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

+ **BAIL APPLN. 961/2024**

SHAHRUKH MANSURI

..... Applicant

Through: Mr. Ayub Khan, Mr.
Anees Ahmad, Mr. Md.
Miskin & Mr. Shaan
Mohammad, Advs.

versus

THE STATE

..... Respondent

Through: Mr. Pradeep Gahalot, APP
for the State
SI Sapna, PS- Aman Vihar
Prosecutrix in person

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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19.03.2024

CRL.M.A. 8336/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeking pre-arrest bail in FIR No. 99/2024 dated 16.02.2024, registered at Police Station Aman Vihar, for offences under Sections 354/ 354 B/ 341 of the Indian Penal Code, 1860 ('IPC'). Section 376 of the IPC was subsequently added in the FIR.
4. On 14.02.2024, a PCR call was received from the complainant regarding the incident. It was informed that a person

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had pushed the caller/ complainant when she was going to buy milk and tore her clothes. It was also informed that four days prior to the incident, the said person had entered her bathroom when she was taking a bath. The complainant's statement was recorded on 16.02.2024 and the present FIR was registered pursuant to the same.

5. It is alleged that the applicant and the complainant live in the same vicinity. It is alleged that the applicant's brother-in-law (neighbour of the complainant) and the complainant had argued on 10.02.2024 over some colony issues. It is alleged that on 14.02.2024, around 10 AM, the applicant's brother-in-law went to the house of the complainant and threatened her against quarrelling with them.

6. It is alleged that around 6 PM, on the same day, the complainant was going to buy milk when the applicant blocked her path and started abusing her. It is alleged that the applicant hit the complainant on her chest and tore her clothes. It is alleged that the applicant ran away after the complainant screamed loudly. Thereafter, the bystanders allegedly took the complainant to her home.

7. The complainant's statement under Section 164 of the CrPC was recorded on 24.02.2024 where she alleged that the incident took place around 7 PM on 15.02.2024. She further alleged that the applicant had also touched her private parts, due to which Section 376 of the IPC was added.

8. During the course of investigation, the complainant produced the clothes allegedly worn by her at the time of the incident, that is, a Saree and blouse.

9. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case and has

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clean antecedents. He submits that contradictory statements have been made by the complainant on different occasions. He submits that different dates and different times have been mentioned on each occasion by the complainant.

10. He submits that initially, it was alleged that on 14.02.2024, at around 6 PM, when the victim was going to Durga Dairy to buy milk, the applicant came from behind, started abusing her and tore her clothes.

11. He points out that the complainant in her statement under Section 164 of the IPC stated that the incident happened on 15.02.2024 at 7 PM, and she made further allegations in relation to the offence under Section 376 of the IPC as well. He submits that the complainant has clearly improvised her statement substantially.

12. He submits that at the time of the alleged incident, the complainant was at Aman Vihar Police Station. He further submits that the allegations are false as the CCTV footage relied on by the complainant reveals the commission of no such offence as alleged.

13. He submits the General Diary Entry was made at 09:30 PM pursuant to the PCR Call, even though, the incident is alleged to have occurred around 6 PM.

14. The learned Additional Public Prosecutor ('APP') for the State strongly opposes the grant of any relief to the applicant. He submits that the investigation is pending and the chargesheet is yet to be filed in the present case.

15. He submits that the nature of offences are heinous in nature. He further submits that the applicant is threatening the complainant and there is reasonable apprehension that the applicant will seek to influence the two independent witnesses

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who were present at the place of incident.

16. The prosecutrix is present in person in Court.

17. I have heard the counsel for the parties.

18. I have perused the CCTV footage relied upon by the prosecution that was taken from a shop near the place of incident. The learned APP points out that the footage is captured before the incident. The CCTV footage, admittedly, does not capture the complainant being pushed or her clothes being torn by the applicant.

19. On the last date of hearing, this Court had directed the Investigating Officer to verify whether the applicant or complainant were present at the place of incidence at 6 PM on 14.02.2024, as alleged in the FIR.

20. The Status Report indicates that the complainant was present at Aman Vihar Police Station on 14.02.2024 from 06:28 PM till 7:21 PM. It is also relevant to note that the CCTV footage relied upon by the prosecution is of 14.02.2024 at 08:56 PM.

21. It is settled law that minor discrepancies or contradictions in the statements of the victim are not always fatal to the case of the prosecution.

22. At this stage, *prima facie*, this Court cannot ignore that there are certain discrepancies in the statements of the complainant regarding the date and time of the incident, as well as the clothes worn by the complainant. The FIR was registered on a complaint that the incident happened at 6 PM on 14.02.2024, and in the statement under Section 164 of the CrPC, it is alleged that the incident happened at 7 PM on 15.02.2024. The CCTV footage however showed the applicant and the victim at the alleged place of incident on 14.02.2024 at 08:56 PM. In the CCTV footage, the applicant is not seen to have pushed the

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victim. The clothes of the victim are also not seen to have been torn. In such circumstances, the commission of the offences as alleged, at this stage, is disputable and is a matter of trial.

23. It is not in doubt that an order for bail cannot be passed in a routine manner so as to allow the accused to use the same as shield. At the same time, it cannot be denied that great amount of humiliation and disgrace is attached with arrest. The purpose of custodial interrogation is to aid the investigation and is not punitive. In the present case, this Court is not of the opinion that custodial interrogation of the applicants is specifically needed.

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

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 join and cooperate with the investigation as and when directed by the IO;
- b. The applicant will not leave the boundaries of Delhi without informing the IO/ SHO concerned;
- c. The applicant shall not contact the complainant / witnesses or tamper with the evidence in any manner;
- d. The applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- e. The applicant shall give the details of his residence to the concerned IO/SHO, and inform them in case of any change.

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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

MARCH 19, 2024

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