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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1217/2024**
PROMILA Petitioner

Through: Mr. Akhilesh Kumar Meena, Ms. Priyanka Sahani and Ms. Twinkle Meena, Advs.

versus

STATE THROUGH SHO MOHAN GARDEN AND ANR

..... Respondents

Through: Mr. Raghuinder Verma, APP for State with IO ASI Sunita and SI Partap PS Mohan Garden

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

07.05.2024

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1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No. 159/2023 under Sections 376(D)/370/342/323/366/120B/506/34 IPC registered at Police Station Mohan Garden, New Delhi.
2. The case of the prosecution is that FIR was registered against co-accused Suraj on a complaint made by the prosecutrix alleging that he had made physical relations with her forcibly and then alongwith his Sister-in-Law (*bhabhi*) forcibly got her married to one Pradeep @ Kale.
3. The learned counsel for the petitioner submits that insofar as the allegations of rape are concerned the same are against co-accused Suraj. Further, the testimony of the prosecutrix has been recorded, she turned hostile and did not support the case of the prosecution.
4. The main accused Suraj has already been granted bail by the learned Trial Court *vide* order dated 02.01.2024, a copy of which has been attached as



Annexure D (colly) to the present petition.

5. It is also the contention of the learned counsel that the present petitioner is a woman and is also entitled to the benefit of proviso to Section 437(1) CrPC and she does not have any criminal record.

6. *Per contra*, the learned APP for the State has argued on the lines of the status report, which has been handed over in Court today and is taken on record.

7. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the record.

8. It is not in dispute that the testimony of the prosecutrix has already been recorded and she has not supported the case of the prosecution. It is also a matter of record that main accused Suraj Sona has already been enlarged on bail *vide* order dated 02.01.2024 passed by learned Trial Court. That apart the allegations against the present petitioner is only that of abetment whereas allegation of rape are only against Suraj.

9. Considering the fact that the petitioner is a woman, the benefit of the first proviso to Section 437(1) CrPC can be extended to the petitioner, in the circumstances of the present case.

10. On a query posed by the Court the learned APP on instructions from the IO fairly states that the petitioner does not have any criminal record. Nevertheless, to ensure the availability of the petitioner during the trial, appropriate condition could be imposed.

11. The investigation in the matter is complete and the chargesheet has been filed and the trial is underway, therefore, the custody of the petitioner is no more required. It is also not the case of the prosecution that the petitioner is a flight risk.



12. Considering the aforesaid facts and circumstances in entirety, I am of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs.20,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide mobile numbers to the IO concerned which shall be kept in working condition at all times and she shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

13. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.

14. The present bail petition is disposed of.

15. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

16. Order *dasti* under signatures of the Court Master.

17. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

MAY 7, 2024
N.S.ASWAL