has pointed out that co-accused Mithlesh Kashyap is only on interim bail. Other co-accused Mukesh is 70% physically

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disabled, who helped the victim to come out of the hell, so he was granted bail. The petitioner has repeatedly raped the victim; material witnesses including the victim have not been examined till date and the victim was aged about 14-15 years at the time of the incident, hence the bail has been strongly opposed.

5.1. It has been further pointed out that although the FIR was initially registered under Section 363 IPC, section 376/342/323/373/420/468/471 IPC and Section 6 of POSCO Act were added subsequently keeping in view the facts, which came to the knowledge of investigating agency during the course of investigation.

6. After hearing arguments of both the sides and keeping in view the fact that the offences are serious in nature; the petitioner is alleged to have repeatedly raped the minor victim in the house of accused Mithlesh Kashyap; the case is still at the stage of framing of charge; the victim has supported her allegations even in her statement under Section 164 Cr.P.C. recorded before the learned Metropolitan Magistrate; material witnesses including the victim are to be examined and the possibility of the petitioner influencing or threatening the said vulnerable witnesses, at this stage, cannot be ruled out. Hence, in my view the petitioner is not entitled to bail at this stage.

7. As stated earlier, the petitioner cannot claim parity as co-accused Mukesh @ Vikky is 70% physically disabled and he was a person who had helped the victim to come out of the place where she was confined by Smt. Mithlesh Kashyap and in case Smt. Mithlesh, she has only been granted interim bail on medical grounds and she is not on regular bail.

8. The bail application filed by the petitioner is hereby dismissed.

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