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

+ **BAIL APPLN. 254/2024 & CRL.M.A. 11412/2024**

JIMMI

..... Petitioner

Through: **Mr.Shikhar Goel & Mr.Shivam
Gaur, Advs.**

versus

STATE (NCT OF DELHI) AND ANR.

..... Respondents

Through: **Ms.Priyanka Dalal, APP along
with SI Kajal Tyagi, PS
Paharganj.**

**Mr.Harshit Jain, Adv.
(DHCLSC) with Mr.Shubham
Singh & Dr.S.K. Yadav, Advs.
for the Victim.**

**Victim/prosecutrix present in
person in Court.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

24.04.2024

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1. This application has been filed by the Applicant under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for the applicant to be released on Bail in FIR No.0774/2023 registered at Police Station: Paharganj, Central-District, Delhi originally under Sections 376D/377/509 of the Indian Penal Code, 1860 (in short, 'IPC').

2. It is the case of the prosecution that the above FIR was



registered on a complaint received from the victim, aged around 29 years, stating that, around six months ago, she had come in contact with a person named Sushant @ Harpreet Singh through the 'MOJ' App. They were regularly in touch with each other, and Sushant @ Harpreet Singh proposed to her for marriage. Subsequently, on the asking of Sushant, she had gone to his house 2-3 times, and Sushant had also gone to her house at Ghaziabad. On 06.08.2023, she went to Punjab with Sushant, where Sushant kept her captive at his home at village Bishanpur, Kota for one week between 06.08.2023 to 12.08.2023. She states that she was sexually assaulted by several persons there. On 13/14.08.2023, she along with Sushant, Shukhbinder, and the applicant herein, came to Delhi. The applicant, along with Sunny, took her to a hotel at Paharganj, where they stayed for half the night with her. She was sexually assaulted at the said hotel. She states that she received threats on her mobile number, and Sushant also threatened her parents.

3. The victim refused to undergo a medical examination. Her statement under Section 164 of the Cr.P.C. was recorded on 03.10.2023. Her statement before the learned Trial Court also stands recorded, where, as per the prosecution, she has supported the allegations against the accused, including the applicant herein.

4. The learned counsel for the applicant submits that there are material contradictions in the case set up by the victim. He submits that while in the FIR, it was the case of the victim/prosecution that she had gone to Punjab on 06.08.2023, however, her Call Data Record belied this assertion. Faced with this, in her testimony before the



learned Trial Court, she admits that she had gone to Punjab only on 09.08.2023. He submits that she has also admitted of previous commercial relationship between herself and with the other accused.

5. He submits that during her statement before the learned Trial Court, the victim has now stated that she had filed an earlier complaint with the DCP, Daryaganj, on 21.09.2023, which is exhibited as PW1/C. In the said complaint, however, she has narrated another incident of Punjab, and as far as the incident at Delhi is concerned, she has named only an unknown person who is alleged to have made intercourse with the victim. When confronted with the same, she then stated that the complaint was made by her Advocate and the same was not read over to her.

6. Placing reliance on the statement of the victim recorded under Section 164 of the Cr.P.C., he submits that the said statement shows that her allegations of forceful sexual intercourse were against the other co-accused, and she, in fact, stated that the applicant was the one who had advised her to run away from the hotel at Paharganj, Delhi.

7. He submits that the applicant has been in custody since 22.10.2023; and the co-accused Sunny has been granted anticipatory bail, vide order dated 12.12.2023 passed by the learned Additional Sessions Judge, Central District, Tis Hazari Courts, Delhi, taking into account the contradictions in the victim's story at different stages.

8. On the other hand, the learned APP and the learned counsel for the victim submit that the charges against the applicant are grave, and he should not be released on bail. They submit that minor contradictions in the statements of the victim at different stages,



cannot be used to discredit her testimony or her case. They submit that the allegations against the applicant stands corroborated by other evidence as well.

9. The learned APP also points out that the applicant also has criminal antecedents and there are at least three cases pending against him.

10. As I was about to dictate the order, the victim, who is present in person in court, herself also wished to make her submission. She has also been heard.

11. I have considered the submissions made by the learned counsels for the parties as also the victim.

12. In the present case, the learned counsel for the applicant has relied upon the contradictions in the victim's statements at different stages of the prosecution/investigation. This is not a stage for getting into a detailed exercise of appreciating the alleged contradictions or the effect thereof on the case of the prosecution. These are matters to be determined by the learned Trial Court on appreciation of the entire evidence that would be led before it.

13. For the present, however, keeping in view the fact that there appears to be some contradictions in the victim's statements recorded at different stages of the investigation and in the trial; nature of allegations made against the applicant; and especially, keeping in view the statement of the victim recorded under Section 164 of the Cr.P.C. on 03.10.2023, wherein she does not state that the applicant was the one who had raped her and, in fact, states that the applicant is the person who had told her to run away from the hotel, in my view, the



applicant has been able to make out a case for being released on bail.

14. As far as the previous involvement of the applicant in other cases is concerned, the learned counsel for the applicant submits that those are not related to the present case and in any case, he has been granted bail in those cases. Be that as it may, I am of the opinion that only due to the pendency of other criminal cases, in the peculiar facts of the present case, bail cannot be denied to the applicant.

15. Accordingly, it is directed that the Applicant be released on Bail in FIR No.0774/2023 registered at Police Station: Paharganj, Central-District, Delhi under Sections 376D/377/509 of the IPC on furnishing a personal bond in the sum of Rs.50,000/- with one local surety of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.
- ii. The Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iii. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the Applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned. The mobile location be kept on at all times.
- iv. The Applicant shall not indulge in similar or any



other criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses or the victim.

v. In case the Applicant is found involved in another case, it will be open to the prosecution to file an appropriate application seeking cancellation of his Bail in the present case as well.

16. Needless to state, any observation touching upon the merits of the case is purely for the purposes of deciding the question of grant of Bail and shall not be construed as an expression on the merits of the matter.

17. The application is disposed of in the above terms. The pending application is also disposed of.

18. Copy of this order be sent to the Jail Superintendent for information and necessary compliance.

NAVIN CHAWLA, J

APRIL 24, 2024/rv/ss

Click here to check corrigendum, if any