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

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Reserved on: 02.11.2023
Pronounced on: 07.11.2023

+ **CRL.M.C. 7307/2023**

RUBI SHATIR

..... Petitioner

Through: Ms. Sonia Mathur, Sr.
 Advocate with Mr. Sushil Kr.
 Dubey, Ms. Shubhangi Arora,
 Ms. Rupakshi Soni, Mr. Nikhil
 Chandra Jaiswal & Mr. Divir
 Mathur, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for the
 State with SI Prashant, P.S.
 IGI Airport.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Section 482 of Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred by the petitioner seeking modification of the bail order dated 15.03.2023, passed by learned Additional Session Judge, Patiala House Court, New Delhi granting bail to petitioner *inter alia* on the ground that the condition that petitioner will not leave the country without the permission of the Court be deleted.



2. Briefly stated, the facts of the present case are that the present FIR bearing No. 98/2023, registered at Police Station IGI Airport, under Section 376 of Indian Penal Code, 1860 ('IPC'), was registered on the complaint lodged by the complainant who had stated that she had met the main accused Gurbaksh Singh through a public platform, and they had started talking in relation to work and advisory related issues. Thereafter, the complainant and accused Gurbaksh Singh had met at Hotel Hyatt Regency where accused Gurbaksh Singh had requested the complainant to sit and talk and had made her drink alcohol. The accused Gurbaksh Singh had then started touching her inappropriately, and had even started recording videos of the same, which the complainant was able to see but could do nothing about since she was under the influence of alcohol. As alleged, the very next day the complainant had called the accused and had asked him to delete those videos which he told her were already deleted. In January 2023, the complainant had come to know that the videos were still in the possession of accused Gurbaksh Singh, and she again had requested him to delete the videos, and on the pretext of deleting the videos, the accused had called her to meet him at Hotel Le-Meridian Gurugram where he had taken her to his friend's room and had forcibly made her drink alcohol. The accused Gurbaksh Singh had then established physical relations with her. Thereafter, on 18.02.2023, accused Gurbaksh Singh had again called complainant to Hotel JW Marriot, Aerocity, Delhi, on pretext of deleting the videos. The accused Gurbaksh Singh had then taken the complainant to the room of present accused/petitioner Rubi Shatir who was staying



there. After making her drink alcohol forcefully, the accused persons namely Gurbaksh Singh, co-accused Atul Gandhi and accused/petitioner Rubi Shatir had forcibly established physical relations with her. On these allegations, the present FIR dated 20.02.2023 was registered. The petitioner/accused was arrested on 06.03.2023 at the Bangalore Airport, Karnataka and was sent to judicial custody on 09.03.2023.

3. Learned Senior Counsel for the petitioner states that investigation in the matter is complete qua the petitioner and charge sheet dated 18.04.2023 has been filed in the matter and the case is presently pending at the stage of arguments on charge. It is stated that petitioner herein is a retired colonel from Israel Army and is presently working as Vice President, Marketing in an Israel Company namely Elbit Systems and he visits India only for his professional commitments/work. It is also stated that petitioner is a permanent citizen of Israel and the family of the petitioner including his wife, daughters and old aged parents are all citizens and residents of Israel. It is argued that petitioner/accused earlier, on four occasions after taking permission from the Court, has travelled back to his home country and has not misused the liberty granted by the Court and had complied with each and every condition imposed vide orders granting permission to travel abroad. It is stated that every time when petitioner is required to travel back to his home country, he has to undergo the tortuous procedure of applying before the Court seeking permission to travel. It is also stated that petitioner has no place to stay in India (Delhi) and has to stay in hotels which financially



affects him heavily. Therefore, it is argued that present petition be allowed.

4. Learned APP for the State, on the other hand, submits that the allegations levelled against the petitioner herein are serious in nature. It is also stated that though chargesheet in this case has been filed, the charges are yet to be framed in this case. It is argued that the condition of taking prior permission from the Court is essential to ensure that petitioner does not flee the country since he is a foreign national, especially when the trial has yet not started in the present case. Therefore, it is prayed that present petition be dismissed.

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

6. The petitioner in the present case has sought modification of the order dated 15.03.2023 *vide* which he was granted regular bail in the present FIR, to the extent that the condition requiring him to obtain prior permission of the learned Trial Court before leaving the country be set aside/deleted. In this regard, the relevant portion of the aforesaid order is extracted hereunder:

“13. Keeping in view the contents of the chat and CCTV footage showing that the victim can be seen side-hugging the accused Gurbaksh Singh immediately before leaving the Hotel, that too, after they were seen in the smoking area for some time and also keeping her no objection given today, as also, the statement of the IO that she does not require further police custody of the accused persons, as also the medical documents relied upon, the accused persons, namely, Gurbaksh Singh and Rubi Shatir are admitted to bail on furnishing of bail bonds/surety bonds in the sum of Rs.20,000/- each with one surety of like amount each to the



satisfaction of the concerned Ld. MM/Duty MM subject to the conditions that:

1. Accused persons shall join the trial arising out of the case FIR No. 98/2023 and shall not abscond;
2. Accused persons shall not contact the complainant in any manner whatsoever;
3. Accused persons shall not tamper with any evidence or influence the complainant or threaten any witness;
- 4. Accused persons shall not leave the country without the prior permission of the court.**

14. In case, found otherwise, the bail shall be liable to be cancelled...”

(Emphasis supplied)

7. In the present case, the allegations against petitioner herein, in a nutshell, are that he alongwith co-accused Gurbaksh Singh had committed rape upon the complainant on 18.02.2023 at JW Marriot Hotel, Aerocity, Delhi. The allegations against the present petitioner relate to commission of offences under Sections 376 of IPC, which are grave and serious in nature.

8. This Court is of the opinion that the order granting bail in question does not impose absolute limitation on the liberty of the accused to travel freely, but only imposes a condition that the permission of the learned Trial Court must be obtained before travelling abroad, which is a reasonable condition in view of serious allegations against the present accused. It is also to be noted that the petitioner has been granted permission to travel abroad once by this Court and thrice by the learned Trial Court, after an application seeking such a permission has been moved before the learned Trial Court on proper grounds and supported by relevant documents.



9. As held by the Hon'ble Apex Court, the fundamental right to travel abroad in cases where a person is facing trial in a criminal case is subject to reasonable restrictions and is not absolute. In this background, this Court deems it appropriate to refer to the observations of Hon'ble Supreme Court in case of ***Barun Chandra Thakur v. Ryan Augustine Pinto*** 2019 SCC OnLine SC 1899, whereby while setting aside an order modifying such a condition, the Apex Court had held as under:

“9. On an overall conspectus of the circumstances, this court is of the opinion that since the chargesheet had been filed, there was no material alteration in the facts, justifying the High Court to modify the conditions governing the grant of anticipatory bail. Significantly, an identical application for modification of the conditions of bail was made earlier by the respondent, which did not meet with success; he withdrew that application. There could be no gainsaying to that the right to travel abroad is a valuable one and an integral part of the right to personal liberty. Equally, however, the precondition of securing prior permission before travelling abroad is a crucial ingredient which undoubtedly was engrafted as a condition for the grant of anticipatory bail in this case. Mere inconvenience in the matter of approaching the court, therefore absent of any significant change of circumstances (i.e. framing of charges or no significant or serious material emerging during the trial, in the course of deposition of key witnesses, as to the role of the respondent), ought not to have led to dilution of the terms of the High Court's previous consistent orders...”

10. Thus, though it is not disputed that the petitioner has been granted opportunities to go abroad on about four occasions and he has not misused the said liberty, this Court at the same time cannot lose sight of the fact that serious allegations of committing rape has been levelled against the petitioner/accused and that he is a foreign



national and therefore, possibility of him fleeing the country cannot be absolutely ruled out.

11. Such a limitation has been imposed in the interest of justice and the same balances the interest of both the accused and the victim and re-assures the fact that laws are same for all, irrespective of a person's economic status and the place of work. At this stage, when the chargesheet for offence under Section 376 of IPC has already been filed against the petitioner and charges have yet not been framed, the petitioner/accused cannot be set absolutely free that he may leave the country whenever he deems fit without the prior permission of the Court.

12. Thus, considering the overall facts and circumstances of the case, *at this stage* when the case is at the stage of hearing of arguments on charge, this Court is not inclined to set aside the condition requiring obtaining of prior permission before travelling abroad, which has been imposed after considering all the material facts and circumstances of the case.

13. Accordingly, the present petition stands dismissed.

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

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

NOVEMBER 7, 2023/zp