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

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Date of decision: July 21, 2023

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BAIL APPLN. 1567/2023

JITENDER @ SONU

..... Applicant

Through: Mr. M.K. Duggal and Mr. Hunny Singh, Advocates.

versus

STATE (N.C.T. OF DELHI) & ANR.

..... Respondents

Through: Mr. Ajay Vikram Singh, APP for the State with SI Priyanka P.S. Subhash Place.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. This is an application filed by the applicant under Section 439 Cr.P.C. seeking regular bail in FIR No. 188/2023 dated 06.02.2023 registered under Sections 376/506/509/109 IPC at Police Station Subhash Place, Delhi.
2. As per the FIR, the applicant met the prosecutrix on 25.05.2022 on the pretext of taking her to a job interview and instead took her in his car to a hotel in Shakurpur Delhi and committed the alleged offence. He threatened her of kidnapping her brothers. The applicant thereafter committed the alleged offence on several occasions including in December 2022 and also



threatened the prosecutrix of recording her objectionable videos and making them viral.

3. The applicant was arrested on 18.03.2023 and has been in custody since then.

4. Learned counsel for the applicant submits that there has been a delay of more than 9½ months in registering the FIR. He submits that the prosecutrix/ complainant was a consenting party to the alleged act(s) and the hotel bookings were made by the prosecutrix herself in her name. For this, he has handed over photocopies of the entries of the hotel register dated 25.06.202 and 28.06.2022, which are forming a part of the charge sheet, to show that it has both the names and the signatures of the applicant as also the prosecutrix/ complainant in two respective columns.

5. He further submits that the FIR does not disclose the dates of occurrence(s) of the offences.

6. Upon issuance of notice the Status Report has been filed and the Nominal Roll was also called for.

7. The prosecutrix/ complainant also filed a response to the said application stating therein that the applicant is a habitual offender who has been involved in various offences and had committed the alleged offence on her just a few days prior to the registration of the FIR. It is further stated that despite being married to the sister of the prosecutrix, he has been completely dishonest and that in view thereof, the grant of bail to the applicant has been opposed by her.

8. Though the Nominal Roll reflects that the overall jail conduct of the applicant is satisfactory, however, it also reflects that there are two additional FIRs pending against the applicant, i.e., FIR No. 362/2016



registered under Sections 376/506 IPC at Police Station North Rohini and FIR No. 949/2022 registered under Section 420/468/471/120B IPC at Police Station Rajouri Garden and that the applicant has been granted bail in both the FIRs. It is further stated that the applicant has been in custody for over 4 months as on date.

9. Learned APP, relying upon the Status Report, submits that the prosecutrix/ complainant in her statement under Section 164 Cr.P.C has supported her earlier version in the FIR *qua* the allegations made on 25.05.2022. He submits that she was threatened by the applicant as well as her brother. He also submits that the applicant is guilty of committing the offence of raping the prosecutrix/ complainant three times, first time on 25.05.2022, second time on another undated incident and third time in December 2022. He also submits that records of the concerned hotel Orbit wherein the offence were committed have also been verified and the entries *qua* the applicant and prosecutrix/ complainant have been found therein. It is further submitted that the applicant is in jail only since 18.03.2023.

10. I have heard learned counsel for the petitioner and learned APP for the State and gone through the relevant documents on record.

11. At the outset, the conditions for granting bail to an accused are [*Re.: Prasanta Kumar Sarkar vs. Ashis Chatterjee* (2010) 14 SCC 496; *State of Uttar Pradesh vs. Amaramani Tripathi* (2005) 8 SCC 21; and *Deepak Yadav vs. State of Uttar Pradesh* (2022) 8 SCC 559] :

- i. *whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- ii. *nature and gravity of the accusation;*
- iii. *severity of the punishment in the event of conviction;*
- iv. *danger of the accused absconding or fleeing, if released on*



bail;

v. character, behaviour, means, position and standing of the accused;

vi. likelihood of the offence being repeated;

vii. reasonable apprehension of the witnesses being influenced; and

viii. danger, of course, of justice being thwarted by the grant of bail.

12. In the opinion of this Court, the fact that the photocopies of the hotel register carry the names and signatures of both applicant and prosecutrix/ complainant together is not proof enough for this Court to conclude that the complainant/ prosecutrix was a consenting party. In any event, the same are pertaining to two different dates than what are mentioned in the FIR and further the veracity thereof are subject to trial.

13. Further, no doubt that the applicant has been granted bail in two other FIRs registered against him, however, the fact that the present FIR is under Sections 376/506/509/109 IPC and there is already FIR No. 362/2016 also under Sections 376/506 IPC pending against the applicant shows that the applicant is guilty of having repeatedly committed the same offence within seven years. In fact, this is the second FIR against him within a span of seven years which, in the opinion of this Court, is a ground for denying grant of bail to the applicant. [*Re.: Prahlad Singh Bhati vs. NCT, Delhi* (2001) 4 SCC 280].

14. This Court cannot lose sight of the fact that while considering an application for granting bail to an accused, no doubt, the personal liberty of such accused is a relevant fact, however at the same time, it is the duty of the Court to also take into account the gravity of the offences involved and the charges levelled and will the accused be a threat to the Society if granted bail. Keeping the aforesaid in mind and considering the character and



background of the applicant and the fact that he has been involved in committing similar offences over a period of time and he is an accused under similar Sections 376/506 in another FIR, in the opinion of this Court, granting bail to the applicant would not be prudent. In fact, this Court does not feel shy to say that it would be injustice to the Society at large.

15. Considering the gravity and heinousness of the offence involved and as the Court has to consider the circumstances holistically and scrutinise every aspect and not exercise its discretion capriciously, particularly when the applicant has been involved in number of other heinous offences, this Court does not consider the present applicant to be fit to be granted bail at this stage [*Re.: Neeru Yadav vs. State of U.P.* (2014) 16 SCC 508].

16. Lastly, recapitulating all the above, especially in view of the facts involved in the present case and in the considered opinion of this Court, *prima facie*, there is a reasonable cause to believe that the applicant may be involved in commission of the offence. Gauging from the nature and gravity of the accusation and the severity of the punishment in the event of conviction and seeing the character, behaviour, means, position and standing of the applicant, not only there is a likelihood of the offence being repeated if the applicant is granted bail but in the opinion of this Court there may be a reasonable apprehension of the witnesses being influenced as well. All/ any of the above is likely to hamper the dispensation of justice.

17. Thus, in view of the legal position and the factual matrix involved, the aforesaid factors lead this Court to the conclusion that there is no merit in the present application for grant of bail to the applicant at this stage.

18. Needless to state, observations made on the merits of the matter, if any, are only for the purposes of adjudicating the present application for the



grant of bail and shall not be construed as expressions on the merits of the matter.

19. Accordingly, the application for granting bail to the applicant is hereby dismissed.

SAURABH BANERJEE, J

JULY 21, 2023

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