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

Date of Decision: 11.05.2023

+ **BAIL APPLN.1562/2023 & CRL.M.A. 12642/2023**

SAKIB AHMED Petitioner

Through: Appearance not given

versus

STATE NCT OF DELHI Respondent

Through: Ms. Rupali Bandhopadhya, ASC
for the State, with SI Sanjeeta,
PS Jahangir Puri
Mr. Akshay Kumar & Mr.
Abhijeet Kumar, Advs.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

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SWARANA KANTA SHARMA, J. (ORAL)

CRL.M.A. 12642/2023

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

BAIL APPLN. 1562/2023

3. By way of present application filed under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the accused/applicant seeks regular bail in case FIR bearing no. 130/2023, registered at Police Station Jahangir Puri, Delhi under Sections 328/376/506 of Indian Penal Code, 1860 (IPC) and Section 6 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

A. Facts of the Case

4. The present FIR was registered on 22.01.2023 on the complaint of prosecutrix wherein she had alleged that she had met and had become friends with the applicant three years ago, after which, they had started talking to each other on phone and gradually had fallen in love with each other. It was alleged that one day in January-February, 2021, the applicant had called the prosecutrix to his house and when she had reached there, the applicant had offered her juice in a glass. It was

alleged that after drinking the juice, the prosecutrix had become unconscious and upon gaining consciousness after an hour, she had found herself lying naked. The applicant had thereafter told her that he had made physical relations with her and had also videographed the same. It is also alleged that the applicant had threatened the prosecutrix to keep quiet, else he would post the pictures and videos on social media. Under such threat, the prosecutrix had continued to talk to him. It was further alleged that one year back, the applicant had again made physical relations with her and he was now forcing her to marry him by changing her religion. It was stated that on the day of lodging of present complaint, the applicant had thrown eggs and stones at her house. During investigation, the medical examination was conducted on 22.01.2023 and the statement of prosecutrix under Section 164 Cr.P.C. was recorded on 23.01.2023.

B. Submissions of Applicant and State

5. Learned counsel for present accused/applicant submits that applicant has been falsely implicated in the present case and the allegations leveled against him are vague in nature. It is stated that applicant and prosecutrix were known to each other for around three years and relations between them were consensual in nature. It is stated that the prosecutrix had also refused to undergo her internal medical examination. It is also stated that investigation in the present case is complete and charge sheet has already been filed. It is stated that applicant has no criminal antecedents and he has been in judicial custody since 22.02.2023.

6. *Per contra*, learned APP for the State argues that the allegations against the applicant are serious in nature and the prosecutrix has supported her case in statement under Section 164 Cr.P.C. It is stated that prosecutrix was minor at the time of incident. It is also stated that charges are yet to be framed and prosecutrix is yet to be examined before the learned Trial Court, and thus, no relief be granted at this stage.

7. This Court has heard arguments on behalf of both sides and has perused the material on record.

C. Judicial Precedents

8. In *Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496*, the Hon'ble Apex Court had laid down the factors to be considered while granting bail to an accused, which read as under:

“...It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail...”

9. The Hon'ble Apex Court in *Sudha Singh v. State of Uttar Pradesh (2021) 4 SCC 781* had observed as under:

“11. There is no doubt that liberty is important, even that of a person charged with crime but it is important for the courts to recognise the potential threat to the life and liberty of victims/witnesses, if such accused is released on bail.”

D. Considerations for Grant of Bail: Court’s Opinion

Balancing Fundamental Rights of the Accused and Victim while considering Grant of Bail

10. Bail is granted to an accused charged with a criminal offence to release him from custody or detention, awaiting commencement and conclusion of trial. As per settled law, the evidence against the accused and other factors which assists the Court in decision making will include, amongst other factors as mentioned in preceding paragraphs, not only the seriousness of the charge, but also keep in mind the actual threat or attempted threat or violence in the past to threaten the witness from deposing before the Court. It is duty of the Court to ensure the safety and security of the victim while making decision for grant or refusal of bail. It is essential to ensure the security and safety of the victims and witnesses since fair judicial decision making process has to ensure that the victims are able to appear before the Court and provide information and evidence fearlessly. In case there is material on record which points to the contrary and reflects that release of the accused could affect safety and security of the victims, and the victims have legitimate concerns about potential of the accused to threaten and harm him or her, it will be a key consideration while deciding a bail application. While it is a fundamental right of accused to personal liberty, the Constitution gives right to life, liberty and security to the victim also.

11. Since these constitutional rights are for the accused as well as for the victim, the Court while granting bail has to balance both their rights in the backdrop of the facts of the case and the judicial precedents. The apprehension of such tampering, threats or violence has to be real and not vague.

E. Analysis and Findings

Innocent, consensual, teenage love relationship distinguished from sexual abuse under threat, pressure, blackmailing and violence

12. The contention of learned counsel for the applicant that the prosecutrix herself was in a **consensual relationship** and therefore, now cannot take a plea that she had been sexually assaulted is not tenable at this stage.

13. The record reveals that that applicant had not only made physical relations with her on the pretext of getting married to her and had continued to do so, but he had also videographed the same. Thereafter, he had kept on sexually assaulting her after threatening her that the photographs of their sexual relationship and videos of the same will be uploaded on the social media. The prosecutrix, therefore, in this case was put under threat of being defamed and embarrassed by posting the photographs and the video on the social media. The FIR further reveals that though initially, the sexual relations were made on the pretext of marriage, thereafter, the same were under threat and he had repeatedly exploited her sexually against her will under the abovesaid threat. In her statement recorded under Section 164 Cr.P.C., the prosecutrix has also

stated that the accused had exploited her, taking advantage of her trust upon him that he will get married to her and had continued to sexually abuse her. Thereafter, by blackmailing her he continued to sexually abuse her. Therefore, due to such conduct, she had asked him that she does not want to have any relationship with him, however, he had again threatened her that he will reveal everything to her parents. What is more disturbing to note in this case is that when she did not want to have any relationship with him, he started going to her tuition classes and threatening her. He also threatened her that she will have to change her religion to get married to him or otherwise, he will post the photographs and videos of the relationship on social media. There are also allegations that on 10/11.01.2023, he had thrown eggs and stone at her house and had also threatened her family since she had disclosed the entire thing to her family after he had started abusing her.

14. The contention of learned counsel for the applicant is that the present case is a case of adolescent love as the accused is about 19 years of age and the prosecutrix is only 17 years. Learned counsel for applicant, during the course of arguments, also stated that this Bench in a recent judgment of *Mahesh Kumar v. State (NCT of Delhi) Bail Appln. 1240/2023* has laid down in that “*the teenage psychology and adolescent love cannot be controlled by the Courts and therefore the judges have to be careful while rejecting or granting bail in such cases*”.

15. This Court, however, is unable to agree with the contention raised on behalf of the applicant. This judgment rather, instead of helping the applicant, goes against him as the facts of the said case were entirely different where the prosecutrix had consistently supported the accused

and had stated that he had neither sexually assaulted her nor induced, abused or blackmailed her for anything and it was she herself who had wanted to go with him, live with him and wanted to get married with him. Therefore, taking note of such dissimilarity between cases which are reported and brought before this Court, this Court rather by way of abandoned caution had itself observed as under:

“18. This Court, as a note of caution while granting bail in this case and making the above observations, clarifies that every case of such nature has to be adjudged on its own peculiar facts and circumstances, and the age being in shadow of doubt as well as the consistency in the statement of the prosecutrix and lack of inducement or threat in such cases has to be adjudicated on facts and circumstances of each case.”

16. **The present case is distinguishable** from the case cited before this Court, as in the case at hand, the accused has not only made video recordings and photographs of their relationship but also has continuously threatened to post it on social media and under the said threat, he had continued to sexually exploit her. This case, therefore, does not fall under the category of those cases where the relationship is consensual without any threat or criminality. Moreover, there are specific allegations in this case that due to the violent and abusive behavior of the accused and continuous threats and blackmailing, the prosecutrix herein wanted to break the relationship, however, he did not let her live in peace and also started harassing her in tuition classes. He also started threatening her that in case, she will not change her religion and get married to him, he will post the videos and photographs of both of them on social media. This case, therefore, is a case of sexual assault of the victim based on preparing inappropriate videos and photographs of

the prosecutrix which belies the claim of the learned counsel for the applicant that it was an innocent teenage mutual love between the parties. Had it been so, the accused would not have prepared/recorded inappropriate intimate videos and photographs of himself and the prosecutrix to threaten to post them on social media. Furthermore, the accused has also threatened the family of the prosecutrix by going to their home and also throwing eggs and stones at their house.

17. To sum up, had it been a case of consensual adolescent mutual love as argued by the learned counsel for the applicant, it would have no place of abusing, blackmailing, inducement, threat, violence, pressurising and threatening her to convert to his religion for the purpose of forcibly getting married to her even when she wanted to get out of the abusive relationship. She was put under fear and threat of social shaming of herself and her family, which does not indicate that it was a consensual innocent adolescent mutual love relationship.

18. Rather, the gravity of offence is aggravated by the fact that the accused was threatening to make public the intimate videos and images that he had captured without consent of the prosecutrix and was using it to blackmail her, and in return was asking for sexual favours. Thus, he was using the sexualised photos and videos as a tool to threaten, socially shame, embarrass, defame and blackmail her to coerce her into sexual relationship.

F. Conclusion and Concerns of the Court

19. In view of the foregoing discussion, and considering the fact that

the applicant/accused is continuously threatening and blackmailing the prosecutrix and the charges are yet to be framed and the prosecutrix is yet to be examined, *this Court is not inclined to grant any relief to the applicant at this stage.*

20. This Court also notes that in a large percentage of cases of sexual assault received by this Court, the victims have alleged that inappropriate videos or photographs of relationships are made by one of the parties and under threat of posting them on social media, the minor girls are sexually abused who do not understand or know as to how to deal with such situations. Therefore, in cases of sexual assault without consent or under some inducement, inappropriate videos and photographs are captured which are used for a long time for blackmailing the victims and continuing the sexual abuse. Even at times, this Court has witnessed cases where young boys have been sexually abused, assaulted and have been victims of such blackmailing.

G. Directions

21. In light of the aforesaid observations, this Court requests Delhi State Legal Services Authority (DSLISA) to formulate a programme whereby they may educate the students, potential vulnerable victims as well as educating the teenagers who may indulge in such crimes without knowing that posting such intimate content on social media without consent of the person concerned is in violation of law.

22. Accordingly, the present application stands disposed with above directions,

23. A copy of this judgment be forwarded to Delhi State Legal

Services Authority (DSLISA) for ensuring compliance.

24. It is, however, clarified that the aforesaid observations made by this Court shall have no bearing on the merits of the case.

25. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 11, 2023/ns

