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

Date of Decision: 24.08.2022

+ BAIL APPLN. 1926/2022

HANZLA IQBAL

..... Petitioner

Through: Mr. Amit Chadha, Adv. with Mr.
Arpit Bhalla, Mr. Antim Chadha, Ms.
Anjali Dhingra, Advs.

versus

THE STATE & ANR.

..... Respondents

Through: Mr. Aashneet Singh, APP for State,
Ms. Astha, Adv., DHCLSC
SI Rajnandini, PS Pahar ganj

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition seeking bail in FIR No. 230/2022 dated 30.04.2022 u/s 376/34 IPC read with Section 6 POCSO Act registered at P.S. Pahar Ganj, Delhi.

2. As per the FIR, it is alleged that the complainant came with her sister to Delhi many years ago and in September, 2019 went to buy a washing machine at Daryaganj, which belonged to the applicant.

3. It is further stated that the applicant and the prosecutrix exchanged numbers and thereafter became friends.

4. Around September, 2019, the applicant called the prosecutrix to Hotel Arjun Deluxe, Chuna Mandi, Gali No. 3, Paharganj, Delhi and established a physical relationship with her.

5. Thereafter, it is stated that the applicant made a video of the prosecutrix and blackmailed the prosecutrix with that video.
6. It is further stated that thereafter the applicant forced the prosecutrix to have physical relationships with different people under the threat of releasing the video.
7. It has also been stated that the prosecutrix around August, 2021 managed to escape from the house of the applicant in Sector 4, Rohini, where she was held captive and went to Sector 17, Rohini, where she met one Sandeep and, on her oral request, he employed her in his shop selling clothes.
8. There she also met one lady called Savita, who helped her. It is stated that Ms. Savita is an advocate by profession, who helped the prosecutrix to register the FIR and was present with her throughout.
9. It is on these grounds that the FIR had been filed.
10. Mr. Chadha, learned counsel has argued for grant of bail application on many grounds.
11. He states that the date of incident is September, 2019. He states that the prosecutrix has 4 different dates of birth. As per the Aadhar card, the date of birth of prosecutrix is 01.01.1998, as per the PAN card, date of birth of prosecutrix is 25.02.2004, as per the verification done by the respondent/state, the date of birth of prosecutrix is 01.06.2005. He states that the prosecutrix has been giving her date of birth as per her own convenience, only to invoke the provisions of POCSO Act against the applicant.
12. He further states that even assuming without admitting, the allegations of the complainant to be true, the date of incident is September, 2019 i.e. 3 years ago.

13. He further states that as per her own statement, the applicant has managed to escape from the house of the applicant in Sector 4, Rohini around 8 months prior to 30.04.2022 (i.e. date of registration of FIR)

14. There is no explanation or reasons given, anywhere, as to why the FIR in question has been registered on 30.04.2022.

15. He states that the only reason for that is that the prosecutrix was extorting money from the applicant and when the applicant refused to comply with her illegal demands, the FIR was filed.

16. He has further drawn my attention to a complaint dated 21.04.2022, wherein 10 days prior to the FIR, the complainant had made a complaint to the police regarding the extortion of money by the prosecutrix and Sandeep.

17. He also submits that the investigation of the police is shoddy. He states that there are financial transactions showing deposit of money by the applicant in the account of Sandeep and the prosecutrix to the tune of about Rs. 4,50,000/-. The same has not been investigated. He states that no staff of Hotel Arjun Delux has been examined. He states that the Aadhar has not been verified. He further states that there is no investigation as to the multiple Instagram accounts of the prosecutrix. There is also no investigation with respect to the neighbours of the houses where the prosecutrix alleges that she was confined.

18. Lastly, he states that there is no investigation with regard to the photographs which show the applicant and the prosecutrix in Rani Khet and Nainital in cozy and happy times.

19. Per contra, Ms. Astha, learned SC for DHCLSC states that as per the verification report from Nepal, the date of birth of the applicant is 01.06.2005.

20. Mr. Singh, learned APP states that the applicant was a minor on the date of incident.

21. He further states that all the contentions raised by the applicant can only be adjudicated after completion of trial.

22. I have heard learned counsel for the parties.

23. I am of the view that in the present case, there is much more than what meets the eye.

24. As per the prosecutrix's own showing and as the case stated in the FIR, she has had relationship with the applicant from 2019. If the applicant had blackmailed the prosecutrix, there was nothing preventing her from approaching the police at an earlier stage.

25. The allegation of blackmailing on the pretext of a video does not inspire my confidence, as the prosecutrix has not stated in the FIR that it was a forced physical relationship between the applicant and her.

26. In addition, from 8 months prior to April, 2022 i.e. the date of registration of the FIR, the prosecutrix as per her own showing, had escaped from the so called flat where she had been kept captive and started working at Sector 17, Rohini with Sandeep. There was nothing which prevented the applicant from registering the FIR within those 6 months. No satisfactory reason has been given for this inordinate delay.

27. As regards the date of birth is concerned, it seems the prosecutrix has 3 different dates of birth. The Aadhar card shows her date of birth as 01.01.1998 and hence on the date of the alleged incident, the prosecutrix was supposed to be a major.

28. The person, who is in a consensual physical relationship with another person, is not required to judicially scrutinise the date of birth of the other

person. He is not required to see Aadhar card, PAN card and verify the date of birth from her school record before he enters into a physical relationship. The very fact that there is an Aadhar Card and the very fact that the same shows date of birth as 01.01.1998 is sufficient for the applicant to form an opinion that he was not indulging in physical relationship with a minor.

29. The fact whether the Aadhar card was forcefully made by the applicant is something which can only be proved at trial.

30. The respondent/State has not verified as to the time when the Aadhar card was issued in favour of the applicant and what supporting documents were provided for making of the Aadhar card.

31. Another reason which prompts granting of bail is that there are transfers of huge amounts of money in favour of the prosecutrix.

32. The transfers start from the month of June, 2021 and go on till 19.04.2022.

33. The answer for these transfers as recorded in the order dated 09.06.2022 is that the prosecutrix had sold a property worth Rs. 50,00,000/-, which is the money she had given to the applicant and it was the applicant who was transferring some part of this money back to her. There is no such averment in the FIR.

34. The status report does not indicate as to what property was sold and when by the prosecutrix or how she received Rs. 50,00,000/-

35. It is hard to imagine that a sum of Rs. 50,00,000/- was received by her in cash and she had given the entire money to the applicant.

36. In addition, I have also been shown the 161 Cr.P.C. statement of one Sandeep dated 15.06.2022. He states that he received money in his account from the applicant as the prosecutrix did not have a bank account and it was

money being returned to the prosecutrix by the applicant, which was being deposited in his account.

37. The screenshots show the money is being transferred by the applicant to account of Sandeep from 17.05.2021 to 30.11.2021. The screenshots show that from June, 2021 to October, 2021, the prosecutrix had an account with Kotak Mahindra bank as the applicant was transferring money to her as well during this period.

38. The status report has not investigated this aspect of the matter either.

39. This Hon'ble Court in one bail application being BAIL APPL. 2813/2020 titled '*Kapil Gupta vs. State*' has noticed that there are cases where innocent persons are being honey trapped and huge amounts of money are being extracted from them. This Court had directed Commissioner of Police to personally look into the matter and investigate such cases of honey trapping.

40. I am, *prima facie*, of the view that this also seems to be a case of such incident.

41. The Commissioner of Police shall have a detailed investigation as regards the prosecutrix if any such similar FIR has been registered by the prosecutrix against any other person in Delhi.

42. The police shall also investigate the Aadhar card bearing No. 667880237875 and the date of issuance of the same and the supporting documents filed for issuance of the said Aadhar card.

43. In the meanwhile, the applicant is directed to be released on the following terms and conditions:

- i. The applicant shall furnish a personal bond with one local surety in the sum of Rs. 20,000/- each, to the satisfaction of the Trial Court;

- ii. He shall appear before the Court as and when the matter is taken up for hearing;
 - iii. The applicant shall provide his mobile number to the Investigating Officer (IO) concerned- at the time of release, which shall be kept in a working condition at all times. The applicant shall not switch off, or change the same without prior intimation to the IO concerned, during the bail period;
 - iv. He shall report to the local Police Station on first Monday of every month at 10:30 A.M. He shall not be forced to sit for more than half an hour on any such occasion;
 - v. In case he changes his address, he will inform the IO concerned and this Court also;
 - vi. The applicant shall not leave the country during the bail period and surrender his passport, if any, at the time of release before the Trial Court;
 - vii. The applicant shall not indulge in any criminal activity during the bail period;
 - viii. The applicant shall not communicate with, or come into contact with any of the prosecution witnesses, or any member of the victim's family, or tamper with the evidence of the case.
44. The application stands disposed of in the aforesaid terms.

JASMEET SINGH, J

AUGUST 24, 2022/dm

Click here to check corrigendum, if any