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

+ BAIL APPLN. 2747/2023

KISHAN LAL

..... Petitioner

Through: Mr. Arun Sharma, Mr. Pradeep  
Kumar, Advs. with Parokar Laxmi  
Devi.

versus

THE STATE

..... Respondent

Through: Mr. Amit Sahni, APP for the State  
with SI Vidhi, PS Okhla Industrial  
Area.

**CORAM:**

**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

**ORDER**

**29.08.2023**

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1. Present bail application has been filed under section 439 r/w 482 CrPC seeking regular bail in case FIR No.382/2023 dated 23.06.2023 registered under Sections 509 of IPC & 12 of POCSO Act at PS Okhla Industrial Area.
2. Briefly stated the allegations in the FIR are that on 23/06/2023 a PCR call was received at PS Okhla Industrial Area complaining about an old man showing his private part to the complainant/victim "P" D/o "S" R/o "X". The call was entrusted to SI Akash to take necessary action. Later that day the victim and her father themselves went to the police station whereupon the statement of the victim was recorded. The victim in her statement stated that she resides with her mother

and brothers in UP and her father is working in Delhi as a driver. She stated that she was studying in the 3<sup>rd</sup> standard in a school in UP. She stated that since she was having her summer vacations at school, she along with her mother and brothers came to visit her father in Delhi. She stated that on the morning of 23.06.2023 when she was sitting near the staircase of her house, the petitioner/ accused who lives in the same neighborhood showed his private part to her and uttered something while facing towards her. The victim informed about the incident to her father whereupon he made the PCR call. Basis this statement of the victim the present FIR came to be registered under sections 509 IPC & 12 POCSO Act against the petitioner/accused Kishan Lal S/o Ram Gopal R/o C-400, Sanjay Colony, Okhla Ph-1, Age-63 yrs.

3. Learned APP for the States submits that thereafter the victim was sent to AIIMS Hospital whereby her medical examination got conducted vide MLC No. 4507/23. The medical history noted by the doctor is as follows:

*“Victim give No exposure of private part by an adult man of age approximately 50 yrs. He resides in front of victim's house. Name of accuse not known. Victim was sitting on stairs of her home at the time of incidence. Accused opened his residence gate and took down his underwear and showed his penis. There was no physical assault, sexual assault, videography, pornography. No touching of victim by accused. No verbal abuse present”.*

4. Ld. APP for the States submits that the petitioner was arrested on

24.06.2023 and has been in Judicial Custody ever since. Ld. APP submits that the statement under section 164 CrPC of the victim was recorded on 24.06.2023 before the Ld. MM, Saket Courts, New Delhi. It has been submitted that the accused Kishan Lal was medically examined in AIIMS Hospital, Delhi where is potency test was conducted. After examination it was opined by the doctor that there is nothing to suggest that the above-mentioned person is incapable of performing sexual intercourse under ordinary circumstances.

5. Ld. APP submits that the accused had moved a bail application before the learned Ld. ASJ (POCSO), Saket Courts which came to be dismissed on 14.07.2023. It has been submitted that the pasting file of victim was received from Samrat Public School Gauspur, Ghazipur, UP and as per the school record her DOB is 29.06.2013.
6. Ld. APP submits that the chargesheet has been filed and the matter is pending before the Ld. ASJ, Saket Courts, next fixed for 21.09.2023. The bail has been opposed on the ground of gravity of the offence.
7. The victim is appearing through support person through VC. The father of the victim is also appearing through VC and states that the incident has severely disturbed and traumatized the victim.
8. The IO is directed to get the counseling session organized for the victim. In this regard some NGO/CWS may be contacted, and appropriate counseling session be conducted.
9. The status report has been filed but it is not on record. Let the status report be brought on record. However, learned Additional PP for the State has placed the status report before the Court.
10. Learned counsel for the petitioner has submitted that even as per the

status report, there is no history of physical assault, sexual assault, videography, or pornography. There is neither history of touching of the victim by the accused nor any report of verbal abuse. The only allegation against the accused is that he opened the gate of his house and took down his underwear and showed his private part to the complainant.

11. Learned Counsel for the petitioner submits that the petitioner is around 63 years of age and is likely mentally unstable. It has been submitted that the petitioner is in custody since 24.06.2023.
12. There is no doubt that such incidents leave a deep trauma on the victim but at the same time, the Court has to strive to maintain a balance. The accused herein is an old man aged 63 years. The accused is stated to be mentally unstable. It is also pertinent to mention here that there is no report or history of touching of victim and verbal abuse.
13. Without going merits of the case and taking into account the age of the accused and no past criminal antecedents, the accused is admitted to Court bail on furnishing a personal bond of Rs. 20,000/- with one surety of the like amount to the satisfaction of the trial court, subject to the following conditions:

- a) the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- b) the petitioner shall provide his/her mobile number(s) to the Investigating Officer;
- c) Since the petitioner resides in the vicinity of the family of the

prosecutrix, in case any complaint is received by the IO, the petitioner shall shift his residence beyond the radius of 5 km from the vicinity of the victim's family.

e) in case of change of residential address and/or mobile number, the petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

14. In view of above, the present bail application stands disposed of.

15. Copy of this order be communicated to the concerned Jail Superintendent for information and necessary compliance.

16. Order *dasti*.

**DINESH KUMAR SHARMA, J**

**AUGUST 29, 2023**

*Pallavi*