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

Reserved on: 07.05.2021

Pronounced on: 10.05.2021

+ **BAIL APPLN. 1214/2021**

MOHIT AGGARWALPetitioner

Through: Mr. Tanmay Mehta, Advocate

Versus

THE STATE & ANR.Respondents

Through: Mr. G.M.Farooqui, Additional Public
Prosecutor for respondent No.1/State
Counsel for respondent No.2
(appearance not given)

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. This is third bail application filed by the petitioner before this Court seeking bail in FIR No. 46/2019, under Sections 376/506/174A IPC, registered at police station Mukherjee Nagar, Delhi.

2. Petitioner's first bail application [BAIL APPLN. 3161/2020] was dismissed as withdrawn vide order dated 19.10.2020 by this Court. His second bail application [BAIL APPLN. 630/2021] was disposed of by this Court on 18.03.2021 while giving him liberty to approach the trial court to

urge the pleas taken herein. Thereafter, petitioner approached the learned trial court and vide order dated 08.06.2020, his bail application was dismissed. He again moved two applications for bail before the trial court and the same were dismissed vide order dated 24.09.2020 and 31.03.2021 respectively.

3. At the hearing, Mr. Tanmay Mehta, learned counsel for petitioner submitted that the petitioner is innocent and he has been falsely implicated in this case. He submitted that the complaint, on the basis of which FIR in question has been registered, was filed by the prosecutrix at the instance of *Rajinder Singh*, his brother-in-law (*Jija*), who has married with his two real sisters and is having strained relations with him. He further submitted that as per the FIR, the alleged incident took place in the February, 2018 whereas the FIR was registered in January, 2019 and no plausible reason is forthcoming for the delay.

4. Learned counsel also submitted that no PCR call was made by the prosecutrix in Mohali against the petitioner and that petitioner has no connection with the Wagon-R car, last digit 8500 and he never forced prosecutrix to make relations with him when he came to Delhi. He also submitted that no material has been brought on record to substantiate the

allegations of prosecutrix.

5. Lastly, learned counsel submitted that petitioner has clean antecedents and no other case is pending against him and that charge sheet in this case has already been filed and also that petitioner has been languishing in jail since 03.09.2019 and trial shall take substantial time, so, petitioner deserves to be released on bail.

6. On the contrary, Mr. G.M.Farooqui, learned Additional Public Prosecutor for respondent/State submitted that the allegations levelled against the petitioner are serious in nature. He submitted that the prosecutrix has alleged that petitioner raped her on several occasions against her wish and had also prepared her obscene video and whenever she refused to get physical with him, he threatened her saying that he will make the said video public. Further submitted that petitioner's threat to prosecutrix had gone to the extent of firing a gun shot on the leg of prosecutrix and in this regard two FIRs, one FIR No.173/2019, dated 03.04.2019, under Section 336 IPC and Sections 27/54/59 of Arms Act and another, FIR No. 262/2019, dated 05.07.2019, under Sections 25/54/59 Arms Act, 1959, both registered at police station Mukherjee Nagar, Delhi have been registered by the prosecutrix.

7. Learned Additional Public Prosecutor next submitted that petitioner/accused avoided judicial process of law and was declared proclaimed offender by the trial court. Further submitted that petitioner does not deserve concession of bail and this petition deserves to be rejected.

8. Learned counsel for respondent No.2/prosecutrix also appeared and supported the submissions made by learned Additional Public Prosecutor for State and submitted that if the petitioner is released on bail, he may again threaten the prosecutrix and influence the material prosecution witnesses.

9. The rival contentions raised by both the sides were heard in detail and material placed on record has been perused.

10. The case of the prosecution is that on 23.01.2019, respondent No.2/prosecutrix, aged 26 years, lodged a complaint that in the year 2016 when she had gone to Mohali, Chandigarh to visit her Aunt (*massi*), petitioner who happens to be her first cousin, forced her to join coaching classes there for bank exams. Accordingly, she joined the classes thinking that it would help her in future. But soon, she at the insistence of petitioner, missed those classes and started visiting malls, PVR, showrooms etc. with petitioner and during this time, petitioner recorded her obscene video and started black mailing her to have physical relations with her. The prosecutrix

further alleged that petitioner threatened her that if she would refuse to make relations with him, he would make that obscene video public. She also alleged that after her return from Mohali to Delhi in April, 2017, petitioner on 25.02.2018 came to Delhi and reached her PG in white colour Wagon R car, last digit 8500 and took her somewhere and showed her the said obscene video and raped her in the car itself and promised her that he would delete the said video. It is further alleged that petitioner returned Mohali thereafter and did not call her, but again on 14.01.2019, he called her up and when she did not respond to his repeated calls, however, on 16.01.2019 he sent the same video clip to her on face book messenger. Thereafter, she made a complaint to the police and the FIR in question was registered against the petitioner.

11. There is no iota of doubt that the allegations levelled against the petitioner are serious in nature. This Court is informed that charge sheet in this case has already been filed and charge is yet to be framed. Though at this stage this Court is not required to dwell upon the merits of the case but for the purpose of grant or refusal of bail, a *prima facie* opinion has to be formed and, therefore, the material placed on record has been considered by this Court.

12. Pertinently, the FIR in question has been registered in the year 2019 and the age of prosecutrix has been mentioned as 26 years. A cursory perusal of FIR shows that prosecutrix had visited Mohali in the year 2016 and instead of attending her coaching classes, she used to roam around with petitioner in malls, PVR and showrooms etc. However, she has pleaded ignorance about how petitioner made her obscene video and allegedly blackmailed her to forcefully make physical relations with him. Three years prior to the year 2019, prosecutrix might have been 23 years of age and in the opinion of this Court, at the age of 23 years, a girl/lady is good enough to decide what is right or wrong. Allegedly, there are allegations of petitioner repeatedly raping her till she returned her home in Delhi in the year 2017. But the fact remains that no complaint/PCR call was made nor any FIR was registered by the prosecutrix in Mohali with respect to alleged incident nor did she thought of returning her home in Delhi from September, 2016 till April, 2017. Even if this allegation is accepted on the face of it, why did prosecutrix only complain petitioner's sister about the alleged incident and did not bring it to the knowledge of her Aunt (*petitioner's mother*), who happens to be her mother's sister (*massi*) or her parents on her return to Delhi, is yet to be established.

13. Prosecutrix has specifically alleged that petitioner had raped her on 25.02.2018 and also on 16.01.2019 in Delhi by threatening her to make her obscene video viral on You tube and he had even sent the said video to her on her face book messenger account. A perusal of status report filed by respondent/State shows that so far prosecution has not been able to procure any technical evidence in this regard.

14. This Court has also gone through the copy of FSL report dated 08.01.2021 placed on record, wherein it is noted that:-

- “i. Facebook Messenger chats and inappropriate videos which were retrieved from "MP1" are enclosed herewith in one Compact Disc marked "CD-A" with folder named "DATA OF MP1.”*
- ii. No Facebook Messenger chats and inappropriate videos were retrieved from "MP2”*

The aforesaid extract of FSL report shows that inappropriate videos and chats have been retrieved from the mobile of prosecutrix, but nothing incriminating has been recovered from the mobile of the petitioner. The alleged obscene video is the foundation of this case, based upon which petitioner has allegedly been implicated in this case. How and in what manner the origin and authenticity of the said video will be established, is a matter of trial, but so far in the absence of any technical evidence on record,

the assertion of prosecution seems to be under clouds.

15. Further, as per status report, prosecutrix had refused to undergo internal medical examination and her MLC was prepared.

16. This Court has also gone through the contents of FIR No.173/2019, under Section 336 IPC and Sections 27/54/59 of Arms Act, 1959, registered at police station Mukherjee Nagar, Delhi on 03.04.2019 wherein it is stated that on receipt of PCR call by a lady that a gun shot was fired at her, the investigation team reached the spot and statement of complainant/prosecutrix was recorded wherein she stated that two bikers had fired and fled from the spot. Accordingly, the crime scene was inspected and two live cartridges were recovered. The FIR and status report are silent about the name of accused/suspect.

17. This Court has also gone through the contents of FIR No. 262/2019, dated 05.07.2019, registered at police station Mukherjee Nagar, Delhi for the offences under Sections 25/54/59 Arms Act, 1959, wherein complainant/prosecutrix has stated that she could not notice the bike number and could not identify the bike riders, who were two boys with their covered face and had fired a shot in the earth near her legs. During investigation, though one empty cartridge was recovered from the spot but prosecutrix did not receive

any injury. Moreover, in the said FIR also petitioner has not been named as an accused/suspect.

18. Pertinently, proceedings in the aforesaid two FIRs are independent to the case in hand and since the name of accused/suspect does not find mention therein, the prosecutrix is yet to establish how these FIRs are connected with the present case against the petitioner.

19. As per status report, petitioner had surrendered before the court concerned on 03.09.2019 and since then he is in custody in this case. It is not disputed that no other case is pending to the credit of petitioner. Charge sheet in this case has already been filed and trial will take substantial time. Accordingly, without commenting on the merits of the prosecution case, the petitioner is directed to be released on bail forth with upon his furnishing personal bond in the sum of Rs.25,000/-, with one surety in the like amount to the satisfaction of the Trial Court/Duty Magistrate, subject to the condition that:-

- i. Petitioner shall not directly or indirectly influence the witnesses or tamper with the evidence;
- ii. Petitioner shall not directly or indirectly approach the prosecutrix or his family members;

20. The present petition is allowed in aforesaid terms and is accordingly disposed of.

21. A copy of this order be transmitted to the Trial Court and Jail Superintendent concerned for information and compliance.

(SURESH KUMAR KAIT)
JUDGE

MAY 10, 2021

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