

शममा गुप्ता
SHAMA GUPTA
अतिरिक्त सत्र न्यायाधीश
Additional Sessions Judge
त्वरित विशेष न्यायाधीश (आर.सी.)
Fast Track Special Court (RC)
कोर्ट नंबर 501, पांचवा सल
Court No 501, Fifth Floor
द्वारका न्यायालय नई दिल्ली
Dwarka Courts, New Delhi

Bail matter no. 1981/2023

FIR No. 306/2023

PS Dwarka South

State vs. Kaushik Talapatra

U/s 323/342/370/374/34 IPC & 75 JJ Act & 14 PCL Act

19.09.2023

This is an application u/s 439 Cr.P.C. for grant of regular bail, moved on behalf of applicant/accused Kaushik Talapatra.

Present: Sh. Yogendra Adari, Ld. Addl. PP for the State.
Ms. Shambhavi Singh, Ld. Counsel for victim, via VC.
None for applicant/accused.

1 In the present bail application, it is stated that applicant/accused is innocent and has been falsely implicated. It is alleged that as per FIR, wife of the present accused was looking for a house help for her 4 years old child and father of the complainant brought the complainant, for taking care of applicant's child and Rs. 2000/- in cash was given to the father of the complainant. It is stated that thereafter, complainant started living in the house of the accused and used to work there, where she was subjected to ill treatment and torture at the hands of the accused.



2 It is stated that accused is in JC since 19.07.2023 and no recovery is to be effected from the accused. It is further stated that applicant/accused is working as Aircraft maintenance Engineer, in Vistara Airlines and he is not involved in any other criminal case. It is further submitted that son of the applicant/accused is suffering from Ulcerative Colitis and Gastritis and Duodenitis. It is further stated that co-accused has already been enlarged on bail, hence on

the ground of parity, bail application of present accused be allowed.

3 Thus, the accused has sought bail on the following grounds:-

- (i) Parity with co-accused, who was already granted bail
- (ii) Investigation qua the accused is already complete.
- (iii) Accused having deep roots in society, with no criminal antecedents.
- (iv) Applicant is father of minor son aged 4 years, who is suffering from Ulcerative Colitis, which is a chronic and life threatening disease and under constant medical observation, thus requires constant care of both parents.
- (v) All offences alleged against accused except section 370 IPC are bailable in nature and bare perusal of the FIR shows that provision of section 370 IPC is not at all applicable.

4 Qua the present bail application, Ld. Counsel for the applicant has placed upon the judgment of Hon'ble Apex Court in Sanjay Chandra vs. CBI (2012) 1 SCC 40 , P. Chidambaram vs. Directorate of Enforcement (2020) 133 SCC 791, Dataram Singh vs. State of UP (2018) 3 SCC 22, Gurbaksh Singh Sibbia vs. State of Punjab (1980) 2 SCC 565, Sushila Aggarwal vs. State (NCT of Delhi) (2018) 7 SCC 731, Ram Kishan Singh vs. Harmit Kaur and Anr. (1972) 3 SCC 280: 1972 SCC (Cri) 493 and of Hon'ble High Court of Delhi in Jagdish Nautiyal vs. State, 2012 SCC online DL 5940 and argued as to the broad principles to be considered at the time of disposal of application for bail.



5 The said application is opposed by Ld. Additional PP for the State with the assistance of IO and Ld. Counsel, who was

representing father of the child victim, on the ground that the accused is not entitled to seek bail on ground of parity, as the wife of the accused was granted bail, considering the medical conditions of the minor and not on merits of the case. Prosecution has relied upon judgment passed by Hon'ble Apex Court in **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) & Anr Crl Appeal no. 422/2021**, that the accused is not entitled to seek bail on ground of parity.

6 It was further argued that the allegations against the accused are serious and grave thus, he is not entitled to seek bail. Qua section 370 IPC, it was argued that as per FIR and statement of child victim, section 370 IPC is attracted. It is further argued that as the minor was having burn injuries as well therefore, section 326 IPC will be added, after receiving opinion on MLC. It was argued that considering the gravity of allegations, bail should not be granted to the present accused.

7 Submissions heard. Records perused.

8 In the present matter, no doubt against accused the allegations are serious in nature but, the same is not the sole criteria for dismissing the bail application, as General rule is bail and not Jail. The object of bail is to secure attendance of the accused at trial and for conclusion of investigation. However, during the course of arguments, case file has been perused, which prima facie shows that after arrest of the accused on 19.07.2023, police custody of the accused was never sought by the IO, which shows that the custodial



interrogation of the accused is not required for investigation.

9 Further, perusal of the statement of child victim under section 164 Cr.P.C., prima facie shows that the allegations against both the accused are similar, that they both assaulted the child victim but, as per the statement, the injuries near her eye and the burn injuries was caused to her by co-accused. Though, at this stage, it cannot be segregated as to what specific act was committed by the accused persons or whether all the injuries as suffered by the minor was on account of common intention shared by both of them or they are responsible for their individual act as alleged but, at this stage of considering the bail application, what is required to be borne in mind, is whether pre-trial incarceration of the present accused will help in further investigation or there are chances that after securing bail, the accused will flee from process of law or will tamper with evidence.

10 But in the present matter, as per the case file, the investigation which is pending, is only qua final medical opinion and to record statement of father of child victim but, for that custodial interrogation of present accused does not seem to be necessary. Further, as per the record, prior to his arrest, the accused was working as Aircraft Maintenance Engineer at Vistara Airlines thus, therefore, there are no chances of his fleeing from justice.



11 Further, as per the submissions of the IO, the child is still with CWC and her statement has already been recorded thus, no fruitful purpose would be served by keeping the accused behind bars, who was in custody since 19.07.2023. Accordingly, the

applicant/accused is admitted to bail on furnishing his personal bond in the sum of Rs. 1,00,000/- with one surety of the like amount to the satisfaction of Ld. MM/Ld. Duty MM/Ld. Link MM, with the following conditions:-

- i) That the applicant/accused or his family will not contact the injured child or her parents except for clearing their dues.
- ii) That the applicant/accused shall not indulge into similar offence or any other offence in the event of release on bail.
- iii) That the applicant/accused shall intimate about change in his residential address within a week.
- iv) That applicant will attend trial on each and every date with authorized counsel so that trial is not delayed
- v) That applicant shall not leave the country without prior permission of the Court
- vi) That applicant shall provide all his mobile numbers to the IO and keep them operational at all the times.

In view of above observations, bail application is disposed off. Copy of order be given dasti to Ld. counsel for accused.



(SHAMA GUPTA)
Addl. Sessions Judge (FTSC) (RC)
South West District, Dwarka Courts

19.09.2023 (MK)
Dwarka Courts, Delhi