



2024:DHC:3603



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 26th April, 2024

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BAIL APPLN. 120/2024

RAHUL

..... Applicant

Through: Mr. Deevanshu Sharma, Mr.
Tarun Kr. Makhija, Ms. Simran
Chawla & Ms. Muskan, Adv.

versus

THE STATE AND ANR.

..... Respondents

Through: Mr. Pradeep Gahalot, APP for
the State with Mr. Sayed Almas
Hussain, Adv.
SI Pinki, PS- Sultanpuri
Mr. Shantanu Sharma, Adv. for
R2

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J.**

1. The present application is filed by the applicant under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC'), seeking grant of pre-arrest bail in FIR No. 1117/2023 dated 24.11.2023, for offences under Section 376 of the Indian Penal Code, 1860 ('IPC'), registered at Police Station Sultanpuri.

2. On 24.11.2023, a PCR call was received wherein it was informed that the applicant/accused had made forceful sexual relations

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with the victim. Subsequently, the present FIR was lodged on the basis of the said information.

3. It is alleged that the accused/applicant and the victim were neighbours and knew each other for three years. It is alleged by the prosecutrix that the applicant made forceful physical relations with her on the false pretext of marriage and also clicked her obscene pictures. She further alleged that the applicant used to threaten her to not disclose anything about their physical relationship to anyone and also threatened her that if she did so, he would viral her private pictures.

4. The MLC of the prosecutrix was conducted *vide* MLC No. 350A/2023 wherein she alleged before the doctor that the applicant was her neighbour and they had last sexual intercourse six months back. She further denied to undergo any internal examination.

5. The statement of the prosecutrix under Section 164 of the CrPC was recorded on 24.11.2023 before the learned Chief Metropolitan Magistrate, Rohini Courts, Delhi.

6. The learned counsel for the applicant submits that the applicant has clean antecedents and has been falsely implicated in the present case. He further submits that the alleged incident is of 14.07.2023, but the complaint for the same was given only on 23.11.2023 when the prosecutrix came to know about the wedding of the applicant, which was fixed for 30.11.2023.

7. He submits that no explanation has been provided for the delay



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of more than five months in lodging the said complaint. He further submits that the story of the prosecution is self-contradictory and the prosecutrix has clearly improved her statement under Section 164 of the CrPC substantially.

8. He submits that the mother of the complainant, in the year 2022, had also lodged another missing complaint of her daughter and had falsely implicated the applicant. However, she withdrew the said complaint when her daughter returned back home from her aunt's place. He further submits that on 10.05.2022, the complainant at the instance of her mother lodged another FIR bearing No. 474/2022 against the applicant for offences under Section 354A/354D/506 of the IPC. During the proceedings, the applicant pleaded guilty before the Juvenile Justice Board. The Board after taking note of his old-aged parents and the applicant being first time offender was admonished for the offence by order dated 08.08.2022.

9. He submits that the applicant is a young boy of 22 years of age and custodial interrogation is no longer required since the chargesheet in the present case has been filed and custody may itself result in the denial of his fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India.

10. He submits that there is no evidence against the applicant in the present case apart from the statement of the prosecutrix.

11. He further states that interim protection was granted to the



applicant by this Court and the liberty was never misused by the applicant.

12. The learned Additional Public Prosecutor ('**APP**') for the State and Mr. Shantanu Sharma, who was requested by the Court to represent the prosecutrix, submit that the allegations in the present case are heinous in nature. They state that there is a possibility that the applicant may extend threats to the prosecutrix and her family, and therefore, the bail application be dismissed.

13. I have heard the learned counsel for the parties.

14. While granting pre-arrest bail to the applicant, no doubt this Court must consider the nature and gravity of the alleged offence, however, this Court is also to consider the role of the applicant, which is yet to be established since there are no medical documents or other evidence placed on record to show that the applicant had established forceful relation with the prosecutrix on the false pretext of marriage. It is a matter of fact that the FIR was lodged after a delay of more than six months.

15. A bare perusal of the material on record indicates that the allegations *qua* the offence of rape were not made in the statement given by the prosecutrix during her medical examination. She had stated before the doctor that she was in a consensual relationship with the applicant. While the veracity of the allegations and defences would be tested during the trial, this Court cannot lose sight of the fact that



the FIR was lodged after a delay of almost six months from the alleged incident, the prosecutrix had not made any allegations of rape against the applicant in the FIR and there appears to be some prior discord between the parties.

16. While the victim has alleged that the applicant had threatened her, the delay in giving the complaint, at this stage, casts doubt on the veracity of the prosecution's case.

17. The Hon'ble Apex Court, in the case of *Meharaj Singh (L/Nk.) v. State of U.P. : (1994) 5 SCC 188*, held as under:

"12. ...Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story..."

18. It is also relevant to note that no date or time of the alleged incident has been mentioned by the prosecutrix. A bald allegation has been made by the prosecutrix about the physical relations being established by the use of force by the applicant. The prosecutrix was a major at the time of the alleged incident. Whether the consent of the prosecutrix was vitiated by a misconception of fact arising out of a promise to marry cannot be established at this stage, and the same would be a matter of trial. It is evident that the statements provided by the prosecutrix, at this stage, exhibit inconsistencies. Specifically, in the FIR, there is an absence of any specific date or time pertaining to



the purported incident. However, in her testimony under Section 164 of the CrPC, she asserts the date of the alleged incident as 14.07.2023. Additionally, in her MLC statement, the prosecutrix indicated that she was engaged in a consensual physical relationship with the accused under the false pretext of marriage, with their last physical encounter purportedly occurred six months prior.

19. The applicant was granted interim protection by this Court by order dated 10.01.2024.

20. It is not the prosecution's case that the applicant has since misused the liberty of interim protection or that the applicant has not cooperated with the investigation thereon.

21. It is not in doubt that an order for pre-arrest bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that a great amount of humiliation and disgrace is attached with arrest. The purpose of custodial interrogation is to aid the investigation and is not punitive.

22. Any apprehension regarding the applicant tampering with the evidence or threatening the witnesses can be taken care of by imposing appropriate conditions.

23. It is not alleged that the applicant is a flight risk or that he will tamper with evidence if released on bail. The apprehension, even otherwise, can be taken care of by putting appropriate conditions. It is trite law that where the court is of the considered view that the



accused has joined the investigation and is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided since, a great ignominy, humiliation and disgrace is attached to arrest. [Ref: ***Bhadresh Bipinbhai Sheth v. State of Gujarat : (2016) 1 SCC 152***].

24. Before concluding, I must express my deep appreciation for the efforts of Mr. Shantanu Sharma, the learned Advocate who assisted the prosecutrix.

25. In view of the above, it is directed that in the event of arrest, the applicant be released on bail on furnishing a personal bond of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the concerned SHO, on the following conditions:

- a. The applicant shall not visit the locality where the prosecutrix resides;
- b. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- c. The applicant shall join and cooperate with the investigation as and when directed by the concerned IO;
- d. The applicant will not leave the country without informing the concerned IO/ SHO concerned;



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- e. The applicant shall not contact the complainant / witnesses or tamper with the evidence in any manner;
- f. The applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- g. The applicant shall give the details of his residence to the concerned IO/SHO, and inform them in case of any change.

26. The present application is accordingly allowed.

27. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

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