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

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Decided on: 08.08.2023

+ BAIL APPLN. 2158/2023

ASHU CHAUDHARY

..... Petitioner

Through: Mr. K.K. Sharma and Mr.
Meesu Sudhir Tomer,
Advocates

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Manoj Pant, APP for the
State with SI Pinki Rana, P.S.
Maidan Garhi
Mr. Hitendar Mahalwal,
Advocate for complainant

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.(ORAL)

1. The instant application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of applicant seeking grant of regular bail in FIR bearing no. 88/2023, registered at Police Station Maidan Garhi, Delhi for the offences punishable under Sections 376/376D/498A/323/354/109/34 of the Indian Penal Code, 1860 ('IPC').

2. Issue notice. Mr. Manoj Pant, learned APP accepts notice on



behalf of State.

3. Briefly stated, the facts of the present case are that the present FIR was registered on the allegations that the victim in this case who was married to the present accused/applicant in the year 2015, was continuously being harassed for non-fulfilment of demand of dowry by the petitioner though her father had given Rs. 5 lakhs to the present accused/applicant. On 06.07.2016, after she was blessed with a baby boy, the applicant who is her mother-in-law had refused to let her stay with them and had asked her to kill the new born baby. She had, therefore, kept the baby at her mother's home. Her brother-in-law had molested her on many occasions and when she had complained to her husband and mother-in-law, they had beaten her. When her son was three years old, she was asked to arrange Rs. 10 lakhs for a shop which was to be run by applicant, and she was able to give Rs. 5 lakhs to them and it was only thereafter that she was brought back to her in-laws home, but she was not allowed to meet her child. Her husband had opened a shop of supplements/steroids and had started giving her some medicines/steroids forcibly on the pretext that she was very weak physically, and after taking the same, she used to feel dizzy and her brother-in-law also used to indulge in touching her inappropriately and used to finger her in her private parts. Her mother-in-law and applicant had beaten her when she had informed them about it and had told her that they will not let her meet her child. In January, 2021, when she was at her mother's home, the applicant had come to take her back to matrimonial home and had given her an injection in the car due to which she had started feeling dizzy. He had taken her to



Chattarpur, a where a Nigerian boy also joined them in the car. The applicant had stopped the car at the road-side and that boy and the present applicant had raped her in the car. The Nigerian boy had given money to the applicant in lieu of the sexual assault. The applicant had threatened her not to disclose anything to anyone or he will ruin her father's political career. In February, 2021, the applicant had told her that they will be going out for dinner and had again given her an injection due to which she felt dizzy, after which he had taken her to a hotel and had forcibly taken off her clothes, and she had felt no energy in her body. A boy had, thereafter, come to the room, and the applicant and that boy had raped her. Thereafter, she was again brought back to her matrimonial home. Later, the applicant had shown her inappropriate video of the sexual assault in his phone which contained her inappropriate photographs and had threatened to show the video to everyone, due to which she had become mentally stressed. Thereafter, the applicant used to give her medicines and injections and used to take her to that hotel on many occasions where she was raped by different persons. She was also forced to send text messages to different persons through her phone. On 11.02.2023, the applicant had again asked her to go to the same hotel again, however, she had run away from home with her child and had disclosed everything to her parents and police. She has also alleged that the accused persons used to insert bottles etc. in her private parts.

4. Learned counsel for the applicant argued that it is purely a matrimonial dispute between the parties which has been given colour of gang rape. It is also stated that the prosecutrix has given different



versions in the FIR and in the statement recorded under Section 164 Cr.P.C. which shows material contradictions. It is also argued that the prosecutrix herself was sending text messages to the co-accused Benjamin and was asking him to meet her and was asking for different sexual pleasures including asking him for his nude photographs. It is also stated that she used to herself initiate nude video calls with the accused. It is argued that there is no evidence of prosecutrix being injected with any substance by the applicant. It is also stated that MLC of the prosecutrix does not support her claim as no external injuries were found on her body. It is also stated that the photographs of the physical abuse filed with the charge-sheet are photos of love bites. It is also stated that the photographs filed along with the bail application and handed over to the Court in a sealed cover point out that the prosecutrix was never confined to a room and was enjoying her matrimonial life with the applicant. It is further stated that co-accused have already been granted bail. It is finally, argued that it has become practice of the complainants to falsely implicate husbands and their in-laws in such kind of cases. It is, therefore, stated that bail be granted to the accused/applicant.

5. Learned APP for the State, on the other hand, has vehemently opposed the bail application and argued that the allegations levelled against present accused/applicant are serious in nature.

6. I have heard arguments addressed on behalf of both the sides and have perused material available on record.

7. In the present case, this Court is of the opinion that the



allegations levelled in the statement under Sections 164 Cr.P.C., 161 Cr.P.C. and in the complaint itself are not only serious, but shocking. The allegations are that the accused husband had forced the prosecutrix into having sexual relationship with different persons and he used to charge money for the same. The applicant allegedly also used to administer steroids to her by injecting injections or otherwise, and he had taken her to a hotel in Delhi where she was raped by unknown persons. Physical relations were also established with her by different persons without her consent under pressure and threat of the present applicant. She was also raped by co-accused Benjamin in the car where the accused had also raped her along with him. They had also taken her to Mussoorie, regarding which prosecution has brought on record booking details of the Mussoorie hotel where a room had been booked for overnight stay. The investigation has revealed that the applicant, the prosecutrix and co-accused had stayed there. The investigation has also revealed financial transactions between the applicant and the co-accused Benjamin. There are thus clear and specific allegations that the applicant used to inject her forcibly due to which she used to feel weak, her body used to become frozen, however, she used to remain conscious but at times she used to feel dizzy, after which, in specific incidents, she has narrated as to how she was raped by different persons and the accused himself had sexually assaulted her. There are also allegations of demand of dowry and beating the prosecutrix by her mother-in-law, her husband/applicant and molesting and sexually assaulting her by her brother in law.

8. As far as the contention of the learned counsel that the text



messages were sent by the victim herself to the co-accused is concerned, the prosecutrix has stated in her statement that the present accused/applicant used to send messages from her mobile phone. In this Court's opinion, prima facie the fact that the accused/applicant is the husband of the victim and, therefore, had access to the phone as both of them were staying together cannot be lost sight of.

9. As far as the contention of the learned counsel that there were discrepancies in the statements of the prosecutrix under Sections 161 and 164 of Cr.P.C., etc., is concerned, the same is also a matter of trial. The prosecutrix has levelled serious allegations that bottles, etc, were inserted in her private part by the accused persons, she was beaten mercilessly and was threatened that in case she will not follow their instructions, they will not let her meet her child, which cannot be taken to be false at this stage.

10. Learned counsel for the petitioner had handed over some photographs in sealed cover, to this Court and had argued that the same can prove that the prosecutrix was enjoying her normal conjugal life with the applicant and, therefore, a false complaint has been lodged against the present petitioner. This Court has gone through the photographs which have been handed over to the Court and is of the opinion that it is only a matter of trial as to under which circumstances and how the photographs had been taken. At this stage, when there are statements with grave and serious allegations against the accused, the photographs filed on record (some are inappropriate) are of little significance. Considering the same, this Court is of the opinion that



these photographs which have again been closed in the same envelope, in the presence of the Court, be given back to the counsel for the applicant after obtaining his signatures on the order in this regard.

11. Therefore, at this stage considering the overall facts and circumstances of the case and the seriousness and gravity of the allegations which are shocking in nature, this Court is not inclined to grant bail to the applicant.

12. Accordingly, the present bail application stands dismissed.

13. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 8, 2023/ns

