

छवि कपूर  
CHHAVI KAPOOR  
अतिरिक्त सत्र न्यायाधीश-01 (पोक्सो)  
Additional Sessions Judge-01 (POCSO)  
कक्ष संख्या-30 जिला न्याय दिल्ली  
Room No. 30 JND PHC, ND

SC No. 111/2022  
State Vs. S.  
FIR No. 66/22  
PS: Mandir Marg

30.11.2022

**File is taken up today for disposal of pending bail application moved on behalf of the accused S (real brother of the victim).**

Present: Sh. Yadvender Singh, Ld. Addl. PP for the State.  
Ms. Shivani Tyagi, Ld. Counsel for DCW.  
Sh. Manas Aggarwal, Ld. Counsel for accused.

1. The accused has been charged with committing offences under Section 376 (2) (f) (n) IPC, 323 IPC and Section 6 of POCSO Act on the allegations that on 23.01.2022 and also 4 ½ years prior to this date, he had repeatedly committed rape upon the victim who was aged about 16 years at the said time. It was also alleged in the charge-sheet that the victim was given beatings by the accused and he caused simple hurt to her. On the basis of the complaint dt. 23.01.2022 of the victim, the present FIR was registered at PS Mandir Marg. Since then, accused is in judicial custody.

During prosecution evidence, the testimony of the victim has already been recorded on 28.09.2022 and 02.11.2022. Her cross-examination has also been concluded. It is argued by the State that the victim has supported the prosecution in her testimony by deposing that the accused had committed rape upon her. In this regard, Ld. APP has submitted that as per the testimony of the victim, the accused had committed rape upon her in the night of 22.01.2022 and in the morning of 23.01.2022 while both of them were sleeping with their mother on the same bed. Ld.



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APP further submits that there was no delay in reporting of the incident to the police. He further submits that articles seized from the scene of crime such as clothes of the victim, quilt and bed covers used at the time of commission of offence have been forensically examined and the report of the FSL Examiner confirms the presence of DNA of the accused in these articles. It is therefore argued that there is no room for the defence to argue that their client has been falsely implicated.

On the other hand, Ld. Counsel for the accused has argued that there are material contradictions in the testimony of the victim and perusal of the same shows that she has made efforts to improve upon her statement by alleging facts which have not been disclosed to by her at the time of investigation. It is argued that the victim has cooked up a new story at the time of her evidence by alleging that the accused was committing rape upon her since the time she was in I / II class. It is argued that the sequence of events as testified by the victim in her evidence are difficult to believe and her cross-examination has revealed that she is not a trustworthy witness. It is stated that the victim has falsely implicated her brother in order to teach him a lesson as he was objecting to her relationship with other boys. It is submitted that the victim has admitted in her cross-examination that she wanted to leave her house and was in love with a person namely Balwant who was her tuition teacher. It was suggested to the victim in her cross-examination that the aforesaid Balwant and the accused had an altercation 2/3 days before the date of the alleged incident and it was under the influence of this person that the victim had filed a false complaint against the accused.

Cross examination of the victim has revealed that since the reporting of this case, she has left her house and has been residing with the aforesaid person namely Balwant. This person is claimed by the victim to have been her tuition teacher in the past and she has admitted that she is in love with this person and wants





to marry him. It has been suggested to the victim in her cross-examination that the accused was not happy with this relationship and was opposing the same. It has been admitted by the victim in her cross-examination dt. 02.11.2022 that she wanted to leave her house. It is an admitted fact that the victim had never disclosed to her mother or her elder sister that the accused was molesting her or that in the past, he had committed rape upon her. Ld. Counsel for the accused argued that as per the testimony of the victim, she was being raped by the accused when she was in Class I/II. Ld. Counsel for the accused brought to the notice of the Court that the age gap between the victim and accused was not large and thus, it would not have been possible for his client to perform penetrative sexual assault upon the victim at the said time. It was argued that their client would not have been adult enough to understand his own body parts so as to cause such bodily injury to the genitals of the victim. It was further argued that as per the testimony of the victim, she used to suffer bleeding due to the alleged penetrative sexual assault by her brother when she was in class I/II, however, she has admitted that no blood stains were ever noticed by her mother or even her elder sister in her clothes at the said time. Ld. Counsel for the accused also argued that as per the statement of the victim during investigation to the examining doctor, her brother was an alcoholic since long. It was submitted that in her cross-examination, the victim admitted that the accused used to work in an office in Udyog Bhawan and used to go to the office and come back from the same with his mother daily. It was pointed out that the accused used to work from Monday to Saturday and had a holiday on Sunday only. In her testimony, victim revealed that whenever the accused used to drink, he used to comeback home at 11:00 pm, however, she also testified that her brother used to sleep in night by 10:00 pm everyday. Thus, it was argued that it was clear the victim was falsely implicating her brother by deposing incorrect facts against him. As regards the FSL Result, it was stated in rebuttal that



the presence of the DNA of the accused in the common bedsheet and quilt being used by the family members was not incriminating evidence to hold the accused guilty of sexual assault with his real sister. In this regard, it was argued that the result of FSL did not prove the presence of semen of the accused from the clothes of the victim and thus, it was claimed that prosecution could not rely upon the FSL Result to prove that the accused had committed rape upon his sister. It was claimed that as per the testimony of the victim, since all family members were sleeping on the same bed and under the same quilt since long and even on the date of the alleged incident, thus there was likelihood that the DNA of the accused might have been obtained from his hair or saliva or any other body secretion, however, absence of semen on the said articles conclusively proved that accused was innocent and had been falsely implicated.

In view of the foregoing circumstances, the contention of the defence that the accused has been falsely implicated cannot be brushed aside. However, without expressing any opinion on the testimony of the victim, this Court is of the view that since the examination of the victim has already been concluded and she is residing separately from her family, there are no circumstances to suggest that the accused shall intimidate her or prejudice further trial, if he is released on bail.

With these observations, the accused S is ordered to be released on bail on his furnishing a personal bail bond and one surety bond in the sum of Rs. 35,000/- each.

**Dasti.**



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**Reader**

— Sd —

(Chhavi Kapoor)

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