

\$~

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

Reserved on: 21.05.2021

Pronounced on: 27.05.2021

+ **BAIL APPLN. 1528/2021**

ARUNPetitioner

Through: Mr. Amit Gupta, Advocate

Versus

THE STATE GNCT OF DELHIRespondent

Through: Mr. G.M Farooqui, Additional Public
Prosecutor for State & SI Khushbu
with victim/complainant (prosecutrix)

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. Petitioner is accused of committing offences under Sections 370/376/342/366A/34 IPC and Section 6 of Prevention of Children from Sexual Offence Act, 2012 in FIR No. 290/2012, registered at police station Kalyanpuri, Delhi. He was arrested on 20.09.2020 in this FIR case.

2. On 16.07.2020, a complaint was received at police station by ASI Virender Singh from mother of the victim that on 12.07.2020 her daughter had gone missing. Thereafter, on 04.09.2020 the mother came to the police station with her daughter/prosecutrix, whose medical examination was

conducted vide MLC No. 300/2020 on the same day. Thereafter, on 04.09.2020 itself, the prosecutrix was produced before the court of learned Metropolitan Magistrate where her statement under Section 164 Cr.P.C. was recorded.

3. In her statement, the prosecutrix stated that on 12.07.2020 she had gone to *Jalebi Chowk, Kalyanpuri* to buy *chowmin* and was standing near the vegetable seller, when Akash came and told her that his wife was calling her and so she went with him. He took her to a house in Sector 11, Noida where one Arun (petitioner herein) was living along with his father, two married sisters and their husbands. She was confined to the said house by those persons and was made to do daily household chores like washing, cleaning etc. and they all used to beat her. She further stated that Arun had committed rape upon her three-four times and though she tried to escape, but could not do so. The prosecutrix also stated that on 15.07.2020, Arun had forcibly married her in front of *mandir* in the house and made her wear *mangalsutra* and *sindoor*. She was forced to live like Arun's wife in the said house but he used to tie her hands and legs and keep her locked in one room.

4. The crux of the complaint came out to be that parents of prosecutrix lived in the neighbourhood of in-laws of Akash, who knew the prosecutrix

and her family very well. Akash also knew brother-in-law (*jija*) of Arun and he and Arun worked together for a few days in a call centre. The prosecutrix used to accompany and help her mother who worked as *safai karamchari* and on their way home, both the accused used to keep an eye on prosecutrix.

5. At the instance of prosecutrix, accused Akash was arrested on 20.09.2020 from his house and petitioner/accused Arun was also arrested on the same day near his house. After investigation, charge sheet was filed on 21.11.2020 against accused Akash for the offences under Sections 363/366A/370/34 IPC and for the offences under Sections 342/366A/370/376/34 IPC and Section 6 of Prevention of Children from Sexual Offence Act, 2012 against accused/petitioner herein.

6. Thereafter, upon receipt of call detail record of mobile numbers used by the prosecutrix and Arun, supplementary charge sheet has been filed, however, charge is yet to be framed.

7. Learned counsel for petitioner submitted that petitioner has been falsely implicated in this case on a fabricated and concocted story, whereas the fact is that petitioner and prosecutrix worked as *safai karamchari* in Noida and they were having a love affair and prosecutrix wanted to marry petitioner. Further submitted that on the day of alleged incident, prosecutrix

had herself come to the house of petitioner-Arun with co-accused /Akash because her parents wanted to solemnize her marriage with a handicapped person for money and she requested petitioner to allow her to stay at his house. Next submitted that petitioner had initially refused her request but the prosecutrix threatened that if he does not allow her to stay at his house, she would go somewhere and commit suicide and for this reason, petitioner had permitted her to stay at his house.

8. Learned counsel for petitioner further submitted that petitioner is living with his father and two married sisters and also that his house is located in a thickly populated area where daily vendors like *sabzi wala*, *safai wala* etc. keep coming and if prosecutrix had ever been locked or deliberately bounded in the house, she could have raised an alarm but she never did so and stayed in the said house out of her own willingness.

9. Further submitted that the call detail record filed along with the supplementary charge sheet further makes it clear that the prosecutrix on many occasions talked with the petitioner and this shows that she was happily residing with him. Learned counsel also pointed out material contradictions in the statement of prosecutrix recorded under Section 161 Cr.P.C. with that recorded under Section 164 Cr.P.C. to submit that the

contents of complaint /statement of prosecutrix cannot be relied upon. Lastly, submitted that petitioner has falsely been implicated at the instance of parents of prosecutrix and he is innocent and deserves to be released on bail.

10. On the other hand, learned Additional Public Prosecutor for State opposed the present petition and submitted that on 10.09.2020 statement of prosecutrix was recorded wherein she stated that on 15.07.2020 petitioner had forcibly married her and thereafter, on that day made physical relations with her and thereafter, on four-five occasions. As per school record, the date of birth of prosecutrix is 28.06.2004 and she being minor, provisions of Prevention of Children from Sexual Offence Act, 2012 were also invoked against petitioner in this case. Further submitted that the offence committed by the petitioner is heinous in nature and does not call for any leniency to him and this petition deserves out right dismissal.

11. Learned counsel representing both the sides were heard at length and the material placed on record has been carefully gone through by this Court to find out whether petitioner, who is accused of serious offence of abduction and rape, deserves bail?

12. The Hon'ble Supreme Court in *Mahipal Vs. Rajesh Kumar, (2020) 2 SCC 118* has held that:-

“12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system.”

13. Further, in ***Mahipal Vs. Rajesh Kumar (Supra)*** held as under:-

“25. Merely recording “having perused the record” and “on the facts and circumstances of the case” does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on

the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty-bound to explain the basis on which they have arrived at a conclusion.”

14. Keeping in mind the pertinent observations of Hon’ble Supreme Court in ***Mahipal Vs. Rajesh Kumar (Supra)***, this Court has gone through the impugned order, copy of charge sheet, supplementary charge-sheet, MLC and statements of prosecutrix recorded in this case.

15. Pertinently, the prosecutrix was got medically examined on 04.09.2020 and in the MLC dated 04.09.2020 it stands noted that the prosecutrix had told the doctor that she was abducted by Sagar and also that she was found back on 02.09.2020 by the police. Since the prosecutrix agreed for both external and internal check-up, the doctor opined that “*no external injury, swelling, bleeding, bruises or abrasion and for internal- no fresh injury, old tear.*” Thus, the contents of MLC *prima facie* falsify the

allegations of prosecutrix that she was ever beaten by the petitioner or his family members.

16. In view of the prosecution story, this Court also adduced the statements of prosecutrix recorded under Section 164 Cr.P.C. on 04.09.2020 and her first statement under Section 161 Cr.P.C. recorded on 10.09.2020. In in her statement under Section 164 Cr.P.C. she stated that she knew Akash with whom she had gone to the house of petitioner-Arun. Similarly, in her statement under Section 161 Cr.P.C., the prosecutrix stated that she knew Akash, with whom on his bike she had gone to the house of Arun.

17. However, on 21.10.2020, supplementary statement of prosecutrix under Section 161 Cr.P.C. was recorded wherein she stated that she had erroneously stated name of Sagar before the doctor who prepared the MLC and it was only Akash who had taken her to Arun's house. She also stated that she does not know why the doctor has appended the date of 02.09.2020 on the MLC, though she had come to *Kalyanpuri* on 04.09.2020 whereas infact, the date recorded in the MLC is 04.09.2020 only.

18. In another supplementary statement recorded on 17.11.2020, prosecutrix has stated that when Akash dropped her at the house of Arun, none else was there in that house. His two sisters along with his brothers-in-

law (*jija*) lived in separate houses. She further stated that she had spoken to Arun on phone earlier but when Akash took her to his house, that was the first time she met him (Arun). Also stated that when Arun's father got to know that her parents were searching for her, he himself dropped her to *Kalyanpuri*.

19. No doubt there appear material contradictions in the statement of prosecutrix recorded under Section 161 Cr.P.C. on various dates and also her statement before the doctor recorded in the MLC. In her statement recorded under Section 161 Cr.P.C. on 10.09.2020, the prosecutrix stated that “अरुण से मेरी पहले कभी बात नहीं हुई” and on 17.11.2019 she stated that “मैं आपको बताना चाहती हूँ की मेरी पहले अरुण से बात हुई थी”. Further in MLC the prosecutrix stated she was found on 02.09.2020 by the police, whereas in her statement recorded under Section 164 Cr.P.C. she stated “मैं 04.09.2020 को बस में बैठकर अपने ससुर (अरुण के पिता) के साथ दिल्ली आ गयी थी”.

20. In what circumstances, the prosecutrix has addressed petitioner's father as her *sasur* (*father-in-law*) has to be seen, as prosecution has not been able to bring on record any video or photos of marriage of petitioner with the prosecutrix. Rather, a few photographs have been placed on record by the petitioner to show that the prosecutrix lived willingly and happily with him

at his house and a perusal thereof, *prima facie* shows no sign of torture or remorse on the face of prosecutrix. Even the call detail record pertaining to the period 01.07.2020 till 13.07.2020 placed on record shows that the prosecutrix had spoken to Arun many times during this period and especially multiple times on the date of incident, before she left home.

21. The issue whether the prosecutrix has deliberately broken her sim card so that she could not be traced or petitioner had broken her phone and sim card, is a matter of trial. In what circumstances, prosecutrix changed her statements and made improvements in her statements recorded on different dates is also to be tested during trial. However, it is not disputed that at the time of alleged incident, prosecutrix was minor but whether she was kidnapped or left her home of her own will to live with petitioner, is also yet to be established.

22. The Hon'ble Supreme Court in ***Krishan Kumar Malik Vs. State of Haryana (2011) 7 SCC 130*** has held that *no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.* In view of said proposition, the quality and worthiness of statement of

prosecutrix shall be tested during trial.

23. However, in view of different versions of prosecutrix forthcoming and the other material placed on record like MLC, call detail record and in the peculiar facts and circumstances of the present case, this Court is of the opinion that petitioner deserves bail, however, without commenting on the merits of the prosecution case.

24. Accordingly, the petitioner is directed to be released on bail forthwith upon his furnishing personal bond in the sum of Rs.10,000/- with one surety in the like amount, to the satisfaction of the Trial Court/ Duty Magistrate.

25. It is made clear that the trial court shall not get influenced by any observation made by this Court while deciding the present petition.

26. The petitioner shall not directly or indirectly influence any prosecution witness and shall appear before the trial court as and when directed.

27. A copy of this order be transmitted to the Trial Court and Jail Superintendent concerned for information and compliance.

(SURESH KUMAR KAIT)
JUDGE

MAY 27, 2021

r