

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

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Judgment delivered on: 07th January, 2019

+ **BAIL APPLN. 2234/2018**

MUKESH GARG

..... Petitioner

versus

STATE OF NCT DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. Mukul Gupta, Sr. Adv. with Mr. Avijit Singh
and Ms. Nisha Garg, Advs.

For the Respondent:

Mr. Kamal Kr. Ghai, Addl. PP for the State
Mr. Anupam S. Sharma, Adv. for complainant

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner seeks regular bail in case FIR No.613/2018 under Sections under Section 323/354/376-D/452/120-B/34 Indian Penal Code, 1860, registered at Police Station Nihal Vihar, Rohini, New Delhi.
2. Subject FIR was registered on the complaint of the prosecutrix alleging that she is divorced and lives alone. It is alleged that about two months before registration of the FIR, she came in contact with one Rinku, co-accused and subsequently became friendly with him

and thereafter voluntarily had physical relations with him. It is alleged in the FIR that on 25.09.2017 at about 9.30 PM, Rinku called her up and enquired about her whereabouts and she stated that she was at home. He stated that he was outside her house and wanted to meet her. At about 9.40 PM, he came to her house with another person. When she opened the door, they both came into the house and Rinku introduced the other person as his brother Maluk (another co-accused). Thereafter Rinku started misbehaving with her. When she objected, he beat her and left. It is alleged that subsequently on 26.09.2017 at about 1.00 AM the other person, who had earlier come with Rinku, i.e. Maluk, came with one Babloo and forcefully entered her house and the two without her consent made physical relations with her.

3. Subject FIR was registered on the complaint given by the prosecutrix at about 6.30 AM on 26.09.2017. Subsequently, the petitioner was taken for medical examination. The medical examination was conducted on 26.09.2017 at about 12.30 PM. In the *Medico Legal Register for Sexual Assault Victim*, the notes made by the Chief Medical Officer, based on the history given by the victim are also similar to what was recorded in the FIR. The counselling report submitted by the Counsellor dated 26.09.2017 is also on similar terms.

4. In a statement under Section 164 Cr. P.C. given on 10.10.2017,

the prosecutrix has alleged that on 26.09.2017, Rinku called at about 10.30 to 11.00 PM and informed that the petitioner – Mukesh Garg wanted to speak with her about getting her some employment. She was at that time at her friend's house and accordingly returned home. When she reached her house, she found that there were four boys – Rinku, Babloo, Mukesh Garg and the fourth person whose name she did not know. It is alleged that Rinku and the petitioner – Mukesh Garg were holding a revolver and the petitioner inserted the revolver in her mouth so that she could not speak and thereafter all four of them repeatedly raped her. Based on her statement under Section 164 Cr. P.C., petitioner – Mukesh Garg was arrested on 30.05.2018.

5. Learned Senior Counsel for the petitioner submits that there are material contradictions in the statement of the prosecutrix. It is alleged that in the FIR, MLC as well as Counsellor Report that the incident is alleged of 25.09.2017 and the version started with Rinku allegedly coming to the prosecutrix house at about 9.30 PM and thereafter accused Babloo and Maluk coming to her house at 1.00 AM on 26.09.2017 and forcefully making physical relations with her.

6. It is contended that the name of the petitioner has not been mentioned in the FIR, MLC and the notes of the CMO as also the counsellor report. The name of the petitioner surfaced for the first time in the statement under section 164 Cr.P.C. recorded after 5 days of the alleged incident. It is further contended that the date of incident

has changed from 25.09.2017 to 26.09.2017 at 10.30 PM. It is further submitted that the story of the prosecutrix as to manner in which the offence occurred has completely changed from what was recorded in the FIR, MLC and counsellor report to what has been stated before the Magistrate at the time of statement under Section 164 Cr. P.C.

7. It is further contended by learned Senior Counsel for the petitioner that the statement recorded under Section 164 Cr. P.C. is clearly false. As Rinku who, as per the statement under section 164 Cr.P.C. allegedly came to her house on 26.09.2017 at 10.30 PM with the petitioner and co-accused, had already been arrested on 26.09.2017 at about 6.15 PM. Further it is submitted that the Call Detail Record of the Petitioner, as collected by the prosecution, shows the location of the petitioner at a place different from the alleged scene of the incident on 26.09.2017.

8. Learned Senior Counsel for the petitioner submits that the petitioner has been falsely implicated and there is a complete change in the version of the prosecutrix. It is alleged that the petitioner has been falsely implicated because of an ongoing dispute over property with one Mr. Amarjeet Garg.

9. Further, it is contended that the main co-accused Rinku has already been enlarged on regular bail.

10. Petitioner has been in custody since 30.05.2018. The

investigation is complete and the charge sheet has also been filed.

11. Without commenting of the merits of the case and keeping in view of the totality of facts and circumstances of the case and on perusal of the records, I am of the view that the petitioner has made out a case for grant of bail.

12. Accordingly, subject to petitioner furnishing a bail bond in the sum of Rs.25,000/- alongwith one surety of the like amount to the satisfaction of the Trial Court, the petitioner shall be released on bail, if not required in any other case. Petitioner shall not do anything, which may either prejudice the trial or the prosecution witnesses. Petitioner shall not leave the country without the permission of the Trial Court.

13. Petition is disposed of in the above terms.

14. Order *Dasti* under signatures of the Court Master.

JANUARY 07, 2019
‘rs’

SANJEEV SACHDEVA, J