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

+ **BAIL APPLN. 389/2023**

MOHD CHAND

.....Petitioner

Through: Mr. Hemant Kumar and Mr. Sanjay
Mandawat, Advocates.

versus

**STATE (GOVT OF NCT DELHI) THROUGH S.H.O SUBHASH
PLACE**

.....Respondent

Through: Mr. Manoj Pant, APP for the State
with Mr. Priyam Gupta, Ms. Surbhi
Chhabra, Dr. Alam Ali and Mr.
Gaurav Chaudhary, Advocates with
SI Srishti.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

09.08.2024

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By way of the present petition filed under section 439 read with section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No. 1009/2022 dated 25.09.2022 registered under sections 376/506 of the Indian Penal Code, 1860 ('IPC') at P.S. : Subhash Place, Delhi. Upon completion of investigation, charges under sections 323/498-A/406/342/450/34 of the IPC have been added *vide* chargesheet dated 24.11.2022 filed in the matter.



2. Notice on this bail petition was issued on 06.02.2023.
3. Status Reports dated 22.02.2023 and 04.04.2023 have filed on behalf of the State.
4. Nominal Roll dated 01.07.2024 has been received from the Jail Superintendent.
5. Though the complainant is neither present nor represented in court today, a perusal of the previous orders shows that the complainant was represented by counsel at the hearing on 29.05.2024 and 12.07.2024; but thereafter she did not appear nor was she represented by counsel on 31.07.2024, whereupon the Investigating Officer ('I.O.') was directed to serve upon the prosecutrix an intimation in accordance with section 439(1-A) of the Cr.P.C., informing her that she is entitled to be heard in the present matter.
6. The I.O. is present in court. She submits that though the prosecutrix has been appearing in the proceedings before the Trial Court, however she is not found to be residing at her last known address and her contact number is also unavailable.
7. However, in view of the fact that the prosecutrix has been represented in the present proceedings on multiple dates, it is not considered necessary to await her presence any longer.
8. The court has heard Mr. Hemant Kumar, learned counsel appearing for the petitioner as well as Mr. Manoj Pant, learned APP appearing for the State.
9. Mr. Hemant Kumar, learned counsel appearing for the petitioner submits, that the prosecutrix was well aware of the fact that the petitioner was married and had children; and all physical relations



between the petitioner and the prosecutrix were purely consensual. Counsel submits, that in fact in the complaint made by the prosecutrix to the CAW Cell, she herself admits that the petitioner contracted *nikah* with her on 23.07.2021, though she alleges that the petitioner was only interested in making physical relations with her.

10. Counsel points-out however, that despite having admitted to the *nikah* in her very first complaint to the CAW Cell, in her subsequent statements and in her court deposition that was recorded on 09.07.2024, she has denied the factum of her marriage with the petitioner as well as her signatures on the *nikahnama*.
11. From the record it is seen that the allegations are that physical relations between the petitioner and the prosecutrix took place between January 2021 and September 2021, with the petitioner alleging that there was a *nikah* between them on 23.07.2021.
12. The record further shows, that there is no medical evidence in support of the allegations of rape, since the prosecutrix had declined her internal examination.
13. Nominal Roll dated 01.07.2024 shows that as of that date, the petitioner has already undergone about 01 year and 06 months of custody; that he was granted interim bail on two occasions on 08.02.2023 and 26.10.2023; and there is no allegation that he did not surrender on time or that he violated any condition of the interim bail so granted. The nominal roll further records, the petitioner's overall jail conduct has been 'satisfactory'; and that he has no other criminal involvement.



14. Furthermore, the court is informed that on 09.07.2024, the prosecutrix has been examined, cross-examined and discharged before the learned Trial Court; that out of 18 prosecution witnesses, only the prosecutrix has so far been examined as PW-1; that the only public witnesses remaining to be deposed is the prosecutrix's landlord; and that accordingly, the trial in the matter is unlikely to be completed any time soon.
15. On the other hand, learned APP appearing for the State has drawn attention to the serious nature of the offence alleged, to say that the petitioner accordingly does not deserve to be enlarged on bail.
16. On an overall conspectus of the facts and circumstances of the case, what weighs with the court at this stage, are the following factors :
 - 16.1. The prosecutrix has already been examined, cross-examined and discharged by the learned Trial Court; and that the only other public witness left to be examined is the prosecutrix's landlord, all other witnesses being official/police witnesses.
 - 16.2. The petitioner's contention, that all physical relations between the petitioner and the prosecutrix were consensual is supported by the submission that the parties contracted *nikah* on 23.07.2021, as evidenced by the *nikahnama*.
 - 16.3. The petitioner was granted interim bail on 02 occasions in 2023 and there is no allegation that he has violated any condition of interim bail or that he had surrendered late.
17. In view of the above, the petitioner **Mohd. Chand s/o Zamindar** is admitted to *regular bail* pending trial, subject to the following conditions :



- 17.1. The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Rupees Twenty-five Thousand Only) with 01 local surety in the like amount from a family member, to the satisfaction of the learned Trial Court;
- 17.2. The petitioner shall furnish to the Investigating Officer, a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 17.3. If the petitioner has a passport, he shall surrender the same to the learned Trial Court and shall not travel out of the country without prior permission of the learned Trial Court;
- 17.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial. More specifically, the petitioner shall neither contact nor interact, whether directly or indirectly, with the complainant or her family, in any manner whatsoever. The petitioner shall also not visit the locality in which the prosecutrix stays.
- 17.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the Investigating Officer.
18. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.



19. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
20. The bail petition stands disposed-of.
21. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

AUGUST 9, 2024

V.Rawat