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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 299/2024

AHSHAN @ AHSAN

..... Petitioner

Through: Mr. Jaideep Malik, Mr. Nitesh Dhankhar, Ms. Poonam Malik, Mr. Saurabh Lakra, Ms. Akansha Sehrawat, Mr. Pranav Sharma, Mr. Lucky Nigam & Mr. Nitin Kumar, Advocates.

versus

THE STATE & ANR.

..... Respondent

Through: Mr. Yudhvir Singh Chauhan, APP with SI Bharti Singh, PS: Burari, for State. Mr. Gaurav Sharma, Advocate for Respondent No. 2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

10.04.2024

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1. This application has been preferred on behalf of the applicant Ahshan @ Ahsan S/o Kalu under Section 439 Cr.P.C. seeking regular bail in case FIR No.889/2021 dated 29.10.2021 under Sections 376/420/323/120B/34 IPC registered at PS: Burari.

2. Status Report has been filed on behalf of the State. Relevant paragraphs read as under:

"Brief facts of case are that the case was registered on the complaint of victim "RD" wherein she alleged that she used to live in Raigarh, Chattisgarh. In year 2005, a person namely Kesar alongwith his other friends was living in her house as tenant and lived there till 2019. Victim's husband died in 2017. In Novemeber 2019, a person namely Danish @ Dinesh Rana @ Inam Ali came to live with Kesar, this Danish @ Dinesh



Rana @ Inam Ali captured victim RD's nude photos and sent them on victim's whatsapp. Danish @ Dinesh Rana @ Inam Ali came back to Delhi and started blackmailing victim "RD" and took her to a hotel and raped her and made video. Danish @ Dinesh Rana @ Inam Ali hide her identity from victim that he is Muslim and continued to blackmail her. In year 2021, victim came to Delhi because Dinesh Rana had promised her to marry but in Delhi he kept her locked and committed rape upon her forcefully several times. On dt: 18/10/2021 Danish @ Dinesh Rana @ Inam Ali called Ahsan alongwith Kanni, Shamim and two other persons at the residence of victim and instructed all of them to rape her. Ahsan outraged her modesty and raped her forcefully.

During the course of investigation, the medical examination of the victim was got conducted in AAA Hospital vide MLC no-56/21 dt: 30/10/2021. The statement of victim u/s 164 CrPC was got recorded in which the victim supported her earlier statement.

The accused Ahsan was arrested on dt: 31/12/2021 in case FIR no-1022/21 Dt:10/12/2021 u/s-376D/323/506/342/34 IPC PS Burari while he was absconding in the present case FIR. Shakeena who was helping victim "RD" was threatened by the accused Ahsan in case FIR no-1022/21. Ahsan also made video while other co-accused were committing rape upon victim "RD" in case FIR no-1022/21 while he was absconding from the present case.

The regular bail of accused Ahsan was dismissed from the Hon'ble Trial Court vide order dt:04/01/24. However, the accused Ahsan has been granted bail from the Hon'ble High Court in FIR No-1022/21.

Bail of co-accused Kesar has been granted from the Hon'ble High Court of Delhi vide order dt:07.12.23 and co-accused Shamim has been granted bail from the Hon'ble Trial Court vide order dt: 12.12.23.

The present case is at prosecution evidence stage and the NDOH is fixed for 19/2/2024 in the Hon'ble Trial Court. The prosecutrix has been examined in the present case as well as in



case FIR no-1022/21. The release of accused at this stage could cause impediments to free and smooth trial of the case as he can threat other witnesses as well as victim.”

3. Learned counsel for the applicant argues that vide order dated 31.03.2023, Trial Court framed charges against the applicant for offences punishable under Sections 354/323/34 IPC only and not with respect to the offences alleged in the FIR. Evidence of the prosecutrix stands concluded on 04.11.2023. Co-accused Kesar has been granted regular bail by this Court vide order dated 07.12.2023 in BAIL APPLN. 2549/2023 and another co-accused namely, Shamim has been granted regular bail by the Trial Court on 12.12.2023. The main accused Inam Ali is on anticipatory bail. It is also submitted that applicant has been granted regular bail by this Court in FIR No.1022/2021 vide order dated 06.09.2023 in BAIL APPLN. No. 1727/2022.

4. It is further argued on behalf of the applicant that the applicant is innocent and has been falsely implicated. The allegations by the complainant resulting in the present FIR were made after she failed in opposing the bail application of the applicant in FIR No. 1022/2021 and the documents on record would further reveal a relationship between the brother-in-law of the applicant and the complainant and hence their collusion in falsely implicating the applicant cannot be ruled out. Applicant was not named by the prosecutrix in her statement under Section 164 Cr.P.C.

5. Applicant has a permanent residence in Village Baghpat and has deep roots in the society. Complainant has been examined and there is no possibility of the applicant tampering with the evidence or threatening her. Applicant is in judicial custody since 31.12.2021 and it would be unfair



to prolong the incarceration in view of the charges framed by the Trial Court.

6. Mr. Yudhvair Singh Chauhan, learned APP states that the applicant is involved in another case FIR No.1022/2021 under Section 376 IPC registered at PS: Burari, *albeit*, he concedes that the applicant is on bail granted by this Court. It is further submitted that PW-1, the prosecutrix has supported the case of the prosecution in her deposition before the Court. Learned counsel for the complainant opposes the application on the ground that the allegations against the applicant are serious and while concededly at this stage no charge has been framed under Sections 376/420/120B IPC, however, the complainant has been advised to challenge the order framing the charge. Prosecutrix has been examined but other witnesses remain to be examined.

7. Heard learned counsels for the Applicant and the complainant and learned APP for the State.

8. Order dated 31.03.2023 shows that charges have been framed against the applicant under Sections 354/323/34 IPC. Two of the co-accused have been released on regular bail with similar allegations while main accused is on anticipatory bail. Evidence of the prosecutrix stands concluded and several witnesses remain to be examined. Applicant is in judicial custody since 31.12.2021 and cannot be kept indefinitely as the trial is not likely to conclude soon. Applicant was granted bail by this Court in FIR No. 1022/2021 on 06.09.2023. It is not the case of the prosecution that the applicant is a flight risk. It is well-settled that at the pre-conviction stage there is a presumption of innocence in favour of the accused and the object of the custody is to ensure his availability to face the trial and receive



sentence, if convicted. Presence of the applicant can be ensured by imposing appropriate conditions for grant of bail.

9. Considering all the aforesaid facts and circumstances, it is directed that the applicant be released on regular bail, subject to his furnishing a personal bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the Trial Court, out of which one surety will be by a person who is a permanent resident of Delhi. Release on bail will be further subject to the following conditions: -

- i. Applicant shall not leave the country without prior permission of the Trial Court;
- ii. He shall provide his mobile number to the IO concerned and keep the same active at all times and shall not change the number without prior intimation to the IO and the Trial Court;
- iii. He shall furnish his permanent residential address to the concerned IO and shall intimate the IO as well as the Trial Court by filing an affidavit regarding any change in his residential address;
- iv. He shall appear before the Trial Court as and when the matter is taken up for hearing;
- v. He shall not indulge in any criminal activity or contact/communicate with the prosecutrix, directly or indirectly, in any manner whatsoever and/or any other prosecution witness; and
- vi. He shall report to the local police station on every third Monday at 11:00 AM.



10. Needless to state that any observation in the present order will not tantamount to expression of an opinion on the merits of the case.
11. Bail Application stands disposed of.
12. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

APRIL 10, 2024

B.S. Rohella/shivam