



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous Bail Application No. 11037/2024

Ramesh S/o Bhanwarlal, Aged About 29 Years, R/o Bheel Mohalla, Raipur, Police Station Raipur, District Jhalawar (Rajasthan) (At Present Confined In District Jail Jhalawar, District Jhalawar).

----Petitioner

Versus

State of Rajasthan, through PP

----Respondent

For Petitioner(s) : Mr. Lakhan Singh Jadoun

For Respondent(s) : Mr. Amit Punia, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

(REPORTABLE)

29/11/2024



सही-प्रतिलिपि

प्रशासनिक अधिकारी न्यायिक
राजस्थान उच्च न्यायालय पीठ,
जयपुर

1. The instant bail application under Section 483 BNSS has been filed on behalf of the petitioner, who has been arrested in connection with FIR No.109/2024 registered at Police Station Jhalawar Sadar for offences punishable under Section 363 IPC. After completion of investigation, chargesheet for offences under Sections 363, 366, 376(2)(N) IPC and Section 5(L)/6 of POCSO Act, 2012 has been filed in the matter.
2. Learned counsel for the petitioner submits that petitioner has falsely been implicated in this case. Counsel submits that the petitioner is innocent. He has not committed any offence. Drawing attention of this Court towards the statement of the victim recorded under Section 164 Cr.P.C on 28.05.2024, learned counsel submits that from bare perusal of this statement, it is absolutely clear as crystal that she has not levelled any kind of allegation



against the petitioner. She has not even named the petitioner at any place in her statement. Learned counsel argues that the petitioner has been kept behind the bars unnecessarily and without there being any reason, his personal liberty guaranteed under Article 21 of the Constitution of India has been curtailed. It is further contended by learned counsel for the petitioner that after completion of investigation, chargesheet has been filed. The petitioner is in custody since 01.06.2024 and conclusion of trial is likely to take time. He thus, prays that the instant bail application may be accepted and the petitioner may be enlarged on bail.

3. Learned Public Prosecutor opposes the instant bail application. However, he failed to controvert the fact that the prosecutrix has not alleged anything against the petitioner in her statement recorded under Section 164 Cr.P.C.

4. I have heard and considered the submissions advanced at bat and have perused the material available on record.

5. This Court is conscious of the fact that this is a bail application under Section 483 BNSS and we are not going to decide the matter finally. As it has been contended by learned counsel for the petitioner that the prosecutrix has not alleged anything against the petitioner and even not named him anywhere in her statement, it would be appropriate to reproduce the same hereinbelow:-

दिनांक 28/05/2024

नोट- गवाह को सोचने समझने का अवसर दिया।

गवाह ने बिना किसी दबाव के स्वेच्छापूर्वक बयान देना जाहिर किया-

शपथ दिलाई गई-

मैं साल के तीसरे महिने में घर से चली गई थी क्योंकि मेरी मम्मी पापा का झगड़ा हुआ था। फिर मैं सुसनेर गई फिर वहाँ से दूदाखेडी मन्दिर चली गई। वहाँ पर धर्मशाला है वहाँ पर रही वहीं पर



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खाना खाया। फिर मुझे मम्मी पापा की याद आई तो वापस आ गई और जैस ही वापस आई पुलिस वालों ने पकड़ लिया। मुझे मेरे मम्मी पापा के साथ रहना है।

नोट— उक्त बयान गवाह के कथानानुसार लेखबद्ध किये। बयान पढ़कर पीड़िता को सुनाये व समझाये गए। बयान सुन समझकर पीड़िता ने बयान सही होना स्वीकार किया।

6. Undoubtedly, this argument of counsel for the petitioner holds water as she has not uttered a single word against the petitioner in her statement recorded under Section 164 Cr.P.C. A statement of a victim recorded under Section 164 Cr.P.C. has a very important value and effect in decision of a criminal case and cannot be ignored in any case. I have perused the order rejecting bail dated 30.08.2024 passed by learned Special Judge, POCSO Act Cases No.1, Jhalawar. This Court fails to understand as to why learned Special Judge while deciding bail application (No.154/2024) did not take into consideration this important aspect of the matter. Generally in the cases involving sexual offences, the victim is to be considered as a star prosecution witness. To my utter surprise and dismay, learned Special Judge further proceeded to observe in the order dated 30.08.2024 that after framing of charge, evidence of important prosecution witnesses are to be recorded, which means the court concerned has already premeditated his mind not to consider arguments advanced on behalf of the petitioner on the point of charge and thereby not discharging him in any case whether he has strong case in his favour. Such type of observations are totally uncalled for. With anguish and pain, this Court observes here that the learned Special Judge failed to exercise his discretion in right perspective and in a very casual manner, decided the bail application, placed before him.



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7. Every arrest has a victim and an accused. Every arrest is also a relief and a pain. It is a critical part of the justice system. All arrests have to be justified and be based on evidence and pave the way for justice. It is to be scrutinised closely by all supervisory authorities accountable including judiciary. Arrest/detention has so many psychological impacts on the personality of the accused or on the person who has been detained particularly when such arrest or detention has been made in absence of proper evidence. Such person faces emotional and psychological trauma, damage to reputation and future opportunities as well as financial burden.

8. The increasing tendency of trial courts to reject bail petitions even in appropriate cases is a matter of great concern and needs to be curbed. Dealing with the cases where issue of personal liberty is involved, Courts should be more vigilant and should not adopt casual approach. Time and again Constitutional Courts have emphasized that "Bail is Rule and Jail is Exception". Hon'ble Apex Court has held in catena of judgments that learned trial judges should not hesitate in granting bail to the accused in appropriate cases but despite the Apex Court time and again reiterating the same, Trial Courts are declining the bail pleas in routine manner which in turn overloads the High Courts. Like on the day of hearing of this bail application almost 475 bail applications are listed before this court and half of the list is assigned to this court. In my considered opinion such a routine and casual approach should be deprecated particularly when Trial Court and High Court are exercising concurrent jurisdiction of bail under Section 439 Cr.P.C (483 BNSS).



राही - प्रतिलिपि


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9 Denial of bail to the accused persons leads to further agony faced by them in the already overcrowded prison system of India. In a statistical report published by the National Crime Record Bureau published in December 2023, out of the 5,73,220 people incarcerated in Indian prisons, 4,34,302 are under trials against whom cases are still pending. This amounts to more than 75% people under-trial. This further shows the conditions which these people are subjected to. It is a well-known fact that many such accused are ill-treated in jail premises and are also deprived of basic human needs, while some even die in absence of proper medical facilities in prisons when they are denied the right to bail and seek appropriate care in hospitals. All of these facts signify the importance of bail and highlight the importance of judiciary in protecting the rights of each and every individual irrespective of the fact whether they are innocent or guilty of an offence. Denying such a right in a routine manner even in appropriate cases amounts to failure of the courts in performing the sacrosanct judicial function, which is the paramount feature of the judicial system in this country. Trial Courts functioning at the district level make up the very foundation of the Indian Judicial system which makes it even more important for the High Courts to not condone such practices of the Trial Courts.



सही-प्रतिलिपि

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10. Dealing with the case at hand, the petitioner is in custody since 01.06.2024. After completion of investigation, chargesheet has been filed in the matter and completion of trial will likely to take time as also, the petitioner has not been named in the statement under Section 164 Cr.P.C. Thus, looking, to the facts and circumstances of the case, no fruitful purpose would be served by



detaining the petitioner behind the bars till conclusion of trial as by virtue of Article 21 of the Constitution of India, no person can be deprived of their life and liberty unless it is in accordance with a procedure established by law. This means that every individual has the right to live, and their life cannot be taken away except in accordance with the prescribed legal procedures.

11. Article 21 protects the personal liberty of individuals. It also prohibits arbitrary or unlawful detention. It ensures that no person can be detained without proper legal justification or without following the due process of law. It safeguards against arbitrary arrests, detention and protects individuals from being unlawfully deprived of their freedom. It also encompasses the right to a fair trial. It guarantees that every person accused of an offense shall have the right to a fair and impartial trial, including the right to legal representation, the right to be heard, and the right to present evidence in their defence.



राष्टी-प्रतिलिपि

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12. In the landmark judgment **Maneka Gandhi v. Union of India reported in AIR 1978 (SC) 597**, Hon'ble Supreme Court held that the right to life and personal liberty under Article 21 is not limited to mere animal existence but includes the right to live with dignity. The court emphasized that the procedure established by law must be fair, just, and reasonable, and it cannot be arbitrary, oppressive, or unreasonable.

13. Thus, without making any comment on the merits/demerits of the case, this Court is of the considered opinion that the petitioner deserves indulgence of bail in this case. Accordingly, the instant bail application is allowed and it is directed that accused-petitioner **Ramesh S/o Shri Bhanwarlal**, arrested in connection with **FIR**



No.109/2024 PS Jhalawar Sadar, District Jhalawar shall be released on bail provided he furnishes a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) together with two sureties in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each to the satisfaction of the learned Trial Court with the stipulation that he shall appear before that Court and any court to which the matter is transferred, on all subsequent dates of hearing and as and when called upon to do so.

14. Let an explanation be sought from the concerned learned Special Judge, POCSO Act Cases No.1, Jhalawar as to why, he did not consider the statement recorded under Section 164 Cr.P.C. at the time of deciding the bail application, came up before him.

15. List on 06.01.2025

(ANIL KUMAR UPMAN),J

LALIT MOHAN /752



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