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

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Reserved on: 03.05.2023

Pronounced on: 08.05.2023

+ **BAIL APPLN. 3725/2022**

SAHAB SINGH (IN JC)

..... Petitioner

Through: Mr. K.C. Mittal, Mr. Abid Ahmad, Mr. Yugansh Mittal and Mr. Vaibhav Yadav, Advocates.

versus

THE STATE & ANR. & ORS.

..... Respondents

Through: Mr. Naresh Kumar Chahar, APP for the State with Inspector Amit Pratap Singh, P.S. EOW.WSI Kamini Saini, P.S. Tughlakabad with prosecutrix.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C') has been filed on behalf of applicant seeking grant of regular bail in case FIR bearing no. 138/2022 registered at Police Station Tughlak Road, Delhi for the offences punishable under Sections 376/417/506 of the Indian Penal Code, 1860 ('IPC').

2. Brief facts of the present case are that on 23.09.2022, an information was received vide DD No. 10A received at Police Station

Tuglak Road, New Delhi. After that, W/SI Kamini Saini had met the complainant and had recorded her statement before a representative of NGO present at the Police Station. Complainant had informed the IO that she was married to one Jagbir Singh, however, due to dispute with him she is presently residing with her mother. She further complained that she was in search of a job and was residing at one of her friend's house at M-54 Krishna Vihar for the last few days. On 12.09.2022, she had met the present accused/applicant at a tea canteen on 5th floor of Jawahar Bhawan Janpath, New Delhi who had promised to help her in getting job and they had further exchanged phone numbers. Thereafter, at applicant/accused request, she had sent her resume to him on his mobile phone. On 19.09.2022, applicant/accused had again called her and had asked to meet her at Jawahar Bhawan Janpath, New Delhi. At his request, the complainant had gone to a park near Jawahar Bhawan Janpath, New Delhi. However, since no one came there she had left for her house. On 22.09.2022, he had again called her and had asked her to meet at about 12:00 PM at the same place. At his request, she had again gone to Gate No. 2 of Jawahar Bhawan Janpath, New Delhi. The accused had asked her to sit in auto rickshaw and had told her that they were going to a place to discuss about her job. However, instead of that, he had taken her to Lodhi Garden, New Delhi and had told her that his boss will meet there. While they were entering Lodhi Garden it had started raining. It is alleged that thereafter, accused/applicant had taken the complainant to an isolated area inside Lodhi Garden where he had raped her despite her refusal and had fled from the spot. After that, the complainant had gone to Jhandewalan, Delhi and had called one of her

friends and had narrated the whole incident to her. Thereafter, she along with her friend had reached Buddha Garden and a phone call was made to the Police. Police had reached at the spot and had told the complainant that the place of incident falls in the jurisdiction of Police Station of Tughlak Road and had sent them to the said Police Station. Thereafter, at her statement, the present FIR bearing no. 138/2022 was registered. It is case of the prosecution that during the course of investigation, counseling of the complainant had been conducted through an NGO, medical examination of the prosecutrix was conducted and site plan was prepared at the instance of the complainant. The accused was also arrested at the instance of complainant. During the course of investigation, her statement was recorded under Section 164 Cr.P.C. The certified copy of the call detail record and tower location of mobile phones of complainant, complainant's friend and the accused was obtained which shows that the accused and victim were talking to each other on the said date. However, FSL report has not yet been received.

3. Learned counsel for the applicant states that there is unexplained delay in lodging the present FIR. It is also stated that the applicant has been falsely implicated in the present case and the call detail record of the prosecutrix points out that the present case has been falsely registered against the present accused. It is vehemently argued that the FIR has been lodged at the instance of a friend of the prosecutrix who is connected with family of the accused in FIRs bearing Nos. 163/2020 and 164/2020 for offences punishable under Sections 302/504 of IPC and Section 25 of the Arms Act registered at District Baghat, Uttar Pradesh as a pressure tactic to get the present applicant hostile in the said case. It

is stated that the present accused/applicant is a witness in the said case and the FIR has been lodged as a pressure tactic. It is also stated that the photograph filed along with application shows that the prosecutrix is standing with one Mr. Kishan in Patiala House Court when the bail application of the applicant was listed. It is stated that Mr. Kishan is one of the accused in FIR bearing nos. 163/2020 and 164/2020 under Section 302 IPC. It is therefore, stated that the applicant has been falsely implicated at the behest of Mr. Kishan against whom FIR has been registered for brutally attacking and killing younger brother of the applicant. It is also argued that the complainant in the said FIR is the present applicant Sahab Singh. It is also argued that Mr. Kishan was granted bail in case registered under Section 302 IPC on 21.01.2021 by the High Court of Allahabad and he was released on 27.01.2021. He had, thereafter, started threatening the family member of the applicant to compromise with him. He had also lodged various complaints to the DGP, UP and a letter of Women's Right Commission on 03.06.2020, whereby communication was sent to police officials at Baghat however, no action was taken on that. Another complaint was sent to SHO, P.S. Khakhra. Another complaint was sent to P.S. Baghat. The applicant has also sent complaint on 23.07.2023. The statement of complainant was recorded in the Court of learned District and Sessions Judge. It is argued that the photograph filed on record clearly shows that the prosecutrix is standing with the accused in the FIR in which the present applicant is the complainant regarding the murder of the present applicant by Mr. Kishan. It is argued that Mr. Kishan was seen with the present applicant in Patiala House Court when the bail application of

applicant was listed which shows nexus between them. It is also argued that the alleged incident of rape could not have taken place in broad day light in the afternoon at 12:30 PM at a busy place like Lodhi Garden. It is also stated that she did not raise any alarm and rather had called her friend who had taken her to Budhha Garden which according to her was the place of incident. It is submitted that though she states that she was taken to canteen at Jawahar Bhawan Janpath, in her statement recorded under Section 164 Cr.P.C. she has given a different story. It is also stated that though she has sent her biodata to the applicant, no such record exists.

4. Learned APP for the State, on the other hand, states that complainant has been cheated in the name of getting a job and rape was committed upon the complainant. It is also stated that there is no nexus between the victim and friend of the accused with Mr. Kishan. It is stated that the husband of the complainant has abandoned her and she is innocent and vulnerable mother of two children who cannot lodge a false FIR against the present accused/applicant.

5. I have heard arguments and have gone through the case file and I have also gone through the statements of the witnesses and the other material placed on record. I have also gone through one of the photographs filed along with the bail application which is on record, authenticity of which was not disputed by the complainant.

6. It is not disputed that accused is the complainant in a case lodged by him regarding murder of his younger brother in which one Mr. Kishan is the accused. The presence of Mr. Kishan in the photograph filed on record shows that the accused/applicant was with Mr. Kishan in

Patiala House Court and the same was not disputed by the counsel for the complainant. The incident had allegedly taken place at 12:30 noon near Gate No. 5 of Lodhi Garden. The present accused/applicant has also lodged several complaints regarding threats and intimidation and apprehension regarding his false implication. The prosecution has also not placed on record the biodata allegedly sent by the complainant to the applicant though the mobile phone of the applicant was in the custody of police since 23.09.2022.

7. The prosecutrix states that she is staying and knows her friend Preeti Bhardawaj, however, she came to know applicant as she had accidentally met him at Jawahar Bhawan canteen. However, Preeti Bhardawaj already knew the present applicant which is reflected from the call detail records. Thus, the friend with whom the prosecutrix was staying already knew the present accused/applicant. Therefore, it is contrary to the allegations that the prosecutrix came to know about the accused/applicant on 12.09.2022.

8. Considering the overall facts and circumstances of the case and the fact that the applicant is in judicial custody since 23.09.2022, this Court is inclined to grant regular bail to the applicant on his furnishing personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the concerned Trial Court on the following terms and conditions:

- i) The applicant shall remain available on mobile numbers; shared by him with the Police.

- ii) The applicant shall not directly or indirectly make an attempt to influence the witnesses or tamper with the evidence in any manner.
 - iii) In case of change of residential address/contact details, the applicant shall promptly inform the same to the concerned I.O/SO.
 - iv) He will not leave the country without permission of learned Trial Court.
9. Accordingly, the present application stands disposed of.
10. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 8, 2023/zp



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