

**HIGH COURT OF DELHI****Bench: Justice Rajnish Bhatnagar****Date of Decision: 19.01.2024**

BAIL APPLN. 4142/2023 &amp; CRL.M.A. 33723/2023

**KHUSHAL SINGH @GANGU** ..... **Petitioner****Versus****STATE OF NCT OF DELHI** ..... **Respondent****Legislation:**

Section 438 Cr.P.C.,

Sections 354, 354A, 354D, 509 IPC

Sections 8, 12 of POCSO Act.

**Subject:** Petition for anticipatory bail in a case involving allegations of sexual assault on a minor.**Headnotes:**

Anticipatory Bail Application - Application under Section 438 Cr.P.C. for anticipatory bail in FIR No. 486/2023 for offences under Sections 354/ 354A/ 354D/509 IPC and Sections 8/12 of POCSO Act - Alleged inappropriate gestures and physical assault by the petitioner towards a minor victim - Petitioner's contention of false implication and evidence of absence from the crime scene [Paras 1, 2, 4].

Prosecution's Argument - Strong opposition to bail by the APP for the State - Allegations considered grave and serious - Concerns about the petitioner threatening the victim and evading investigation - Reference to the petitioner's past criminal involvement [Para 5].

Victim's Statement and Evidence - Victim's statement under section 164 Cr.P.C. supporting allegations against the petitioner - Confirmation of victim's minor status at the time of the incident - CCTV footage confirming victim's presence near the incident site, but not the exact place of offence [Paras 6, 7].

Court's Decision - Bail denied due to serious nature of allegations, the minor status of the victim, the petitioner's evasion of investigation, and non-cooperation in an ongoing investigation - NBW issued against the petitioner - Observations made without prejudicing merits of the case [Paras 7, 8, 9].

Representing Advocates: None.

Petitioner: Mr. K. K. Manan, Sr. Advocate with team.

Respondent: Mr. Raghuinder Verma, APP for the State; Ms. Astha, Advocate

## **ORDER**

### **RAJNISH BHATNAGAR, J.**

1. This is a petition filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No. 486/2023 under Sections 354/ 354A/ 354D/509 IPC and Sections 8/12 of POCSO Act registered at Police Station Amar Colony.

2. In brief the facts of the case are that on 17.11.2023 at 08:30 P.M the victim went to Iskcon Temple and when she was returning from the temple, she saw accused (Petitioner herein) who made inappropriate gestures towards her and winked at her. Thereafter, the victim went to confront and scold him, the petitioner pressed her chest and ran away from the spot. Subsequently, FIR No. 486/2023 under Sections 354/ 354A/ 354D/509 IPC and Sections 8/12 of POCSO Act was registered at Police Station Amar Colony.

3. I have heard the learned Sr. counsel for the petitioner, learned APP for the State assisted by learned counsel for the victim and perused the status report filed by the State.

4. Learned Sr. counsel for the petitioner submitted that the petitioner has been falsely implicated in this case and the allegations stated in the F.I.R against the petitioner are inconsistent, false and frivolous. He further submitted that the victim is not known to the petitioner despite the claims of the victim to the contrary in the FIR. He further submitted that the CCTV footage of three different shops in the vicinity of the alleged incident show that the petitioner was neither drunk as alleged by the victim nor was he present at the place of incident at the said time. He further submitted that the victim alleged in the FIR that she got scared when the petitioner misbehaved with her, however, to the contrary, the CCTV footage shows that the victim was on her way from "Asian House" which is at the beginning of the road towards "Shyam Communications" which is adjacent to the petitioner's house and towards "Pawan Traders", which is further away from the petitioner's house

and her demeanour in the said CCTV footages does not reveal any harassment being faced by the girl as she is seen to be walking in her usual stride. He further submitted that there were many eyewitnesses on the said busy road on the date of the alleged incident that have come forward and written to the police officials about the said incident not taking place whatsoever. He further submitted that the sections under POCSO Act have been incorporated without verifying the age of the victim and there is nothing to show that the victim was a minor at the time of alleged incident. Learned Sr. counsel for the petitioner further submitted that the Ld. Sessions Court had been misinformed by the Investigating Officer about two criminal cases being pending against the petitioner as the petitioner has been acquitted in both the cases.

5. On the other hand, learned APP for the State assisted by learned counsel for the victim, has vehemently opposed the bail application and has argued on the lines of the status report. He submitted that the allegations against the petitioner are grave and serious in nature and the victim who was a minor at the time of incident has supported the case in view of her statement recorded under section 164 Cr.P.C and has leveled specific allegations against the petitioner of making inappropriate gestures towards her, winking at her and pressing her chest. He further submitted that the CCTV footages confirm the presence of the victim near the place of incident and there is strong likelihood of petitioner threatening the victim as he is the resident of the same locality, nearby to the place of incident. He further submitted that during investigation, search was made to trace the petitioner but he had evaded the investigation since the day of occurrence and subsequently, on 01.12.2023 NBW was obtained against petitioner. He further submitted that the petitioner was previously involved in two cases being FIR No. 13/2008 and FIR No. 336/2013, both under Sections 323/341/34 IPC and in both the aforementioned cases, the petitioner compromised with the victim and the proceedings were settled through Mediation. Lastly, Ld. APP for the State submitted that the investigation is at an initial stage and the petitioner has not cooperated during investigation and is absconding and therefore, he may hamper further investigation if bail is granted at this stage.

6. In the instant case, the victim in her statement recorded under section 164 Cr.P.C has fully supported her case and corroborated her version as given in the complaint. She has leveled specific allegations against the

petitioner of making inappropriate gestures towards her, winking at her and pressing her chest.

7. As far as the contention of the counsel for the petitioner that the sections under POCSO Act have been incorporated without verifying the age of the victim and there is nothing to show that the victim was a minor at the time of alleged incident, has no force in it as perusal of the Status Report filed by the State shows that during investigation, the age proof of the victim from the first school which was attended by her was collected and as per the documents received from MCD Pratibha School, Lajpat Naga-IV, Delhi, her date of birth was confirmed to be 10.03.2006 and therefore, on the date of incident i.e., 17.11.2023, the victim was a minor. Furthermore, though the CCTV footages have confirmed the presence of the victim near the place of incident, however, it is contended that the exact place of offence is not covered in any CCTV cameras, in my opinion, the same is a matter of trial and cannot be commented upon at this stage.

8. Keeping in view the circumstances of this case and the fact that the victim was a minor at the time of the incident coupled with serious allegations against the petitioner who is the resident of the same locality which is nearby to the place of incident and also, considering the fact that NBW has been issued against the petitioner on 01.12.2023, he is evading investigation since the day of incident and has failed to cooperate in the investigation which is still at an initial stage, no benefit can be given to him at this stage and the bail application along with pending application is, therefore, dismissed.

9. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

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