

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on:13.01.2023

+ **BAIL APPLN. 2688/2022**

JAGBIR @ DADA

..... Applicant

versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Advocates who appeared in this case:

For the Applicant : Ms. Joshini Tuli, Advocate

For the Respondents :Ms. Priyanka Dalal, APP for the State with WSI
Vijeta Gautam, PS Naraina.
Mr. Kanhaiya Singhal, Ms. Priyal Garg, Mr.
Jasmeet Singh & Mr. Prasanna, Advocates for
R2/Complaint

CORAM

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application for grant of regular bail is filed in FIR No. 0585/2020, registered at police station Naraina, under Sections 376D/406/120B/34 of the Indian Penal Code, 1860 (IPC).
2. It is alleged that the prosecutrix had known the co-accused namely Ajay Yadav @ Mangu for about 5-6 years. Ajay who called her to Delhi on the pretext of marrying her and under the influence of getting married the Prosecutrix came to Delhi with Cash amounting to Rs.1 Lakh Rupees and jewellery weighing about 20 *tolas*.
3. It is further alleged that on 27.08.2020 the brother of the co-

accused, Ajay, namely, Shivratan @ Pintu also an accused in the present FIR helped the prosecutrix from running from her nani's house and left her on a bus for Delhi from her village and upon reaching Delhi, prosecutrix met Co-accused Ajay and the present applicant who took her to their room (place of incident) in WZ-308, Naraina village and made forceful sexual relations with her. After the said incident both the accused persons took the bag containing jewellery and cash from prosecutrix and left her at the room stating that they will be need a bigger room to stay together after marriage but never returned back. In the evening after waiting at the room for co-accused and the present applicant to return, the prosecutrix reached her Mama's residence in Chhatarpur, Delhi and the next day she informed him about the entire incident and thereafter on 30.08.2022 gave the complaint and the present FIR was registered.

4. Learned Counsel for the Applicant/accused submits that the Accused is 24-year-old young man and has been in continuous incarceration for a period of more than two years, (is in custody since 31.08.2020). The chargesheet in the present has already been filed and there is no material on record or any evidence in support of the allegations.

5. She states that there is no medical evidence placed on record to implicate the present applicant for an offence of Rape as alleged by the Prosecutrix and in this regard reliance is placed on FSL report which is on record which states that there is no male DNA found from the source of Exhibit-1/A Right Vulval Swab and Smear, 1/C High Vaginal swab and smear, 1/D low vaginal swab and smear, 1/E

Cervical swab and Smear, 1/F Rectal swab and smear 1/G Pubic hair did not match with the applicant's sample.

6. She submits that the Prosecutrix is her examination has stated that she was never in touch with the present applicant and the only contact she had was with the co-accused Ajay and that too only telephonically before the alleged incident. The size of the room as stated by the prosecutrix was 8*8ft and the probability of presence of three people at the time of incident is highly improbable and that too when the co-accused Ajay was having physical relations with the prosecutrix in the same room.

7. She further submits that the conduct of the prosecutrix is not natural as she did not raise any hue or cry and rather when both the accused persons, that is, Ajay and the present applicant had alleged quarrel, she tried to pacify both of them. The reliance is placed upon the statement of the prosecutrix recorded under section 164 Cr.P.C. in which it is stated that the prosecutrix told the co-accused Ajay that the present applicant also had forceful sexual relations with her, he got angry and got into a quarrel with the applicant and in order to stop the quarrel she told them that there's no need to fight and what's done is done.

8. In support of his arguments learned Counsel for the applicant has also placed reliance on the following judgements: -

a. Arun Vs. The State of GNCT of Delhi
MANU/DE/0974/2021

Whereby this Court has granted bail to the accused in view of different versions of Prosecutrix forthcoming before the Court;

b. *Krishan Kumar Malik Vs. State of Haryana* (2011)3SCC(Cri)61

Whereby the Hon'ble Apex Court had granted bail considering that the size of the room was not prepared as per scale and the probability of the alleged incident of Gangrape was not possible in the said room due to its size in addition to inconsistencies in the statement of the Prosecutrix on record;

c. *Rai Sandeep Vs. State of NCT of Delhi* (2012)8 SCC 21, where Hon'ble Apex Court granted relief to the accused noting that the testimony of the Prosecutrix does not inspire confidence due to several lacunae in the statement of the Prosecutrix and the evidence of the prosecutrix not being of a sterling quality.

9. Learned Counsel for the applicant also states that the co-accused, Shivratan, has already been granted bail.

10. Learned APP for the State opposes the present bail application and has filed a status report.

11. She submits that allegations in the present case are serious in nature and the role of the present applicant is of one of key conspirators in the commission of the offences as alleged.

12. She submits that after the registration of the FIR prosecutrix in her statement recorded under section 164 C.r.P.C. has supported the case of the prosecution and has corroborated her previous version as recorded in the complaint.

13. She also states that although there is no recovery at the behest of the any of the accused persons, the Maternal Uncle ("*Mama*") has produced the original bills of the jewellery which were taken by the

present applicant and the co-accused Ajay.

14. She also states that the statement of the landlord under section 161 Cr.P.C. is also recorded in which he has stated that he had given the said premises on rent to two persons namely Mangu and Dada (applicant).

15. Learned Counsel for the prosecutrix states that the applicant herein in connivance with the co-accused Ajay enticed the prosecutrix to come to Delhi with all her jewellery, articles and cash on pretext of marriage. He further states that the applicant developed a forceful sexual relationship with the prosecutrix. Also, the applicant along with the co-accused Ajay misappropriated the jewellery and cash belonging to the prosecutrix.

Conclusion

16. The applicant has been in custody since 31.08.2020. The investigation was complete long back and the matter has proceeded for trial. The statement of the prosecution witnesses i.e., the landlord of the property where the alleged incidence took place and the prosecutrix has been placed on record.

17. It is not in dispute that the co-accused Ajay was in contact with the prosecutrix. The prosecutrix, in her statement, had categorically stated that it was at the behest of co-accused Ajay that she came to Delhi. Ajay had assured that he will marry her.

18. In her testimony, the prosecutrix stated that after the accused Ajay left the room, the present applicant entered and established forceful sexual relation. No time, however, has been mentioned. It is significant to note that in her statement, under Section 164 of Cr.P.C.,

the prosecutrix stated that the applicant was sitting in the room while the co-accused Ajay had forceful sexual relation with her. There is some inconsistency in the statement that would be considered at the time of final argument.

19. The prosecutrix in her statement, under Section 164, Cr.P.C., had also stated that the applicant and the co-accused were having quarrel when she informed the co-accused that the applicant had a forceful sexual relationship with her and she told both of them not to fight and said that whatever has been done is done.

20. It is not in doubt that to hold a person guilty for commission of offence of rape even solitary evidence of the prosecutrix is sufficient provided the same inspire confidence and is found to be absolutely trust worthy.

21. At this stage, there is no other material which corroborate the involvement of the accused / applicant with the commission of the crime. The quality of worthiness of the statement of the prosecutrix will be tested during the trial. It is, however, cannot be disputed that there is certain inconsistency in the statement given by the prosecutrix in relation to the presence of the applicant.

22. It is not in dispute that the offence as alleged is heinous in nature. However, it cannot be lost sight of the fact that the object of jail is not punitive but to secure the presence of the accused during the trial.

23. The applicant is in custody since 31.08.2020 and only three out of 27 witnesses have been examined till date. The trial is likely to take a long period of time before it reaches the finality.

24. Without commenting further on the merits of the case and keeping the facts and circumstances as mentioned above, I am satisfied that no purpose would be served by keeping the applicant in further incarceration.

25. The applicant is, therefore, directed to be released on bail on furnishing a bail bond for a sum of ₹50,000 with two sureties of the like amount to the satisfaction of the learned Trial Court/ Duty Metropolitan Magistrate, subject to the following terms and conditions:

- i) The applicant shall provide his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- ii) The applicant shall not take unwarranted adjournment and attend the Trial Court proceedings on every date;
- iii) The applicant shall not leave the city without informing the concerned IO / SHO;
- iv) The applicant shall not in any manner contact the complainant or any of the witnesses;
- v) The applicant shall not in any manner tamper with the evidence;
- vi) The applicant shall not leave the country without permission of the learned Trial Court.

26. In the event of there being any FIR / complaint lodged against the applicant or the applicant is found to have violated the conditions stated above, the State is at liberty to file an appropriate application seeking cancellation of bail.

27. The present application is allowed in the aforesaid terms.

28. It is, however, made clear that any observation made in the present order are only for the purpose of deciding the present application and no should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

29. *Dasti under signature(s) of the Court Master.*

JANUARY 13, 2023
"SS"/SK

AMIT MAHAJAN, J

