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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 14th September, 2020
+ **BAIL APPLN. 1264/2020 and CRL.M.A. 7702/2020, 7703/2020**
LAKHAN SINGH Petitioner
Through: Mr. Rajiv Mohan, Advocate (M:
9818647579).
versus
STATE OF NCT OF DELHI & ANR Respondents
Through: Mr. Raghuvinder Varma, Id. APP
Ms. Richa Dhawan, Advocate for the
Complainant.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been held through video conferencing.
2. The Petitioner in this matter seeks regular bail. He has been accused of committing offences under Sections 376/506 of IPC. An FIR was registered against the Petitioner and he was taken into custody on 22nd February 2020.
3. The case of the Petitioner is that he was a tenant, in the first floor of the premises where the prosecutrix was living. The husband of the prosecutrix had given the said property out on tenancy. The Petitioner had vacated the property in September 2019 and the first allegation of rape against the Petitioner had been made in February 2020. The allegation of the prosecutrix is that she was being raped by the Petitioner since June/October 2018.
4. Mr. Rajiv Mohan, Id. counsel for the Petitioner submits that the allegation is that the Petitioner had committed the offence complained of

over a period of several months, but the FIR was only registered on 22nd February 2020. He submits that this itself shows that benefit of doubt needs to be given to the Petitioner as the story of the prosecutrix is unbelievable. It is further submitted that she was residing with her husband and her 3 children. Thus, the delay of a year and a half, in filing the complaint and the silence of the prosecutrix during this period is unexplainable.

5. He further submits that the relationship between the parties continued from October 2018 to September 2019. The prosecutrix has never met the accused after October 2019 and in fact, he was arrested from Agra, as per the case of the prosecution itself. The FIR was lodged when the prosecutrix visited the police station, along with her husband in February, 2020.

6. Ld. counsel also places reliance on the judgment dated 10th February 2011 of the Delhi High Court, in ***Shashi Chaudhary v. Ram Kumar and Anr. [Crl. Rev. P. 537/2009]*** to plead that in such cases, even a short delay in lodging of FIR could have a great impact on the innocence of the accused.

7. Mr. Mohan, ld. counsel further submits that though the settled law is that solitary statement of the prosecutrix is sufficient to hold an accused guilty of commission of an offence of rape, this statement has to inspire the confidence of the Court.

8. Ld. counsel also states that there are several contradictions between the initial FIR, the MLC of the prosecutrix in the hospital, and the statement of the prosecutrix as recorded under Section 164 of the CrPC. He submits that initially, the prosecutrix stated that the first incident took place in October 2018, however in the hospital she stated that the first incident took place in June 2018. He further submits that the prosecutrix had monetary disputes with her husband, as per the statement under section 164 of the

CrPC, and that led to the alleged incident of physical intimacy between the accused and the prosecutrix. Id. counsel also submits that the contradiction is also to the extent that in the first statement i.e in the FIR, she mentioned that she has 2 daughters whereas thereafter, in the statement under Section 164 of the CrPC, she improved and said that she also has a son, who had gone to school. According to the Id. counsel for the Petitioner, the manner in which the alleged incident was committed has also been described differently in all the versions.

9. He submits that there are three major factors which support the prayer for bail:

(i) The prosecutrix is a 29-year-old, who is married and is fully equipped with a mobile phone. Therefore, she could have always called her husband.

(ii) There are three different versions of the incident which the prosecutrix has given.

(iii) The last interaction between the prosecutrix and the accused was in October 2019. The FIR was lodged only in February 2020, almost after a period of four to five months, when the prosecutrix visited the police station along with her husband. He submits that in this case, the fact that the prosecutrix was silent for so many months and that there are various contradictions in her statement itself shows that the allegations are without any basis.

10. Mr. Mohan, Id. counsel finally submits that the Petitioner is a security guard, and will be taking a job in Delhi, and any conditions may be imposed on him, while granting bail. He also undertakes to fully participate in the trial.

11. On behalf of the Complainant/prosecutrix, Ms. Richa Dhawan, Id. counsel has appeared for the Delhi High Court Legal Services Committee. She submits that the main reason that the complaint was filed belatedly was that the prosecutrix was facing grave threats and she was suffering in silence. She did not have the courage to inform her husband. It is further submitted by Ms. Dhawan, Id. counsel, that the prosecutrix has minor children, and if bail is given, the Petitioner would pose a grave threat to her.

12. Ms. Dhawan also submits that it is too early to judge the reason of the late lodging of the FIR. She submits that even in the case of a married woman, there could be reluctance in reporting the case, especially due to the fact that she has a husband and is a mother of young children. She further submits that the Petitioner and the prosecutrix are related to each other as the Petitioner was a tenant at her residence. She submits that he knows of the entire whereabouts of the prosecutrix, as also the general nature of the family's condition and their daily routine. She thus submits that giving bail at this early stage, when the statement of the prosecutrix is yet to be recorded, shall be quite detrimental to her interest.

13. Mr. Verma, Id. APP submits that the charge sheet is yet to be filed. The examination of the prosecutrix and the other witnesses is yet to take place. Accordingly, if the Petitioner is released on bail, he may prejudice the trial. He submits that atleast the statement of the prosecutrix should be recorded before granting bail to the Petitioner. He further submits that the prosecutrix belongs to a lower stratum of the society, and thus, such minor contradictions in her statements ought not to be highlighted in this manner. Mr. Verma also submits that the Petitioner does not have a permanent address in Delhi.

14. This Court has heard the submissions of the parties and perused the facts. There is no doubt that the Petitioner was a tenant of the prosecutrix's family and was living on the first floor in the same residence. The Petitioner is well aware of the prosecutrix and her family. There is something to be said about the fact that the offences are stated to have been committed continuously over a period of one year and three months i.e July/October 2018 to September 2019, however the FIR was lodged only in February 2020. Since the prosecutrix is a married woman, it seems a little unusual, at this stage, that the alleged incidents were not reported by her to her husband or that the husband did not learn about the same from either the children or the behaviour of the prosecutrix. However, the possibility of the prosecutrix being under some kind of threat from the Petitioner, cannot be ruled out at this stage. The question as to whether there was a consensual relationship or commission of an offence by the Petitioner has to be determined at trial and at this stage it is not possible for this Court to give any view on this, as the trial is yet to commence.

15. In so far as the threat perception is concerned, the Petitioner was living in the same house as that of the prosecutrix and from October, 2019, which was his last interaction with the prosecutrix, there has been no serious allegation that he ever visited the prosecutrix, or extended any threat to her orally, or through telephone or in any other manner. Thus, in such circumstances, an argument based on threat perception may not be completely tenable.

16. Under these circumstances, this Court is inclined to grant interim bail to the Petitioner so that his conduct may be monitored, and thereafter the Petitioner can avail of the remedy to move for regular bail. Accordingly,

interim bail is granted to the Petitioner, for a period of 30 days from the date of release, subject to the following conditions: -

- (1) The Petitioner shall provide an address in Delhi, where he would be residing during the period of interim bail.
 - (2) The Petitioner shall provide his live mobile number to the Investigating Officer (*hereinafter, "IO"*). The address and the mobile number shall be verified by the IO and the same shall be submitted to the Id. Trial Court.
 - (3) The Petitioner shall furnish a personal bond to the tune of Rs. 5,000/-, along with a like surety to the satisfaction of the Id. Trial Court, after verification of the address is complete.
 - (4) The Petitioner shall remain within the territory of Delhi.
 - (5) He shall report to the IO on a daily basis.
 - (6) The Petitioner shall not contact the prosecutrix, her husband, her children or any of her related family members or friends. He shall also not visit the neighborhood, where the prosecutrix is residing with her family.
 - (7) The Petitioner shall appear before the Trial Court as directed.
17. The Petitioner shall immediately surrender upon the expiry of 30 days, from the date of his release.
18. Considering the nature of this case, interim bail is granted for a period of 30 days only and shall not be extendable further. However, the Petitioner's right to seek regular bail in accordance with law, is left open.
19. With these observations, the present petition, with all pending applications, is disposed of.

PRATHIBA M. SINGH, J.

SEPTEMBER 14, 2020/MR/A/Ak