

(2022) 02 DEL CK 0138

In the Delhi High Court

Case No : Bail Application No. 3386 Of 2021

Sonu Khatri

APPELLANT

Vs

State (G.N.C.T Of Delhi)

RESPONDENT

Date of Decision : 07-02-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 376, 506

Code Of Criminal Procedure, 1973 — Section 439

Protection of Children from Sexual Offences Act, 2012 — Section 6, 17

Citation : (2022) 02 DEL CK 0138

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : R.N. Sharma, Sanjeev Sabharwal, Parveen Kumar

Final Decision : Dismissed

Judgement

Manoj Kumar Ohri, J

1. The present bail application has been filed under Section 439 Cr.P.C. on behalf of the applicant seeking regular bail in FIR No. 492/2020 registered under Sections 376/506/34 IPC and Sections 6/17 of the POCSO Act at P.S. Narela, Delhi.

2. Mr. R.N. Sharma, learned counsel for the applicant submits that the applicant is in custody since 17.11.2020 and the charge sheet having been filed, he is no longer required for any investigation. It is further submitted that the prosecutrix in the present case is the daughter of the applicant, who had filed the present complaint at the instance and at the behest of her mother with whom, the applicant has pending matrimonial dispute. It is submitted that the allegations levelled against the applicant are false and unbelievable. It is submitted that in the complaint it has been alleged that although the first incident is stated to have been committed in June, 2018, the present FIR came to be registered only on 16.11.2020. It is submitted that the allegation levelled by the child victim that the applicant alongwith his sister has shown her obscene video and thereafter

committed offence of rape upon her, on the face of it, is unbelievable. It is submitted that the allegations are concocted and levelled by the prosecutrix at the behest of her mother, who was having adulterous relationship with her brother-in-law, namely, Adesh Kumar.

Learned counsel for the applicant has also sought parity with co-accused, Kavita (sister of the applicant), who has been admitted to anticipatory bail by this Court vide order dated 21.09.2021. Learned counsel has also referred to the complaint dated 24.08.2020 given on behalf of the applicant, wherein he has expressed his apprehension of being falsely implicated at the behest of the complainant (mother of the child victim).

3. Mr. Sanjeev Sabharwal, learned APP for the State, duly assisted by Mr. Parveen Kumar, learned counsel for the complainant, has vehemently opposed the bail application. It is stated that at the relevant time, the child victim was about 13 years of age and she is yet to be examined in the trial. It is stated that the factum of applicant influencing the witnesses or tampering with the evidence cannot be ruled out.

4. I have heard learned counsels for the parties and have also gone through the entire material placed on record.

5. As noted hereinabove, the child victim in the present case, is the daughter of the applicant. During investigation, as per the school records, the date of birth of the child victim is found to be 23.08.2007. According to which, she was aged about 11 years at the time of the incident. The first incident is stated to have occurred in June, 2018 and the last incident occurred on 26.01.2020. It was further stated that the applicant being her father has continuously threatened her for which reason she could not disclose the incident to her mother. After investigation, the Investigating Officer has filed the charge sheet against the present applicant, wherein the name of co-accused Kavita was kept in Column No. 12 without her being arrested.

6. Considering the aforesaid and the fact that co-accused, namely, Kavita was not a resident of Delhi and was living 500 kms away in U.P., this Court had granted the benefit of anticipatory bail to her vide order dated 21.09.2021. The applicant cannot seek parity with the co-accused. As far as the applicant is concerned, the child victim has consistently levelled allegations against him and she is yet to be examined.

7. Keeping in view the aforesaid facts and circumstances, this Court is not inclined to admit the applicant on bail at this stage. Accordingly, the present application is dismissed.

8. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case.