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

% Judgment delivered on: 09.10.2023

+ BAIL APPLN. 707/2023

PARVEZ AHMED SHEIKH Petitioner
Through: Mr. Mohit Mathur, Sr. Adv.
with Mr. Amitabh Narender,
Mr. Mridul Chakravarty and
Mr. Jehangir Ahmed, Advs.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent
Through: Ms. Richa Dhawan, APP for
State with SI Giriraj, P.S.
Kamla Market.

**CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN**

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in FIR No. 05/2012 under Section 366A/363/372/373/376/377/368/174-A/109/34 Indian Penal Code, 1860 and under Sections 3/4/6 of Immoral Traffic Prevention Act, 1956 and Section 23/26 of Juvenile Justice (Care and Protection of Children) Act, 2000 registered at P.S. Kamla Market.
2. *Vide* order dated 03.03.2023, notice was issued in the bail application of the petitioner and the State was directed to file a Status



Report. The State has filed Status Reports dated 17.04.2023 and 08.07.2023, which are on record.

3. The case of the prosecution as borne from the status reports is that information was received by the police that some minor girls were being kept forcibly at GB Road and were also being compelled for prostitution. On this information, a raiding team was constituted and raid was conducted whereby 10 girls namely CC, SM, RR, RB, LSP, KN, RN,JD, SK and CGK were rescued.

4. Thereafter, on the statement recorded under Section 161 Cr.P.C. of the rescued girl CC R/o Hyderabad, Andhra Pradesh, the aforesaid FIR came to be registered. In her statement under Section 161 Cr.P.C., the victim deposed that after her parents passed away, she went to Pune in search of a job and remained there for around two years. During this period, she met with one unknown boy who lured her to Delhi on the pretext of a job and sold her to one lady namely, Rani for Rs. 30,000/-. Thereafter, the victim CC was forced to establish sexual relations under threat by Rani and Reshma. She further alleged that the present petitioner who was living at the brothel, used to facilitate the accused Rani and Reshma for compelling the petitioner to establish sexual relations against her will. She further alleged that the petitioner used to beat the victim and did not allow the petitioner to leave from the brothel. She also alleged that a person 'PAPA' was the owner of the brothel and would visit the brothel and would also frighten and threaten the victim.

5. During the course of investigation, all the rescued girls were medically examined and the bone age x-ray report revealed that 5 of



the victims were major and the remaining 5 victims were found to be minor. Statement under Section 164 Cr.P.C of all the rescued were recorded in which 'RN' and 'KN' deposed that they are willingly staying at the brothel. However, the remaining 8 victims made allegations against Reshma and PAPA.

6. Thereafter, search of the petitioner was made by the IO but since the petitioner was absconding, he was declared Proclaimed offender. Thereafter, the petitioner was arrested by Crime Branch, Kotwali, Delhi vide DD No.-4, Dated 23.12.2018 under Section 41-1(C) Cr.P.C. and on 14.01.2019, he was formally arrested in the present case before the Hon'ble Court.

7. Mr. Mohit Mathur, learned senior counsel for the petitioner at the outset submits that the petitioner has been incarcerated since 24.12.2018 and has thus spent more than 4 years in custody. He further submits that the prosecution has sought to examine 39 witnesses out of which 10 witnesses have been dropped and 13 witnesses are yet to be examined. It was thus urged, that the petitioner may not be kept in custody till the conclusion of trial, which is not likely to be concluded anytime soon.

8. On the merits of the case, Mr. Mathur submits that it is the case of the prosecution that total 10 victims were rescued, however, 07 of the 10 victims have been dropped as witnesses as they are untraceable. In support of his contention, Mr. Mathur has referred to the order dated 25.08.2022, which reads as under:-

"As per record, more than reasonable efforts were made for production of witnesses mentioned in the list of witnesses at



Serial Nos. 02,03,04,05,07,08 and 10 but those witness could not produced by the prosecution. The efforts were also made through the office of Worthy DCP but in vain and it was reported that the said prosecution witnesses are not traceable.

In the given circumstances, the witnesses mentioned at Serial Nos. 02,03,04,05,07,08 and 10 are hereby dropped from the list of witnesses."

9. The 03 victims who were available, their evidence has already been recorded. He submits that all the victims in the present case have been examined, thus, there cannot be any apprehension of petitioner threatening or intimidating the witnesses, in the event of he being enlarged on bail.

10. Mr. Mathur, also drew the attention of the court to the examination of the victim 'S' who was examined as PW-5 to submit that on 27.04.2018, when the witness was initially examined she did not make any allegation against the petitioner. Thereafter, PW-5 was recalled for further examination on 03.02.2020 as in the meantime the petitioner was arrested on 24.12.2018. Referring to the examination of PW-5, he submits that the witness/victim failed to identify the present petitioner.

11. Mr. Mathur also invited attention of the Court to the testimony of victim 'K' who was examined as PW-6 to submit that on 09.10.2018, when the witness was initially examined, the said witness also did not depose against the present petitioner and the allegations were made only against co-accused Reshma. However, when PW-6 was examined on 15.09.2021, after the arrest of the petitioner, she could not give any clarity as to identity of the present petitioner.



12. Mr. Mathur also handed over in Court the statement of PW-6, which was recorded under section 164 Cr.P.C and has been exhibited as Ex. PW6/B. Referring to the said statement, he contends that PW-6 in her statement under section 164 Cr.P.C has admitted that she was living at the brothel out of her free will and without any coercion.

13. Mr. Mathur also invites the attention of the Court to the testimony of Victim 'CC' who was examined as PW-8 on 27.09.2022 to submit that even PW-8 has stated that 'Papa' was the owner of the brothel. Elaborating further, he submits that a conjoint reading of the testimonies of PW-5 and PW-6 actually reveal that the petitioner and 'papa' are different persons.

14. Mr. Mathur also referred to the cross examination of PW-8 to contend that PW-8 is not a reliable witness as she herself has admitted that she does not remember material facts about the present case.

15. Elaborating further he submits that statement of PW-5 and PW-6 were examined in the year 2018 and at that stage they did not name the petitioner. However, after the arrest petitioner, both the witnesses were recalled. PW-5 was recalled on 03.02.2020 and PW-6 was recalled on 15.09.2021. Even after recall PW-5 stated that she has never seen the petitioner earlier, whereas PW-6 identified him as P.P. Singh. PW-8 was examined subsequent to the arrest of the petitioner, on 27.09.2022, only after the PW-5 and PW-6 failed to support the case of the prosecution.

16. Mr. Mathur also refutes the prosecution case to the effect that the petitioner is owner of the brothel. He contends that there is no document to show that the petitioner is the owner of the said brothel.



17. In the backdrop of aforesaid facts and circumstances it has been urged by Mr. Mathur that the petitioner be enlarged on bail.

18. *Per contra*, the learned APP appearing on behalf of the State has argued on the lines of the Status Report. She submits that the present petitioner has been accused of a grave and serious offence, therefore, he may not be enlarged on bail. She further submits that victim 'CC' alleged in her complaint as well as in her statement recorded under Section 164 Cr.P.C. that the present petitioner used to beat the victim whenever she tried to leave the brothel as well as forced her into prostitution. She submits that the petitioner is the main accused in the matter and that he is the owner of the brothel. She also submits that PW-8 has clearly identified the petitioner and has also supported the case of the prosecution.

19. I have heard the learned senior counsel for the petitioner as well as the learned APP for the State and perused the material on record.

20. The case of the prosecution relies heavily on the statement of PW-8, who has allegedly supported the case of the prosecution. However, the contention of the learned senior counsel for the petitioner is that PW-8 is not a reliable witness. Though the probative value of the testimony of PW-8 will be decided by the learned Trial Court during trial but at this stage, even taking the statement of PW-8 on its face value, it is to be noticed that PW-8 has admitted that she does not know the name of the present petitioner. Further, the statement of PW-8 is not corroborated with the evidence of other witnesses, as the other witnesses (PW-5 & PW-6) have failed to identify the present petitioner.



21. *Prima facie* the statement of PW-8 also suffers from self contradiction. At one stage of her examination-in-chief she states that she will not be able to identify Reshma, Papa or any of their associates today as much time has lapsed since the time when this incident happened and also because of the fact that she stayed at that kotha for only 6-7 days. She then also says that she is unable to recall the names of the other associates of Reshma and Papa due to the same reason. However, when the next moment the petitioner is shown to PW-8, she states that petitioner was the person whom she had seen at the said kotha and he used to force the girls staying there to enter into prostitution. Perusal of the cross-examination of PW-8 *prima facie* shows she feigned ignorance and does not remember the material facts of the case.

22. It will be apt to refer to the statement of PW-5 recorded on 03.02.2020, when she was recalled for further examination. She failed to identify the present petitioner. Intriguingly, the said witness was neither declared hostile nor was cross-examined by the prosecution. The examination of PW-5 recorded on 03.02.2020 reads as under:

"On S.A.

(At this stage, accused Parvez Sheikh is asked to come from behind the screen and shown to the witness. After seeing him, the witness states that she has never seen the accused earlier. The witness failed to identify accused Parvez Sheikh.)

During investigation also the police officials had enquired from me about one person namely Parvez Sheikh and I told them also that I do not know any such person.



XXXX by Sh. Amitabh Narendra, Advocate, Counsel for accused Parvez.

Nil. (Opportunity given).

23. As far as the testimony of PW-6 is concerned, *prima facie* it cannot be said that the same is free from contradictions and inconsistencies. PW-6 has identified the petitioner as P.P. Singh and has further stated that P.P. Singh was the owner of the brothel along with another person who was named as 'Papa'. However, the name of the petitioner or P.P. Singh did not surface during the recording of her statement under Section 164 and has only come at the time of recording of evidence on 15.09.2021. The relevant part of the examination of PW-6 reads as under:-

"ON SA

Question: Can you identify the accused Mohd. Parvez Alam?

Answer: Yes, I can identify the accused

(At this stage, the accused Mohd. Parvez Alam is shown to the Victim on the screen and after seeing the accused, the victim states that he is P.P. Singh "isko PP Singh bolte the, jahan main karti thi, G.B. Road par Reshma ke paas" The victim has correctly identified the accused Mohd. Parvez Alam.)

"PP Singh bhi udhar ka malik tha aur ek malik aur tha jisko Papa kehte the. Mujhe Reshma kam ke liye lekar gayi thi. Maine vahan teen saal tak kaam kiya tha par mujhe koi paise nahi mile"

XXXXXX by Sh. Amitabh Narendra, Advocate, Ld. Counsel for accused Mohd, Parvez Alam.

Question: I put it to you that you have not mentioned anywhere in your statement recorded under Section 164 Cr.P.C., Ex.



PW6/B that accused Mohd. Parvez Alam was the owner of the premises in issue. What have you to say?

Answer: "maine har jagah ye baat boli hai ki us jagah ke teen malik the, ek PP Singh, ek Reshma aur ek aadmi jisko Papa kehkar bulate the

(At this stage, victim is confronted with her statement recorded under Section 164 Cr.P.C., Ex. PW6/B wherein it is not so mentioned.)"

24. It is trite that the detailed and elaborate appreciation of evidence cannot be undertaken at the stage of considering bail application. However, for the limited purpose of seeing whether there exists a *prima facie* case in favour of the accused warranting grant of bail, the evidence can be looked into for indicating reasons therefor. Reference may be had to the observations of the Supreme Court in *Lt. Col. Praasad Shrikant Purohit v. State of Maharashtra, (2018) 11 SCC 458*, which read as under:-

"29. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider, among other circumstances, the following factors also before granting bail; they are:



(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge."

25. In view of the settled law, this Court cannot shut its eyes to the improvements, inconsistencies or contradictions in the testimonies of the material witnesses viz., PW-5, PW-6 and PW-8 which may have the potential of making dent into the case of the prosecution to an extent. However, the evidentiary value of the testimonies will be seen by the learned Trial Court at an appropriate stage.

26. The offences under Section 6 of Immortal Traffic Prevention Act, 1956 and Section 376 of the Indian Penal Code, 1860 are punishable with maximum punishment of life imprisonment. Whereas, the remaining offences under the Indian Penal Code, 1860 are punishable with imprisonment which may extend to 10 years. However, it is yet to be established whether the petitioner is guilty under Section 6 of the Immortal Traffic Prevention Act, 1956 and under Section 376 of the Indian Penal Code, 1860 in light of the evidence that may come on record during trial. For now, it cannot be ignored that at the pre-conviction stage there is a presumption of innocence.

27. Further, while it is the case of the prosecution that the petitioner is the main accused in the matter and is also the owner of the brothel, but notably no documentary evidence in the form of any sale deed,



lease deed or any other document have not been relied upon by the prosecution in support of the aforesaid contention.

28. Undisputedly, all available victims have already been examined and only formal witnesses are to be examined, therefore, there is no question of any apprehension that the petitioner may influence the witnesses if enlarged on bail.

29. It is also not disputed by the prosecution that the antecedents of the petitioner are clean, rather it is mentioned in the status report that there is no case pending against the present petitioner.

30. The nominal roll dated 20.04.2023 reveals that as on 19.04.2023, the petitioner has spent 4 years 3 months and 26 days in custody. Therefore, it can be safely presumed that the petitioner has spent approximately 4 years and 10 months in custody till date.

31. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be awarded to him. Detention is not supposed to be punitive or preventive. The seriousness of allegations or the availability of material in support thereof are not the only considerations for declining bail. Delay in the commencement and conclusion of the trial is a factor to be taken into account and the accused cannot be kept in custody for an indefinite period if the trial is not likely to be concluded within a reasonable time.¹

32. At this stage, it cannot be overlooked that the petitioner has been incarcerated for approx. 4 years and 10 months and the prosecution has cited as many as 39 witnesses, of which 13 are yet to

¹ Vinod Bhandari v. State of Madhya Pradesh, (2015) 11 SCC 502



be examined, which would inevitably lead to a protracted trial. In the given circumstances, no useful purpose will be served in keeping the petitioner behind bars.

33. In so far as the apprehension expressed by the learned APP as regards the petitioner being a flight risk, the same can be dispelled by putting stringent conditions.

34. Considering the above-discussed circumstances, I am of the view that the petitioner is entitled to grant of regular bail pending trial. Accordingly, the petitioner is admitted to bail subject to his furnishing a personal bond in the sum of Rs. 50,000/- with two sureties of like amount, subject to the satisfaction of the Trial Court/Duty Magistrate/CMM, further subject to the following conditions:

- a) Petitioner shall not leave limits of Delhi/NCR.
- b) Petitioner shall surrender his Passport, if any, before the Trial Court at the time of furnishing bail bond/surety bond.
- c) Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- d) Petitioner shall provide all the mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the Investigating officer concerned.
- e) Petitioner shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the present case.



35. It is made clear that the observations made herein are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.
36. The petition stands disposed of.
37. Copy of the order be forwarded to the concerned Jail superintendent for necessary information and compliance.
38. Order *dasti* under the signatures of the Court Master.
39. Order be uploaded by the website of the Court.

VIKAS MAHAJAN, J

OCTOBER 09, 2023/dss