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

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.....Petitioner

Through: Mr. Ramesh Gupta, Sr. Advocate with Ms. M Begum, Ms. Nandita Rao, Mr. Jai Shankar, Mr. Amit Dubey, Mr. Manoj Kumar Makhija and Mr. Mayank Bhaiya, Advocates.

versus

STATE OF NCT OF DELHI & ANR.Respondents

Through: Mr. Naresh Kumar Chahar, APP for State along with SI Yashveer Sharma, PS: Govindpuri.

CORAM:

HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. By way of the present application, the applicant seeks grant of regular bail in FIR

under Sections 376/328/509 of the Indian Penal Code, 1860 [hereafter '*IPC*'] and Sections 4/6 of the Protection of Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*'].



2. Briefly stated, the present case arises from the FIR registered, pursuant to a PCR call received regarding the allegations of sexual assault. The prosecutrix, aged 13 years and a student of Class 9th, had been residing with her mother in a rented accommodation at .

As per the statement of the prosecutrix, the petitioner, who is her father, had married her mother in the year 2010. It was alleged that after the petitioner had been released from jail in March 2023, he had started staying in close proximity to the prosecutrix for a period of 2-3 weeks, repeatedly assuring her that she was his best friend and encouraging her to share everything with him. Consequently, the prosecutrix had begun confiding in him. It was alleged that approximately 15 months prior to the lodging of complaint, while other members of the household had been asleep, the petitioner had placed his hand on the prosecutrix's chest. Initially, she had believed it to be accidental; however, after the act had been repeated 5-6 times, she had formed the opinion that it was intentional. Due to frequent conflicts between her parents in the past, she had refrained from disclosing the incident, fearing further discord. The prosecutrix had also stated that she had experienced pain in her private parts upon waking up and had suspected that on multiple occasions, when she had been alone at home, the petitioner had administered some substance in her food, causing her to lose consciousness. Such incidents had allegedly occurred 6-7 times. She had further alleged that on one occasion, the petitioner had offered



her a milkshake, which she had discreetly discarded in the kitchen dustbin, suspecting that it had some substance that may lead her to lose consciousness. On that day, she had become aware that the petitioner had engaged in inappropriate conduct with her. Although distressed, she had refrained from reporting the matter due to hesitation and fear. Subsequently, the prosecutrix had confronted the petitioner regarding his conduct, upon which he had allegedly apologised and assured her that such incidents would not recur. He had also dissuaded her from informing her mother. However, it was alleged that the petitioner had continued to subject the prosecutrix to inappropriate touching on multiple occasions. On 24.07.2024, the petitioner had allegedly repeated the prior acts. Finally, on 09.10.2024, the prosecutrix had informed her mother of the incidents. Thereafter, the present FIR was registered at the instance of the prosecutrix. During the course of investigation, the medical examination of the prosecutrix was conducted at AIIMS Hospital, Delhi. The petitioner was on 09.10.2024, and his disclosure statement had been recorded.

3. The learned senior counsel for the petitioner argues that the petitioner has been falsely implicated in the present case due to ulterior motives. It is contended that the petitioner has been in judicial custody since 10.10.2024 and that the allegations leveled against him are baseless and fabricated. It is submitted that the complainant/prosecutrix is the biological daughter of the petitioner, and the present FIR is an afterthought, allegedly orchestrated by the



prosecutrix's mother. The learned senior counsel contends that matrimonial disputes, including cases of domestic violence, are presently pending between the petitioner and the prosecutrix's mother. It is argued that the present FIR has been lodged as a means to exert undue pressure on the petitioner and to settle personal scores. The learned senior counsel also submits that this is not the first instance where the complainant has attempted to falsely implicate the petitioner, and in this regard, it is pointed out that on an earlier occasion, the prosecutrix's mother had filed a complaint against the petitioner, leading to the registration of an FIR bearing no. 04/2021, for offences under Sections 420/468/471/495/376/509 of IPC. However, the order dated 17.03.2023 passed by the Coordinate Bench reflects that after filing the said complaint, the complainant had entered into a compromise with the petitioner. It is stated that following the compromise, the parties had resumed cohabitation, and now, a fresh complaint of this nature – allegedly orchestrated by the wife – is not believable. Additionally, it is submitted that there has been an unexplained and inordinate delay of over 19 months in lodging the FIR, which casts serious doubts on the veracity of the allegations. In view of the above, it is prayed by the learned senior counsel that the petitioner be granted bail.

4. On the other hand, learned APP for the State opposes the present application, arguing that the trial in this case is yet to commence and allegations against the application are serious in nature. It is argued that the mere fact that the earlier complaint filed



by the petitioner's wife was compromised between the parties can be no ground to suspect that the present complaint is false. It is submitted that the gravity of the allegations, coupled with the fact that the victim is the biological daughter of the applicant/accused, adds to the gravity of the offence. It is further argued that there exists a strong likelihood of the applicant/accused threatening the victim, her mother, and other material witnesses, if granted bail. In light of the aforesaid circumstances, it is prayed that the present bail application be dismissed.

5. This Court has **heard** the arguments addressed by both the sides, and has perused the material on record.

6. After perusing the record, this Court is of the opinion that the arguments of learned counsel for the petitioner, contending that the present complaint is rooted in a revengeful motive and that the complainant mother has used her daughter to settle marital discord or extort money from the accused, is not found meritorious at this stage. The mere fact that the prosecutrix's mother and the petitioner are in a marital relationship and that their marriage is going through turmoil, resulting in multiple disputes, cannot by itself be a ground to outrightly reject the allegations made by the victim. The prosecutrix, who is a minor, cannot be deprived of her right as an individual to seek justice merely because her parents are embroiled in litigation. The right of a victim of sexual assault to report cannot be viewed with suspicion solely because the allegations pertain to incest.



7. This Court has carefully examined the statement of the prosecutrix, who is about 13 years of age. In her statement, she has categorically stated that the accused, who is her real father had administered a cold drink to her, following which she had lost consciousness. Given that the accused is her father, she may not have suspected any ill intent at that time. She has further stated in her statement under Section 183 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 (hereafter 'BNSS') as follows: *“When my mother was not at home, he used to bring something to eat and drink for me. Suddenly, after eating that, my head used to get heavy. At that time, I used to feel that I should lie down for 5 minutes, then I used to fall into a deep sleep. After that, when I used to wake up, my father would have gone from there and I used to feel a lot of pain in my whole body. This happened 2-3 times. Then one day, father brought milkshake. I took two sips of it in front of father and threw the rest in the kitchen basin. That day also, I fell into a light sleep and lay down. When I was lying down I saw that Papa was fingering my private parts. I could not understand anything at that time and kept crying for 1-2 hours. Then when I woke up I asked Papa why do you do this to me.”*

8. The allegations leveled by the prosecutrix regarding repeated instances of sexual assault, coupled with threats by the accused to prevent her from disclosing the incidents to her mother, cannot be disregarded at this stage.

9. It is pertinent to note that on an earlier occasion, the



petitioner's wife had filed a complaint against him, which had led to the registration of FIR bearing no. 04/2021 for offences under Sections 420, 468, 471, 495, 376, and 509 of the IPC. Although the said case was subsequently settled between the parties, the mere existence of a prior compromise cannot automatically lead to the presumption that the present complaint is false, especially since the parties in this case had entered into a compromise which included compromise between the parents, i.e. the accused and the prosecutrix's mother. Each case has to be examined on its own merits, and a past settlement between the parties does not grant immunity against fresh allegations of a grave nature. Merely because the prosecutrix's mother had earlier entered into a compromise with the accused and had given her no objection to the grant of bail to the accused/petitioner in the said case, alone cannot lead to the presumption that she is a habitual complainant, nor does it diminish the gravity of the present allegations, especially when specific allegations have been levelled by the minor prosecutrix herein.

10. Further, unlike in the previous case filed against the accused under sections dealing with marital offences, where the complainant was the mother of the prosecutrix, in the present case, it is the child herself who had made a distress call to the police, and reported the incidents of sexual assault committed upon her by her father. In fact, rather than being a witness, to whom the child had narrated the incident of sexual assault, the mother has been booked in an FIR for failing to report the incident of sexual assault to the authorities.



11. In this Court's view, the present case presents a distressing and grave situation where a minor victim has allegedly not only been subjected to the trauma of her parents' ongoing disputes but has also allegedly been sexually assaulted by her own father. The psychological and emotional burden on the prosecutrix cannot be overlooked, as she was placed in a deeply vulnerable position, being harassed and traumatized both by the discord between her parents and the alleged acts of sexual violence committed against her.

12. Victims of sexual assault, particularly minor children, have independent rights under the law, which cannot be negated merely because their parents have chosen to settle disputes among themselves. The legal system recognizes the rights of every child, and even in situations where their own parents fail to stand by them or support them, the Court has a bounden duty to uphold their voice, protect their rights, and ensure that justice is served in accordance with the law.

13. Furthermore, the apprehension raised by the prosecution regarding the likelihood of the accused influencing the victim and other material witnesses, given the nature of the allegations and the relationship between the parties, cannot be ignored or disregarded, at this stage. The possibility of intimidation, or the accused absconding from the jurisdiction to evade trial also weighs against the grant of bail.

14. In view of the above discussion, and considering the



seriousness of the allegations, and the consistent statements of the victim, this Court finds no merit in the present bail application.

15. Accordingly, the present bail application stands dismissed.

16. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression on the merits of the case.

17. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

MARCH 20, 2025/zp