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

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Reserved on: 05.12.2023
Pronounced on: 06.12.2023

+ **BAIL APPLN. 2365/2023**

ZIYAUL ISLAM SIDDIQUI

..... Petitioner

Through: Mr. Rajul Bhargava, Senior Advocate with Dr. Vijay Kumar Shukla, Ms. Nupur Shukla, Mr. Kartikeya Bhargava and Mr. Anirudh Gulati, Advocates

versus

THE STATE & ANR.

..... Respondents

Through: Mr. Manoj Pant, APP for the State
Mr. Pramod Kumar, Mr. Om Prakash Singh, Mr. Ajay Kumar Yadav and Ms. Piyushi Garg, Advocates for victim/prosecutrix

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant application under Section 439 of the Code of the Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of applicant seeking grant of regular bail in case FIR bearing no.



397/2023, registered at Police Station Pahar Ganj, Delhi for the offences punishable under Sections 376/328 of the Indian Penal Code, 1860 ('IPC').

2. Briefly stated, the facts of the present case are that the victim had lodged a complaint with the police alleging therein that on 09.05.2023, while she was travelling from Allahabad to Delhi without a confirmed ticket, the Travelling Ticket Examiner ('TTE') had approached her for the purpose of checking her ticket. It is stated that when she had told him that she did not have a confirmed ticket, he had asked her to pay Rs. 500/- to get a seat. Thereafter, he had got her a seat and she had informed him that she was illiterate and was looking for a job. He had promised her for a permanent job in railways and had taken her mobile number. He had disclosed his name as Kalu Singh, and being illiterate, she was not able to read his name plate. Thereafter, she had come to Delhi. It is alleged that when she had come to Delhi, the accused had made a phone call to her on the same day and had informed her that he had spoken to the higher officials about her job and will meet her on 13.05.2023. Thereafter, he had kept on talking to her continuously on the phone in relation to the job. On 13.05.2023, he had visited her house in Noida and had told her that he will speak to his higher officials to get her a job. On 19.05.2023, he had called her to Gaziabad Railway Station and thereafter he had brought her to New Delhi Railway Station. He had thereafter taken her to a hotel in Pahar Ganj on the pretext that the officer concerned will come to the hotel to get her a job. They had reached the hotel at 4:00 PM and since she had not brought her



identity card with her, accused had spoken to the hotel staff and had asked them to put her fake signatures in the register. Thereafter, he had taken her to 4th floor of the hotel. He had also given her a cold drink to drink and after having the cold drink around 5:00 PM, he had forcibly made physical relations with her and as her body had gone numb after consuming the cold drink, she could not resist him. Thereafter, he had promised to marry her after getting her a job as he was unmarried. It is alleged that he used to call her from his friend's mobile phone and had fixed another meeting with her on 04.06.2023 at the same hotel. Thereafter, he had told her that he had taken her nude photographs and in case she will not meet him, he will post them on social media. On 04.06.2023, she had under threat gone to the same hotel. Since he had not come there, she had shown the photo of his identity card which she had taken with her mobile phone at the time of hotel entry on 19.05.2023 to the hotel staff and the hotel Manager had read it and had informed her that name of accused is Ziyaul Islam and not Kalu Singh. It is stated that Ziyaul Islam had pretended to be a Hindu and had forced her to have physical relations with her on the pretext of getting married to her. On these allegations, the present FIR was registered under Sections 376/328 of IPC. Chargesheet was filed under Sections 376/328/419 of IPC.

3. Learned Senior counsel for the applicant argues that investigation in the present case is complete and that there are discrepancies in the statements of the victim recorded under Sections 161 and 164 of Cr.P.C. It is stated that the victim has failed to handover her mobile phone to the police for further investigation. It



is also argued that accused had never hidden his identity or his religion and that he was wearing his name plate on his uniform and, therefore, the victim knew his identity. It is stated that there is a delay of 16 days in registration of the FIR, and the victim herein has falsely implicated the present accused/applicant. It is also stated that there is nothing on record to prove that the accused had taken any obscene or inappropriate photographs of the victim and that no useful purpose will be served by keeping him in jail. Therefore, it is submitted that the applicant, who has been in judicial custody since 06.06.2023, be enlarged on regular bail.

4. Learned APP for the State, on the other hand, argues that the victim has leveled specific allegations of sexual assault on false pretext of marriage and getting her a job in her statements, which are serious in nature. It is also stated that though chargesheet has already been filed, charges are yet to be framed in this case and, therefore, the applicant should not be released on bail.

5. This Court has heard arguments addressed by learned Senior Counsel for the applicant and learned APP for the State, and has perused the material on record.

6. In the present case, this Court is of the opinion that there are specific allegations against the present accused/applicant that he was a government servant who had met the victim in the train as he was functioning as Travelling Ticket Examiner. The contention of the learned Senior counsel for the applicant that the accused had been falsely implicated in the present case is not supported by any other contention as to why the victim will falsely implicate him in a case of



rape and the motive behind it. The victim did not know the applicant and was a passenger in a train where the present accused/applicant had been on official duty as TTE. There is no explanation as to why he had obtained the phone number of the victim and was in constant touch with her. There is also no explanation as to why he had met her in the hotel. The hotel in question has the entry regarding the room wherein the sexual assault was allegedly committed on pretext of marriage and getting her a job. The applicant could not explain as to why he had visited the house of the victim. It was not also contended that there was any consensual relationship between the parties, therefore, the arguments put forth before this Court did not have the force of the reason regarding the communication of the present accused/applicant who was a stranger to the victim to obtain her phone number, his continuous communication with her and thereafter, visiting her home and then taking her to a hotel.

7. At this stage, it is the case of the victim, on the other hand, that she did not know about the name of the accused and he had introduced himself as Kalu Singh, and even if he was wearing his name plate on his official uniform, she was unable to read it since she is illiterate. However, on 04.06.2023 when she had visited the hotel where she was called, she had taken the details of his Id card which he had given to the hotel Manager at the time of booking the room and the hotel manager had read the name of the accused and had informed her that his name is Ziyaul Islam. Therefore, the contention of the victim argued through the APP for the State that she was not



aware of the real name and religion of the applicant at this stage cannot be ignored.

8. This Court notes that further investigation in this case regarding the phone in question wherein inappropriate photographs of the victim were taken is pending and a supplementary chargesheet will be filed as per submissions made by the learned APP for the State. Charges are yet to be framed in this case, and the victim is yet to be examined.

9. Therefore, considering the aforesaid facts and circumstances of the case, no case for grant of bail is made out, at this stage.

10. Accordingly, the present bail application stands dismissed.

11. It is however clarified that the observations made hereinabove shall not be construed as expression of opinion of this Court on the merits of the case.

12. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

DECEMBER 6, 2023/zp