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

+ **BAIL APPLN. 402/2024**

INAM ALI

..... Petitioner

Through: Mr. Kaushal Kaushik, Mr. Mausam Chodhury and Mr. Amit Nayyar, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for the State with SI Bharti Singh, PS: Burari. Mr. Virender Kumar and Mr. Noor Alam, Advocates for the Complainant.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

15.05.2024

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1. This application has been preferred on behalf of the applicant Inam Ali S/o late Sh. Haji Sharif Ali 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. Charge sheet has been filed under Sections 376D/420/323/354/509/506/174A/120B/34 IPC.
2. Case of the prosecution is that a case was registered on the complaint of the victim, wherein she alleged that she lived in Raigarh, Chhattisgarh and in the year 2005, a person, namely, Kesar along with his friends was living in her house as a tenant and continued to live till 2019. Victim's husband died in 2017. In November 2019, the applicant came to live with Kesar and captured her nude photographs and sent them on the victim's WhatsApp. After he returned to Delhi, applicant started blackmailing the



victim and forcefully took her to a hotel and raped her and made more videos. Applicant hid his identity from the victim that he was a Muslim and continued to blackmail her.

3. It is further stated in the Status Report that in the year 2021, victim came to Delhi because the applicant promised to marry her but he kept her locked in a room and repeatedly committed rape on her. On 18.10.2021, applicant called Ahsan along with Kanni, Shamim and two other persons at victim's residence and on the instructions of the applicant, they all raped her. On 23.07.2021, applicant took the victim to Tis Hazari Court and made her sign papers purporting to be marriage documents.

4. It is stated that during the course of investigation, medical examination of the victim was conducted and her statement was recorded under Section 164 Cr.P.C. in which she supported her earlier statement. Applicant was declared Proclaimed Offender in another FIR No.1022/2021 vide order dated 20.04.2022 and was later arrested in the present case on 09.05.2022. Applicant was granted anticipatory bail in the present case by this Court but on registration of the second FIR, anticipatory bail was dismissed. While the applicant is on regular bail in case FIR No.1022/2021 granted by this Court on 12.01.2024, the Trial Court dismissed the regular bail application in the present case. It is not disputed that co-accused Kesar had been granted regular bail by this Court on 07.12.2023 and co-accused Shamim was granted bail by the Trial Court on 12.12.2023. Present case is at the stage of prosecution evidence and the prosecutrix has been examined in this case as well as the second case. Bail is opposed on the ground of seriousness of the allegations and previous involvement.



5. Learned counsel for the applicant submits that applicant is innocent and has been falsely implicated in the present case. Charges have been framed and prosecutrix has been examined and therefore there is no possibility of tampering with evidence or intimidating/threatening the material witness. Applicant is in judicial custody since 13.05.2022 and the trial is not likely to conclude soon looking at the number of witnesses remaining to be examined by the prosecution.

6. It is further submitted that co-accused Kesar had been admitted to bail in the present FIR by this Court and co-accused Shamim was granted bail by the Trial Court. Applicant is on regular bail in case FIR No.1022/2021 registered at PS: Burari and has not misused the concession/liberty granted by the Court till date. Since the material witness has been examined, no purpose will be achieved in continuing the applicant in judicial custody indefinitely.

7. It is urged by the learned counsel that after registration of the present FIR, complainant was wilfully moving around with him in different States and stayed in several hotels and photographs would show that she was happily shopping with the applicant and the allegations of rape are absolutely false and an afterthought. Applicant had filed his first bail application on 23.11.2021 and soon thereafter complainant filed a false complaint on 26.11.2021 and also demanded Rs.40 lakhs prior thereto. Complainant filed multiple complaints dated 10.09.2021, 16.09.2021, 21.09.2021 and 27.09.2021 but in none of them, there were allegations of rape. Even in the present FIR, no allegation of rape has been levelled within the jurisdiction of this Court.



8. It is argued that the testimony of the complainant is full of self-contradictions and in the cross-examination, she has attempted to improvise the case at every step. In the video recording of 30 seconds during the cross-examination on 04.11.2023, complainant admitted that she had demanded Rs.40 lakhs as that was the cost of purchasing a flat.

9. Mr. Chauhan, learned APP for the State, *per contra*, opposes the bail application on the ground that the allegations are serious and applicant is involved for a similar offence in case FIR No.1022/2021 *albeit* he concedes that he is on bail in the said matter. It is urged that the complainant has supported the case of the prosecution and other witnesses still remain to be examined. Counsel for the complainant adopts the arguments of Mr. Chauhan, learned APP and opposes the bail application.

10. Heard learned counsels for the applicant and the complainant and learned APP for the State.

11. Indisputably, prosecutrix stands examined before the Trial Court and only formal witnesses remain to be examined. Chances of the applicant tampering with evidence and/or intimidating the material witness no longer exist. It is not the case of the prosecution that the applicant is a flight risk. Applicant is in judicial custody since 13.05.2022 and the trial is not likely to conclude soon. Co-accused are on regular bail and the applicant is also on regular bail in case FIR No.1022/2021. Another co-accused Ahsan has been granted regular bail by this Court on 10.04.2024 in the present FIR in BAIL APPLN. 299/2024. Applicant has raised a defence that the relationship between him and the prosecutrix was consensual and in evidence he will be in a position to prove his case that she was willingly and happily moving around with him in different parts of the country and staying in hotels and



shopping. He has also urged that prosecutrix had demanded Rs.40 lakhs from him to purchase a flat. Her statement to this effect is allegedly recorded in a 30 second video with which she was confronted during cross-examination. Prosecutrix, on the other hand, has levelled serious allegations of rape against the applicant and the co-accused persons and has also taken a position that she was called to Delhi and raped repeatedly on the false pretext of marriage. These are issues which can only be decided during trial and it is neither possible nor permissible at this stage to conclude one way or the other on the guilt of the applicant.

12. It is a well-settled principle that at pre-conviction stage, there is presumption of innocence in favour of accused and object of custody is to ensure his availability to face trial and receive sentence, if convicted. In view of the overall facts and circumstances, it is directed that the applicant shall be released on bail upon furnishing a personal bond in the sum of Rs.50,000/- with two sureties of the like amount, subject to satisfaction of the Trial Court and 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; and

- v. He shall not indulge in any criminal activity or contact any witness and/or any other person associated with the present case.

13. It is made clear that nothing stated in this order shall tantamount to expression of an opinion on merits of the case.

14. Application stands disposed of.

15. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

MAY 15, 2024/shivam/BSR