

\$~9

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

+ **BAIL APPLN. 1159/2020**

MOHD. NAUSHAD

..... Petitioner

Through Mr Kanhaiya Singhal, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through Mr Amit Gupta, APP for State.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

24.07.2020

[Hearing held through videoconferencing]

1. The petitioner has filed the present application, *inter alia*, seeking regular bail in FIR No. 697/2014 under Sections 328/365/376-D/392/342/411/34/120-B of the IPC registered with PS Bhajanpura.
2. The said FIR was registered on 06.06.2014. The same was registered on the basis of information that was received at 2:35 a.m. regarding one unknown girl aged twenty years (hereafter referred to as 'victim D') was lying unconscious at North Gaunda, Hansraj Dairy. Victim D was shifted to GTB Hospital in an unconscious state. It is stated that when the concerned police official reached the hospital she was unconscious and her statement could not be recorded. The clothes of the victim D were partially torn and there was evidence of blood on her apparel. The undergarments of the victim were also torn. The MLC indicates that victim D had suffered injuries

consistent with her being raped.

3. During the course of investigation, the statement of victim D was recorded on 07.06.2014. She stated that on the day of incident her friend (hereafter victim ML) was also with her and both of them booked their tickets to return to Jharkhand. She stated that both of them came to Delhi for obtaining their certificates and were returning back to Jharkhand. Their tickets were on waiting list and they were not allowed to board the train and consequently, they missed their train. While they were waiting at the railway station, they were approached by one of the accused (Raju) who told them that he was also to board the train to return to Hajaribagh but had missed the train. He stated that there was another train at 7:30 a.m. from Delhi to Jharkhand and they could board that train from the Old Delhi Railway Station. They all decided to leave for the Old Delhi Railway Station. It is alleged that the accused Raju hired a TSR from outside the station as accused Raju stated that the TSRs available within the railway station would charge a higher fare.

4. Both the victims came out of the railway station along with accused Raju and he hailed one TSR just outside the railway station. There were two persons already sitting in the TSR. The TSR was being driven by the accused Raj Kumar Sharma. The petitioner (Mohd. Naushad) was sitting beside Raj Kumar Sharma on the driver seat. Accused Raju stopped the TSR and bought a yellow coloured mango flavoured cold drink and insisted that the victims consume the same. It is the prosecution's case that the said drink was spiked with a sedative/tranqualiser and they lost their consciousness.

5. While the victim D was found on the next date on 06.06.2014, victim ML returned to her acquaintance (Tara Ma) on 07.06.2014. Her MLC is also

suggestive of her being raped.

6. Both the victims have identified the petitioner in TIP proceedings. There are inconsistencies in the statements given by victim ML and her testimony. It is not necessary to evaluate the same in any detail at this stage. The question whether such inconsistencies are material or not are required to be determined by the Trial Court after evaluating the entire evidence.

7. The forensic report has been filed. The same indicates that the DNA profile from the gauze of blood of the accused Naushad is accounted for in the DNA profile generated from the source of exhibits (vaginal swab & smear, cervical swab and vaginal washing of victim ML). There is a controversy regarding the said report, inasmuch as, that the blood gauze of the petitioner is mentioned as Ex. '1l', however, the said exhibit is that of blood sample of the victim. However, exhibit '11' is the blood gauze of the petitioner. It is contended on behalf of the State that referring the exhibit '11' as '1l' is a typographical error as the exhibit has been clearly described as the blood gauze of accused Naushad.

8. This Court is refraining from expressing any opinion on the above issue as the same is required to be examined by the Trial Court.

9. Although there appears to be evidence suggestive of the petitioner being guilty of the offence for which he has been charged, but the entire prosecution evidence is yet to be led and the accused are also at liberty to lead evidence in their defence.

10. It is noticed that the petitioner has been in custody since 09.06.2014 (that is over six years and one month). During the said period, nineteen witnesses have been examined. This Court is informed that the prosecution proposes to examine twenty-seven more witnesses. Clearly, it is unlikely

that the trial would be completed within a short span of time.

11. In view of the above and considering the period already spent by the petitioner in custody, this Court considers it apposite to allow the present petition. The petitioner shall be released on bail on his furnishing a personal bond in the sum of ₹1 lakh and a surety of the equivalent amount to the satisfaction of the concerned Jail Superintendent/Duty Magistrate.

12. This is also subject to the following further conditions:-

- (a) that the petitioner shall provide a contact number and ensure that he is reachable at all times;
- (b) that the petitioner shall mark his presence in the concerned police station on the first Monday of each calendar week;
- (c) that the petitioner shall not contact, either directly or indirectly, any of the other co-accused, witnesses or the victims or their family members;
- (d) that the petitioner shall not leave the National Capital Territory of Delhi; and
- (e) the petitioner shall be available on all hearings before the Trial Court.

13. The petition is allowed in the aforesaid terms.

14. A copy of this order be sent to the Jail Authorities electronically.

VIBHU BAKHRU, J

JULY 24, 2020

pkv

