

Case SC No. 961/22
State Vs. Chirag Sharma
FIR No. 602/22
PS Mohan Garden

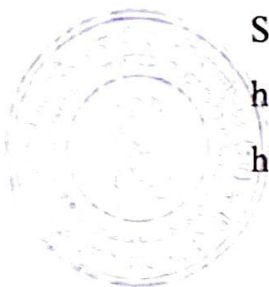
गगनदीप जिंदल
GAGANDEEP JINDAL
जिला सहायक सचिव वीरेंद्रजी १२
Additional Secy. (Adm.) FSC/SCS-43 (S.M.)
कॉर्ट नं. 502, नयाँ दिल्ली
Court No. 502, Fifth Floor
दिल्ली न्याय न्याय विभाग
New Delhi

20.05.2023

Present: Ms. Kiran Bala, Ld. Addl. PP for State.
Ms. Nigar Parveen, Ld. Counsel for DCW.
Sh. Shailendra P. Singh, Sh. Adarsh Mishra, Sh.
Rishabh Shivhare, Sh. Jayesh Pandey, Sh. Deepak and
Sh. Gurmukh Singh, Ld. Counsels for accused.

1. This order is in respect of regular bail application under section 439 of Code of Criminal Procedure, 1973 (hereinafter referred as to "Cr.P.C") for grant of bail to accused Chirag Sharma.

2. Ld. Counsel for accused argued that accused has been falsely implicated in this case. He is custody since 28.10.2022. The present case is based on false and fabricated misleading facts. The child victim made contradictory statement at different stages of investigation and further during her examination in the court. In statement made to doctor, she has stated that she went to the house of the accused at 11:30 AM, thereafter, accused offered her snacks and coffee. After consuming the same, she felt sleep and when she walk, she found her clothes were dirty. She left the house of accused at 05:00 PM and went to her friend house namely 'G'. In her statement recorded u/s 164 Cr.P.C., she had stated that she went to the house of the accused on



26.10.2023 and accused 'gandi harkat with her'. She received the phone call of her mother. She met her mother at Tilak Nagar Metro Station. In her examination in chief, she deposed that she went to the flat of the accused on 26.10.2022 at about 10:00 AM, accused was with her till 06:00 PM. In the evening, accused has taken out of his house for 1 ½ hours. They came back at flat at 10:00 PM. Her parents made call to police officials.

3. It is further argued that as per the CDR record of mobile phone of victim and accused total 16 calls were made by them to each other on 26.10.2022 between 11:22 AM to 04:00 PM, if they were together in a flat then why they would call each other on mobile. As per the location chart of victim, she was present at [REDACTED] [REDACTED] [REDACTED] at 12:52:05 hours on 26.10.2022 where as the location of accused was at [REDACTED] [REDACTED] Delhi at 12:53:16 hours on 26.10.2022. Both the places are faraway from each other. Therefore, accused can not be present at his flat as alleged by the victim. The FSL result is still awaited. The recording of evidence of other witnesses is likely to take considerable time. Accused may be released on regular bail and he undertakes to furnish sound surety.

4. Ld. Additional Prosecutor for the State opposed the bail application on the ground of nature and gravity of the offence and the child victim and other public witnesses are yet to be examined.

5. The IO has opposed the bail application of the accused. The child victim has appeared through VC and opposed the bail application of accused.

6. I have gone through the records.

7. Though Section 29 of POCSO Act postulates a presumption against the accused that “where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved”, however in view of the judgment in case title as ***Dharmander Singh @ Saheb Vs. The State (Govt. of NCT, Delhi)*** dated 22.09.2020, though the presumption arises against the accused after framing of charge, however, each case has to be assessed on the basis of facts and circumstances surrounding the same. The relevant paragraph of the said judgment is as under:-

“74. As always, when faced with such dilemma, the court must apply the golden principle of balancing rights. In the opinion of this court therefore, at the stage of considering a bail plea after charges have been framed, the impact of section 29 would only be to raise the threshold of satisfaction required before a court grants bail. What this means is that the court would consider the evidence placed by the prosecution along with the charge-sheet, provided it



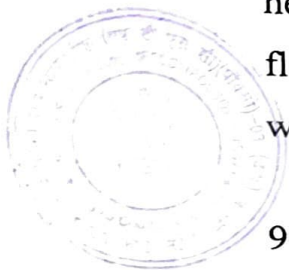
is admissible in law, more favorably for the prosecution and evaluate, though without requiring proof of evidence, whether the evidence so placed is credible or whether it ex facie appears that the evidence will not sustain the weight of guilt.

75. If the court finds that the evidence adduced by the prosecution is admissible and ex facie credible, and proving it during trial is more a matter of legal formality, it may decide not to grant bail. If, on the other hand, the court finds that the evidence before it, is either inadmissible or, is such that even if proved, it will not bring home guilt upon the accused, it would grant bail."

8. The present FIR u/s 376 IPC & Section 4 POCSO Act has been registered on the complaint of mother of the victim lodged on 27.10.2022. The victim in her statement recorded u/s 161 Cr.P.C. has stated that on 25.10.2022, she was talking with her friend on phone. Her *Bua* and sister had seen her and scolded her. On 26.10.2022 at 10:00 AM, she went to meet accused at his flat without informing him family members where accused did wrong act with her and sent back.

9. In her statement recorded u/s 164 Cr.P.C., she has stated that on 26.10.2023, accused Chirag called her at his flat where he did wrong act with her.

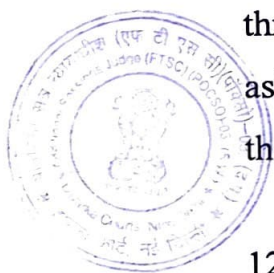
10. At the time of her medical examination, she had stated to doctor on 26.10.2022, she met with accused with common



friend Ashish. On 26.10.2022, she went to the house of accused at 11:30 AM as she was called by accused. When she reached there three boys were already sitting. Accused asked them to go outside and offered her some snacks and coffee. She slept till 05:00 PM when she walk up, she found that her clothes were dirty, she left house of accused at 05:00 PM and went to her friend's house namely 'G'. She left the house of her friend at 07:30 PM and went to Bangla Sahib Gurudawara. But she dropped at Tilak Nagar Metro Station at 11:00 PM.

11. In her examination in chief, she deposed that she and accused became friends on instagram, two three months before the incident. On 26.10.2022, her mother scolded her for using the excessive phone. Therefore, at about 10:00 AM, she went to meet accused at his flat. They both were together till 06:00 PM in the evening, accused had taken her outside for 1 ½ hours. We came back at flat at 10:00 PM. Her parents made call to accused through police official as she had switched her mobile. Accused asked her to go to her home. She went to her home. She deposed that accused made physical relations without her consent.

12. There is contradiction as to how victim met with accused whether they met through common friend Ashish or instagram. There is contradiction as to whether victim herself went to the flat of the accused or she was called by accused. There is also contradiction with regard to the time till when she remained at the flat of accused. At one point of time, she left the



flat of accused at 05:00 PM while in her examination in chief, she left the flat of accused at 10:00 PM. There is also contradiction as what wrong act had been done with her by the accused. At the time of her medical examination, she stated that she slept after having snacks and coffee and she woke up at 05:00 PM, she found her clothes dirty but did not describe how her clothes were dirty. Whereas in her examination in chief, she deposed that the accused made physical relations with her at about 03:00-04:00 PM.

13. Victim in her examination in chief deposed that she had switched off her mobile, therefore, she did not receive any call from her parents and her parents made call on the mobile phone of accused through police officials. However, according to CDR of mobile no. 917XXXX734, she made/ received more than 100 calls between 10:19:14 hours till midnight on 26.10.2023. This fact also contradict her stands that she was sleeping from 11:00 AM to 05:00 PM.

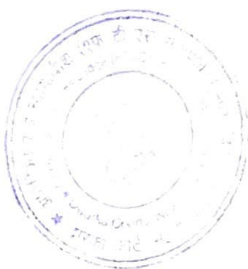
14. Having regard to the conspectus of the above-noted judgment, the contradictions in the testimony of the victim vis-a-vis her previous statement given to the doctor at the time of her medical examination, overall circumstances of this case, accused who is in custody since 28.10.2022, is now admitted to bail subject to furnishing of personal bond and surety bond in the sum of Rs.20,000/- each.



15. The bail is further subject to the following conditions:-

- (i) that applicant/accused shall not contact the child victim/ family members of the child victim or any other witness and if he will contact any of them in any manner, bail shall be cancelled.
- (ii) that the accused/applicant shall appear before the court on each and every date of hearing;
- (iii) that the accused/applicant shall not leave the country without prior permission of the court.

16. With these observations, application stands disposed off. This order may not be treated as an expression of opinion on the merits of the case. Copy of order be given dasti to Ld. Counsel for accused, be sent to child victim through Ld. Counsel for DCW and also be sent to concerned Jail Superintendent for necessary information to accused.




(Gagandeep Jindal)
ASI (FTSC) (POCSO)-03
Dwarka Courts, New Delhi
20.05.2023 दिल्ली
Dwarka Courts, New Delhi