

(2022) 03 DEL CK 0117

In the Delhi High Court

Case No : Bail Application No. 2225 Of 2021, Criminal Miscellaneous (Bail) No. 868 Of 2021

Sunita

APPELLANT

Vs

State Of Nct Delhi

RESPONDENT

Date of Decision : 21-03-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 439, 482
Protection of Children from Sexual Offences Act, 2012 — Section 4, 6, 12, 17
Indian Penal Code, 1860 — Section 34, 323, 366A, 370(4), 370A(1), 372
Immoral Traffic (Prevention) Act, 1956 — Section 4, 5
Juvenile Justice (Care And Protection Of Children) Act, 2015 — Section 23

Citation : (2022) 03 DEL CK 0117

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Mohit Mathur, Suchita Dixit, Madhusuda Agnihotri, Hirein Sharma, Liyi Marli Noshi, C.P. Nautiyal, Akshay Kumar

Final Decision : Disposed Of

Judgement

Manoj Kumar Ohri, J

1. The present bail application has been filed under Section 439 Cr.P.C. read with Section 482 Cr.P.C. on behalf of the applicant seeking regular bail in FIR No.368/2016 registered under Sections 370A(1)/372/323 IPC, Sections 4/6 of the POCSO Act and Section 5 of the Immoral Traffic Prevention Act, 1956 (hereinafter, referred to as the 'ITPA') at P.S. Bindapur, Delhi. Alongwith the application for regular bail, the applicant has also preferred an application seeking interim bail, being CRL.M.(BAIL). 868/2021.

2. After completion of investigation, the charge sheet in the instant case was filed under Sections 323/366A/370(4)/370A(1)/34 IPC, Sections 4/12/17 of the POCSO Act, Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Sections 4/5 of the ITPA.

3. Mr. Mohit Mathur, learned Senior Counsel appearing for the applicant, submitted that the applicant is in custody since 28.05.2016, and the charge sheet having already been filed, she is no longer required for any investigation. It was further submitted that 8 witnesses have already been examined and there are multiple contradictions qua the role of the applicant in the statements of said witnesses, including that of the child victim herself.

It was averred that the child victim has materially improved upon her earlier statements during trial, inasmuch as the only allegation levelled against the applicant in the FIR was that she used to give beatings to the child victim on her refusal to do household chores, and further deprive her of food. However, during trial, it was alleged for the first time that the applicant also used to visit on some occasions when co-accused/Hari Shankar took the child victim to different persons for the work of prostitution. Lastly, it was submitted that the applicant is not involved in any other case.

4. Learned APP for the State, on the other hand, duly assisted by learned counsel for the complainant/child victim, vehemently opposed the bail application. It was submitted that the present case relates to a minor girl who, as per her school records, was aged about 13 years at the relevant time, and brought to Delhi by the applicant on the pretext of some work. It was further submitted that the allegations against the applicant are serious, as she is not only accused of physically abusing the child victim, but also of abetting prostitution.

5. Learned APP urged that the statement of the child victim has been recorded under Section 164 Cr.P.C. and she has been examined during trial, in course of which proceedings, she has supported the initial allegations on all material aspects. It was further urged that the statement of the mother of the child victim has been recorded under Section 161 Cr.P.C., wherein she has stated that the applicant took the child victim by lying that she had some personal work. It was informed that accused/Vinod Sharma, one of the persons who established physical relations with the child victim forcibly, has also been arrested.

In addition, learned counsel for the complainant informed that the child victim suffers from substantial hearing disability. It was averred that she was brought to Delhi on the pretext of work, whereafter the applicant abetted co-accused/Hari Shankar in forcing her into the work of prostitution.

6. I have heard learned counsels for the parties and perused the material placed on record.

7. In the present case, a PCR call dated 04.05.2016 was received at P.S. Bindapur, Delhi regarding sexual assault of one 13-year-old girl. The said information was recorded vide DD No.52-B. When the concerned Investigating Officer approached the child victim, she was found to be speaking Maithili language. Accordingly, the authorities arranged for a translator and the child victim's statement was recorded on 16.05.2016, pursuant to which the present FIR came to be registered on the same day.

8. The applicant came to be arrested on 28.05.2016. An application seeking regular bail was preferred on her behalf before the Sessions Court, but the same was dismissed vide order dated 10.05.2021 in light of factors, including the gravity of the offence and that certain witnesses remained to be examined. Notably, in the said order, it was erroneously recorded that the child victim was subjected to sexual assault by the applicant.

9. As per the allegations levelled in the FIR, the child victim had come from Bihar with the applicant and her husband/Hari Shankar to work as a domestic help in Delhi, whereafter she started living with them and their minor son in a tenanted premises. At the said house, the child victim was forced to do household chores, failing which she was given beatings by the applicant and Hari Shankar as well as deprived of food. It has been alleged that Hari Shankar used to lock the child victim in a room, undress her and take her nude photographs, which were sent to other persons. He also used to take the child victim in the night to different places on a motor cycle, where he would leave her with different persons in exchange for money. The said persons used to commit sexual assault/rape on the child victim and give beatings if she opposed. Later, Hari Shankar used to take the child victim back to the house. As per the prosecution case, Hari Shankar used to molest the child victim himself as well and gave beatings to her when she did not concede to his demands.

10. A perusal of the statement of the child victim recorded under Section 164 Cr.P.C. would show that the allegations, insofar as the present applicant is concerned, relate only to giving of beatings to the child victim and her being deprived of food. Moreover, from the said statement, no exercise of force by the applicant in bringing the child victim from Bihar to Delhi is discernible, inasmuch as the child victim has stated 'mujhe mere gaon ***** se meri chachi Sunita aur chacha lekar aaye'.

11. During her examination in trial, it has been deposed by the child victim that the applicant also used to visit sometimes when Hari Shankar took her to different persons for the work of prostitution, however, the allegation does not find support either in the FIR or in the statement of the child victim recorded under Section 164 Cr.P.C.

During her cross-examination, the child victim has further stated that she was brought to Delhi forcibly by one Pooja Punjabin, who was a resident of her village.

12. Keeping in view the aforesaid facts, the role assigned to the applicant and the period of incarceration undergone by her, it is directed that the applicant be released on regular bail subject to her furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty M.M. and subject to the following further conditions :-

i) The applicant shall furnish her mobile number at the time of furnishing of personal bond, which shall be kept operational at all times during the pendency

of the trial.

ii) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.

iii) The applicant shall regularly appear before the concerned Court during the pendency of the trial.

iv) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.

13. The bail application is disposed of in the above terms, alongwith the pending application.

14. A copy of this order be communicated electronically to the concerned Jail Superintendent for information and necessary compliance.

15. Copy of this order be also uploaded on the website forthwith.

16. 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.