

\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

+ **BAIL APPLN. 2165/2022**

KAMINI ARYA THROUGH PEROKAR Petitioner

Through: Ms. Anu Narula, Advocate.

versus

THE STATE NCT OF DELHI Respondents

Through: Mr. Manoj Pant, APP for the
State with Inspector Devendra
Singh, P.S. Mohan Garden.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present application has been filed by the petitioner seeking interim bail for two weeks in FIR No. 323/21 registered at P.S. Mohan Garden under sections 302/365/292/397/411/120-B/201 & 34 of the Indian Penal Code, 1860 ('IPC'). The petitioner and her husband, who is the co-accused in the aforementioned FIR, have been in judicial custody since 11.07.2021. The application has been moved by the mother of the child on the ground that she is concerned about the admission in a school of her child, who is about 8 years of

age. It is stated that without her presence, she cannot be admitted in any school.

2. The interim bail application of the petitioner has been dismissed by the Id. ASJ, Dwarka Court, vide order dated 21.05.2022 wherein the Id. ASJ opined that the ground on which the petitioner has approached the court for bail, i.e. getting her daughters admitted to school, is not of such a nature which can be termed as a compelling circumstance or intolerable grief. The application was thus dismissed by the Id. ASJ.

3. The court is informed by the learned counsel for the applicant that the elder sibling of the child is studying in the secondary school branch of Co-Ed Pry. School, West Zone, New Delhi – 110059. It is prayed that the child in the present case may be admitted in Nursery Class in the aforementioned school.

4. In the present case, it has come to notice of the court that the applicant, i.e. the mother of the minor child, is in judicial custody due to her alleged involvement in the murder of an old lady whose body parts were severed and disposed of in a drain.

5. During the course of arguments on the bail application a query was put forth by this court and the court was informed that the presence of the applicant/mother is not required for admission of the child in the school and the Aadhaar Card of the mother shall suffice. The same has been duly verified by the Investigating Officer (IO) who has filed a reply from the Principal of SDMC, Co-Ed Pry. School, West Zone, New Delhi – 110059, wherein it is stated that the child's admission can be done without the Aadhaar Card if the child

has a certificate bearing the child's date of birth from any government institution. It is further stated that any local guardian of the child can also get him/her admitted in school.

6. In my opinion, education is the first step towards tackling social evils, especially poverty, inequality and discrimination. Every child, irrespective of caste, religion, sex, or economic background has been guaranteed right to education. An educated individual can make informed decisions, first for themselves, and then be able to contribute constructively towards the progress of the nation and society at large.

7. Once it comes to the notice of the court that a child or an individual is deprived of a fundamental right, the courts have to ensure that the fundamental right is enforced and there is no impediment for any individual to enjoy the same. The court should not fail in its duty at any point of time in this regard.

8. Right to Education is a fundamental right guaranteed to every citizen under Article 21-A of the Constitution. A child must not suffer the consequences, on account of their parents having been in judicial custody for a crime which is yet to be adjudicated upon by the court. This court is duty bound to enforce fundamental rights of every citizen and in this case right to education of the child.

9. The Constitution guarantees protection of independent identity and individuality to every Indian citizen. Constitution of India is the supreme law of the land and this court is bound to protect the rights of every individual enshrined and guaranteed by the same. Especially in the present case, where the right to education of a child is at stake,

it is imperative that the court intervenes timely and upholds the right envisaged in the Constitution to protect the future of the of the child.

10. This court is of the opinion that the child must get admitted in a school at the earliest so that shadow of no unpleasant happening falls upon the child's life to darken her future.

11. At the cost of repetition, it is opined that in the present case, the child is an individual Indian citizen and enjoys her own Fundamental Rights given to her by virtue of her being born in India, Right to Education is the child's fundamental right. In the present unpleasant situation of the case, the court has to become the voice of the voiceless child. The parents are in judicial custody and the prime concern of the parents is education of the child. It is not only in cases dealing with family disputes that the rights and welfare of the child should be considered but also in the cases as the present one, the courts can become and act as the parent of the child and ensure that the child is not deprived of its Fundamental Right to Education. Depriving any child of education due to family circumstances should not be allowed to every extent possible. An educated child educates the entire family and becomes an asset to the nation.

12. In the circumstances, at this stage, this court feels the need to exercise its discretionary powers under Article 226 of the Constitution of India and take suo-motu cognizance to facilitate the child's admission in a school so that the child does not lose out on the current academic year i.e. 2022-23. It is therefore directed that the SHO concerned will get the child admitted to the school adjacent to

the senior branch of the school in which the older sibling of the child is already enrolled and pursuing her education.

13. The Principal of the school will extend full cooperation for the admission of the child. A compliance report will be filed within 10 days. The identity of the child and the school in question is not being mentioned in this order to protect the privacy and dignity of the child.

14. It is submitted by the counsel for the petitioner that the petitioner is satisfied with the relief that has been granted. Considering the petitioner was seeking bail only on the ground that she needed to fulfil her responsibilities as a parent and get her child admitted to school, permission is now sought by the counsel of the petitioner to withdraw the present application.

15. In view of this order, the learned counsel for the applicant states that she is satisfied with the order and does not press her application at this stage. Permission is sought to withdraw the same.

16. In terms of the above, the application is dismissed as withdrawn.

17. Ordered accordingly.

SWARANA KANTA SHARMA, J.

AUGUST 3, 2022/zp