



2024:DHC:2967



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

*Reserved on: 04.04.2024
Pronounced on: 15.04.2024*

+ **BAIL APPLN. 1574/2023**

RAVI

..... Petitioner

Through: Mr Shailendra Babbar, Advocate.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr Raghuvinder Verma, APP for
State with SI Shweta, Police Station
Tilak Nagar.

Mr Ajay Kumar and Ms Muskan
Gupta, Advocates for complainant
(DHCLSC).

Mr Hemant Singh and Ms Urvashi
Jain, Advocate for prosecutrix.

**CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN**

JUDGMENT

VIKAS MAHAJAN, J.

1. The present application has been filed seeking regular bail in connection with FIR No.0744/2020 under Sections 376(2)(n)/377/323/506 IPC registered at PS Tilak Nagar.

2. The case of the prosecution as borne out from the FIR is that the prosecutrix met the petitioner in the year 2019 at the time of *Ganpati Visarjan* and they became friends and started talking to each other over the

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telephone. Fifteen days prior to Holi in March, 2020, the petitioner called the prosecutrix at the residence of his friend Deepanshu, where the petitioner made the prosecutrix to drink beer and, thereafter, the petitioner forcibly established physical relations with her. It is alleged that the petitioner also prepared a video and started blackmailing the prosecutrix. The petitioner also made a promise to prosecutrix to marry her, however, later on it came to the notice of the prosecutrix that the petitioner is married and under the threat that the petitioner will publish the video of the prosecutrix, he repeatedly established physical relations with her and the last such incident happened on 08.10.2020 at the residence of the prosecutrix. It is further alleged that the petitioner refused to marry the prosecutrix. This led to the filing of complaint by the petitioner which culminated into the aforesaid FIR. Thereafter, the petitioner was arrested on 21.10.2020.

3. The learned counsel for the petitioner has invited the attention of the Court to the complaint, as well as, to the testimony of the prosecutrix recorded on 09.12.2022, to contend that in the complaint it has been mentioned that the prosecutrix met the petitioner in the year 2019 on the occasion of *Ganpati Visarjan* whereas in the testimony recorded on 09.12.2022 she has stated that she had met the petitioner in the year 2020.

4. He submits that the festival of *Ganpati Visarjan* was in the month of September in the year 2020 and the FIR has been registered in October 2020, which belies the version of the prosecution that in March, 2020 approximately 15 days prior to Holi the petitioner had established physical relations with the prosecutrix at the residence of his friend, namely, Deepanshu.

5. He further invites the attention of the Court to the cross-examination



of the prosecutrix conducted on 19.01.2023, to contend that in response to a specific question put to her, the prosecutrix has stated that she met the petitioner on the occasion of *Ganpati Visarjan* in the year mentioned by her in the statement, the petitioner responded to the same in affirmative. The question put to the prosecutrix and the answer thereto reads as under:-

“Q. I put it to you that as you have stated in your examination in chief dated 09.12.2022 that you met accused Ravi on the occasion of Ganesh Chaturthi in the year mentioned by you in that statement, it is correct that you did not meet him prior thereto. What do you have to say?”

Ans. Yes. I only knew him that he was residing in the neighbourhood area. Wo DJ-VJ ka kaam karta tha uss karan usko bulaya jata tha, mai usko itna hi janti thi.”

6. The learned counsel further submits that 4 CDs were placed on record by the petitioner and during her cross-examination, the prosecutrix was confronted with the said CDs and she admitted that the house which is seen in the said videos is a residence of one *didi*, who was staying in the lane of the prosecutrix. The relevant part of the testimony of the prosecutrix, to which the attention of the Court was drawn reads as under:-

“At this stage, at the request of Ld. Counsel CD “A”, “C”, “D” and “E” already on record are played and witness is questioned.

Jo in sab CDs me ghar dikhai de raha hai vo ghar ek didi ka hai jo meri gali mai rehti thi. Mujhe didi ka naam yaad nahi hai. CD “A”, “C” “D” and “E” are now Ex. PW1/DX5-DX6, 7, 8

7. Further, the attention of the Court is drawn to the question put to the prosecutrix during cross-examination, with reference to the CDs and the



response given by the prosecutrix, to contend that the involvement of the prosecutrix in the sexual act visible in the CDs was consensual (participating) one.

8. Learned counsel further refers to the question put to the prosecutrix that “is it correct that “didi” was your known”, to which the response given by the prosecutrix is in affirmative.

9. Further, attention of the Court is invited to the cross-examination of the prosecutrix wherein she has admitted “*it is was in my knowledge that accused was shooting these videos, maine toh kuch nahi bola usko.*” Premised on the testimony of the prosecutrix, the learned counsel for the petitioner submits that the physical relations established between the petitioner and the prosecutrix were consensual, therefore, the offence alleged invoked against the petitioner is not made out.

10. Learned counsel submits that in the complaint, as well as, in the statement recorded under Section 164 CrPC there is no whisper about the videos having been prepared with the consent of the prosecutrix. He has further drawn the attention of the Court to various improvements made by the prosecutrix in her testimony *vis-a-vis* her statements recorded under Sections 161 CrPC/164 CrPC.

11. The learned counsel for the petitioner submits that the petitioner does not have any criminal record. He further submits that the petitioner has been granted interim bail by this Court on various occasions and the same has never been misused by him.

12. Further, the petitioner is married having two children and is a permanent resident of Delhi, therefore, the petitioner is not a flight risk. He, therefore, urges the Court to enlarge the petitioner on bail.



13. *Per contra*, learned APP for the State has argued on the lines of the status report. He submits that the prosecutrix in her testimony has supported the case of the prosecution.

14. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the material on record.

15. A perusal of the complaint shows that the case of the prosecution is that the prosecutrix met the petitioner in the year 2019 on the occasion of *Ganpati Visarjan* and, thereafter, 15 days prior to Holi in the month of March, 2020 the petitioner is stated to have established physical relations for the first time with the prosecutrix, whereas, from the testimony of the prosecutrix it appears that she met the petitioner for the first time in the year 2020 on the occasion of *Ganpati Visarjan*. Thus, *prima facie*, there appears to be substance in the contention of the learned counsel for the petitioner that the testimony of the prosecutrix belies story of the prosecution with regard to physical relationship having been established by the petitioner with the prosecutrix in the month of March, 2020 at the residence of petitioner's friend Deepanshu.

16. Further, a bird's eye view of the testimony of the prosecutrix also *prima facie*, gives an impression that the relationship between the petitioner and the prosecutrix was consensual in nature. There also seems to be certain improvements and contradictions in the testimony of the prosecutrix as pointed out by the learned counsel for the petitioner but the probative value of the evidence and the credibility of the prosecutrix is an aspect which will be considered by the learned Trial Court during the course of trial and it will not be appropriate to make any comment on the same as it may cause prejudice to the case of the prosecution, as well as, of the defense.



However, the circumstances discussed above coupled with long incarceration tilts the balance in favour of the petitioner for grant of bail.

17. To be noted that the petitioner has remained incarcerated for a period of two years eight months and twenty days as per the nominal roll dated 18.07.2023. The prosecution has cited 13 witnesses, of which 04 witnesses have been dropped and till date only 02 witnesses have been examined. Therefore, it appears that the trial is not likely to be concluded any time soon and in the given facts and circumstances, the petitioner cannot be kept in custody for indefinite period to await the outcome of trial. That apart, there is also a presumption of innocence in favour of the petitioner at this stage and an ultimate acquittal with continued custody would rather be a case of grave injustice.

18. It is also not in dispute that the petitioner has clean antecedents. He is a permanent resident of Delhi having wife and two children, therefore, the petitioner does not seem to be a flight risk. Further, since the testimony of the prosecutrix and her mother has already been recorded, there is no possibility of petitioner influencing the prosecutrix in the event he is enlarged on bail. Incidentally, the petitioner has been granted interim bail on various occasions by this Court and it is not the case of the prosecution that the liberty so granted has been misused by him.

19. Considering the aforesaid circumstances in entirety, this Court is of the opinion that the present petitioner is entitled to regular bail. Accordingly, the petitioner is enlarged on regular bail subject to his furnishing a Personal Bond in the sum of Rs. 25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-



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a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.

b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.

c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

20. The petition stands disposed of.

21. It is made clear that nothing stated herein above is to be construed as an expression of opinion on the merits of the case.

22. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

23. Order *dasti* under signatures of the Court Master.

24. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J.

APRIL 15, 2024
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