



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 17.02.2022

Pronounced on : 26.04.2022

+ BAIL APPLN. 1647/2021

MOHD. AAMIR

.....Petitioner

Through: Mr. Nilesh and Ms. Diksha Dwivedi,
Advts.

Versus

STATE AND ANR.

..... Respondents

Through: Ms. Rajni Gupta, APP for the State.
Ms. Ashu Chaudhary, Advocate for
the complainant.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. This petition is filed by petitioner under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in FIR No. 740/2020 under Sections 323/376/376B/376D/506 IPC registered at Police Station Khajuri Khas, Delhi.

2. In brief, the facts of the case are that on 7.9.2020, the victim lodged an FIR against the petitioner/applicant who is her brother-in-law and his co-accused, namely, Jakir who is the husband of the victim. It is alleged by the victim that on 27.08.2020 between 2.00 am to 5.00 am the



applicant/petitioner and his brother committed rape on the victim at her matrimonial home. The statement of the victim under Section 164 Cr.P.C was recorded on 24.09.2020.

3. I have heard the learned counsel for the petitioner/applicant, learned APP for the State assisted by the learned counsel for the complainant and perused the status reports dated 17.7.2021 and 13.01.2022 and also perused the records of this case.

4. It is submitted by the learned counsel for the petitioner that co-accused Jakir has been granted default bail by the learned Metropolitan Magistrate vide order dated 09.12.2020. It is further submitted by the counsel for the petitioner/applicant that petitioner is a married man having one year old son, and has been falsely implicated in this case because the prosecutrix and her husband, namely, Jakir who is the brother of the petitioner are having matrimonial dispute and owing to the dispute the prosecutrix used to spend most of her time at her parent's house. It is further submitted that on 25.06.2020 a quarrel took place between the prosecutrix and her husband Jakir which resulted into filing a kalandra no. 750/2020 under Section 107/151 Cr.P.C vide DD No. 116A at Police Station Khajuri Khas, and the brother of the petitioner, namely, Jakir was sent to judicial custody and was released on bail on 28.6.2020.

5. It is further submitted by the learned counsel for the petitioner that on 27.08.2020, the prosecutrix visited her matrimonial house on the pretext of taking clothes of her children, and thereafter she left at around 9:45 pm, and got the present FIR registered on 07.09.2020 alleging that petitioner and his

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brother had raped her on 27.08.2020. It is further submitted by the counsel for the petitioner that as per the prosecutrix she was raped by the petitioner and his brother on the intervening night of 27.08.2020 and 28.08.2020 from 2.00 am to 5.00 am but the FIR was not lodged immediately when according to the prosecutrix such a brutality was committed upon her. It is further submitted by the learned counsel for the petitioner that the prosecutrix has not got herself medically examined immediately after the incident when according to her she was continuously raped for about 3 hours by two men. It is further submitted that in these circumstances as alleged by the prosecutrix, there would be injuries on her body which should have been detected had she gone for her medical examination immediately after the incident but for the reasons best known to her she had not gone for her medical examination and has not even lodged the FIR immediately after the incident and even refused for her internal medical examination which shows the falsity of the case of the prosecutrix, and this case is nothing but arises out of a matrimonial dispute between her and her husband co-accused Jakir. It is further submitted by the learned counsel for the petitioner that the chargesheet has already been filed, and the petitioner has been made an scapegoat because of the matrimonial fight between his brother Jakir and the prosecutrix. He further submitted that the prosecutrix has even filed the complaint regarding threats which has been found to be a false complaint. He further submitted that petitioner was nowhere present near the place of incident as alleged by the prosecutrix. He further submitted that petitioner/applicant is in judicial custody since 16.02.2021. He further submitted that as per the MLC No. 74/2020 dated 08.09.2020, the



prosecutrix has refused her internal medical examination, and there was no history of external injury which is highly improbable in the manner in which the offence is alleged to have been committed by the petitioner and his brother.

6. On the other hand, it is submitted by learned APP for the State, assisted by the learned counsel for the complainant/prosecutrix that the allegations against the petitioner are grave and serious in nature, and the prosecutrix in her statement recorded under Section 164 Cr.P.C has supported the allegations made by her against the petitioner and has explained the reasons for not approaching the police immediately. She further submitted that petitioner is not entitled to parity with the co-accused as the co-accused was granted default bail by the learned Magistrate.

7. In the instant case, there is a matrimonial dispute between the brother of the petitioner and the prosecutrix which is evident from the record. The incident, according to the prosecutrix took place in the intervening night of 27/28.08.2020 from 2.00 am to 5.00 am but the FIR has been lodged on 07.09.2020 i.e. after 11 days of the incident. The statement of the prosecutrix under Section 164 Cr.P.C was recorded on 24.09.2020 wherein apart from making the allegations against the petitioner and his brother as made by her in the FIR, she stated that she had gone to file a complaint on 01.09.2020 but she was not feeling well, so she has filed the complaint on 07.09.2020, however, nothing has been placed on record to show that the prosecutrix was not feeling well rather her MLC No. 74/2020 dated 08.09.2020 shows that she has refused her internal examination and no



external injuries were found on her person, despite of the fact that according to her the offence continued for about 3 hours brutally by the petitioner as well as his brother.

8. As per the status report, the prosecutrix has given a written complaint at Police Station Khajoori Khas on 29.09.2021 alleging that on 09.09.2021, accused Jakir, brother of the petitioner came to her house, and put pressure upon the prosecutrix to settle the matter but when enquiries were conducted no cognizable offence was made out, so the said complaint was filed. On 11.09.2021, the brother of the petitioner has filed a complaint against the prosecutrix that she has tried to enter his parent's house. Father of the petitioner made a PCR call and on enquiries it was revealed that the prosecutrix had gone to the house of the parents of the petitioner to take her clothes which resulted into an argument between them.

9. In the status report dated 13.1.2022, the mobile location of the prosecutrix and the petitioner has been filed and the same does not match.

10. In view of the entire facts and circumstances discussed hereinabove, the present matter appears to be an off shoot of matrimonial dispute between the prosecutrix and her husband. There is delay in lodging the FIR and coupled with the fact that the prosecutrix did not immediately get her medical examination conducted rather she refused for her internal medical examination and, as per the MLC, there are no external injuries on the body of the prosecutrix despite of the fact that according to her, she was brutally raped by two persons from 2.00 am to 5.00 am on the intervening night of 27/28.08.2020. As far as the allegations made by the prosecutrix are



concerned, those can be proved by the prosecutrix by entering into the witness box. Therefore, keeping in view the above facts and circumstances, and also keeping in view the fact that petitioner/accused is in judicial custody since 16.02.2021, the application is allowed and the petitioner/applicant is admitted to bail on his furnishing a personal bond in the sum of Rs.20,000/- with one surety in the like amount to the satisfaction of the trial court concerned.

11. Nothing stated herein above shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

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