



2024: DHC: 2134

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

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Judgment delivered on: 18.03.2024

+ **BAIL APPLN. 1989/2023****SUDHANSHU KUMAR ALIAS SUDHANSHU
MISHRA**

..... Applicant

versus

**THE STATE OF NCT OF DELHI
& ANR.**

..... Respondents

Advocates who appeared in this case:

For the Applicant : Mr. Sushant Bali, Adv.

For the Respondents : Mr. Pradeep Gahlot, APP for the State
SI Anshu Kumari, PS-Paharganj
Mr. Vishesh Wadhwa & Mr. Arjun Gupta,
Adv. with Complainant in person**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT**

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 (**CrPC**) seeking grant of regular bail, in FIR No. 125/2023 dated 18.02.2023, registered at Police Station Paharganj, for offences under Sections 376/506 of the Indian Penal Code, 1860 (**IPC**).

2. The facts relevant for the adjudication of the present application are as follows:

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- 2.1 It is alleged that in the month of February 2022, the complainant / prosecutrix and the applicant / accused met each other when they visited Haridwar. In the due course of time, they exchanged their mobile numbers and started talking to each other.
- 2.2 On 09.04.2022, allegedly the applicant had come to Delhi to meet the prosecutrix at Paharganj. It is alleged that since the applicant was tired, they went to a hotel, namely, 'Mini Yes Please'. The complainant alleged that the applicant, thereafter, made physical relations with her without her consent. She further alleged that the applicant also took her pictures and videos and threatened her to viral the same if she discloses about the said incident to any other person.
- 2.3 In the month of May 2022, the prosecutrix and the applicant met again in the same hotel, namely, 'Mini Yes Please' at Paharganj, where the applicant again forcefully made physical relations with her on the pretext of the pictures and videos, he had of hers.
- 2.4 It is further alleged that the applicant had also made fake ID of the prosecutrix on Instagram, where he used to post her pictures and has also threatened the prosecutrix to kill her parents. This led to the registration of FIR in the present case. Thereafter, the medical examination of the prosecutrix was conducted on 16.02.2023.



2.5 The statement of the prosecutrix was recorded under Section 164 of the CrPC before the learned Metropolitan Magistrate, Tis Hazari Courts, Delhi on 20.02.2023, in which she corroborated the version of the FIR.

2.6 The investigation in the present matter is complete and the charge sheet has been filed on 18.04.2023 under Sections 376/506 of the IPC and the charges have been framed by the learned Trial Court. The applicant was arrested on 23.02.2023 from Nepal where he was working as a skilled labourer and has been in judicial custody since then. The prosecutrix examination and cross-examination has been recorded by the learned Trial Court.

2.7 The applicant had preferred two bail application before the learned Sessions Court, which were dismissed, firstly, on 27.04.2023 and, then on, 24.05.2023.

3. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case and the prosecutrix was in consensual romantic relationship with the applicant for about past one year. He submitted that the investigation is complete and the chargesheet has also been filed.

4. The learned counsel submitted that the present FIR was registered after an inordinate delay of almost one year from the date of the first alleged incident, which creates suspicion about the allegations made by the prosecutrix.



5. The learned counsel submitted that the prosecutrix and the applicant met at the hotel, namely, 'Mini Yes Please' with mutual consent and consequently developed intimate relations with each other.

6. He further submitted that the applicant and the prosecutrix got matching permanent tattoos of the names of each other on their upper chests being "S***** is my life" and "Sudhanshu is my life", and also planned to get married to each other. He further submitted that when the parents of the prosecutrix came to know about the said tattoo, they pressurised the prosecutrix to get the present FIR registered against the applicant.

7. He submitted that the photographs and videos recovered during the investigation clearly show that the prosecutrix and the applicant were well acquainted with each other and were in a consensual relationship.

8. The learned counsel submitted that the applicant has been in custody since 23.02.2023 and no useful purpose would be served by keeping him in further incarceration. He further submitted that the applicant has deep roots in society and has clean antecedents.

9. The learned counsel submitted that the learned ASJ has failed to appreciate its own finding that it was a consensual romantic relationship and refused bail to the applicant. The learned ASJ in para 6 of the order dated 24.05.2023 observed as under:

"The video which was produced in the court by the council for the applicant/accused is undated (the court has maintained the dignity of the prosecutrix while perusal of the video). The same



does not prima facie, show use of force upon the prosecutrix.”

10. The learned counsel has relied upon the following judgments in furtherance of his contentions:

- i) ***Sanjay Chandrav. Central Bureau of Investigation : (2012) 1 SCC 40***
- ii) ***Meharaj Singh (L/NK.) v. State of U.P.: (1994) 5 SCC 188***
- iii) ***H. B. Chaturvedi v. C.B.I.: 2010 SCC OnLine Del 2155***
- iv) ***Union of India v. K. A. Najeeb : (2021) 3 SCC 713***
- v) ***Manish Kumar v. State of NCT of Delhi and Another : 2023 SCC OnLine Del 1095***
- vi) ***Md. Asfak Alam v. State of Jharkhand and Another: 2023 SCC OnLine SC 892***
- vii) ***Rohit Chauhan v. State NCT of Delhi: 2013 SCC OnLine Del 2106***
- viii) ***Sanjay v. State Govt. of NCT Delhi and Another : 2021 SCC OnLine Del 3152***
- ix) ***Ankit Bisht v. State NCT of Delhi : BAIL APPLN. 3136/2021***

11. The learned Additional Public Prosecutor for the State vehemently opposes the present application on the ground that the allegations are serious and grave in nature. It is further submitted that the applicant has forcefully established physical relation with the prosecutrix on the false pretext of marrying her. The applicant has also previously threatened the prosecutrix of making her photographs viral and there is a likelihood of applicant threatening or influencing the



prosecutrix. It is submitted that the mobile phone of the applicant has been sent to FSL and the result is awaited. It is also asserted that there is an apprehension of applicant absconding and tampering the evidence. Therefore, in such circumstances, the applicant should not be released on bail.

12. I have heard the learned counsel for the parties and have also perused the records.

13. It is not denied that the prosecutrix had known the applicant for a long time. The allegations made by the prosecutrix are that the applicant had forcefully established physical relations with her. The alleged incident is stated to have taken place in the month of April 2022, whereas the FIR was registered on 18.02.2023, that is, almost after ten months from the alleged incident. Therefore, the same, at this stage, appears to be an afterthought and casts serious doubt on the veracity of the prosecutrix's statement recorded during the investigation.

14. The Hon'ble Apex Court, in the case of **Meharaj Singh (L/Nk.) v. State of U.P.: (1994) 5 SCC 188**, held as under:

"12. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story."

15. It is not in doubt that a mere statement of the prosecutrix is sufficient for establishing the offence of rape and the same does not require corroboration, if the same inspires confidence.



16. The prosecutrix, in the present case, has alleged that the applicant wanted to marry her and forced her to have sexual intercourse for the first time during her medical examination conducted on 16.02.2023.

17. In the present case, it is admitted that the prosecutrix had known the applicant and was meeting him on regular basis on her own will. It is also apparent from the statement given by the prosecutrix under Section 164 of the CrPC that she accompanied the applicant to the hotel, namely, 'Mini Yes Please' willingly.

18. Whether the consent of the prosecutrix was vitiated by misconception of the fact arising out of the promise to marry, or the threats extended by the applicant, cannot be established at this stage, and would be a matter of trial.

19. It is apparent that the prosecutrix is a literate person and even prior to the alleged incident, she was in regular touch with the applicant. The FIR, in the present case, was registered on a complaint given by the prosecutrix on 18.02.2023, for an alleged incident which took place in the month of April 2022. Therefore, there is considerable delay in lodging the complaint. The chargesheet in the present case has been filed.

20. Certain videos and photographs were placed before the learned Trial Court during the cross examination of the prosecutrix. It was observed by the learned Trial Court that in all the said videos and photographs, the prosecutrix appears to be consensually sharing her intimate moments with the accused and she did not appear to be under



any kind of coercion or pressure. It is also admitted by the prosecutrix in her cross examination that she had got a tattoo engraved on her chest being “S... is my life”. She had not stated that the said tattoo was made under any pressure or coercion by the applicant or that she was under any threat to get the tattoo made. The prosecutrix is a mature woman, who had gone to meet the applicant on her own free will and was not in any captivity. The making of a tattoo is a complex art, and same cannot be engraved in case of any resistance from the person who is getting it engraved. The same was, admittedly, got done in a shopping mall.

21. The prosecutrix has also mentioned in her cross examination that she used to talk to the applicant for two to three hours daily.

22. The statement of the hotel owner of ‘Mini Yes Please’, where the applicant and the prosecutrix visited, was also recorded. It is not alleged that the prosecutrix had gone to the hotel under any force or pressure.

23. In such circumstances, the statement that the applicant established forceful sexual relationship with the prosecutrix, at this stage, does not inspire confidence.

24. Even though an allegation has been made that the applicant had threatened the prosecutrix of the circulation of the videos and photographs, however, no such charges have been framed against the applicant. The same appears to be an afterthought.

25. The videos and the photos are stated to have been found in the phone of the applicant. As noted by the learned Trial Court, the same



appears to have been made by the prosecutrix and the applicant consensually, recording their intimate moments.

26. At this stage, no evidence has been brought on record to corroborate that the videos or the photos were circulated by the applicant.

27. The prosecutrix was meeting the applicant from quite some time before the filing of the complaint, and in such circumstances whether any sexual relationship between the prosecutrix and the applicant was consensual or on the pretext of any threat, would be established after the trial.

28. It is not in dispute that the offence as alleged is serious in nature. However, it cannot be lost sight that the object of the jail is not punitive but to secure presence of the accused during the trial.

29. The applicant is about 20 years old and belongs to the poor strata of the society and has been in custody since 23.02.2023.

30. It is not denied that the applicant has clean antecedents and keeping the young man of 20 years of age in custody would do more harm than good. No purpose would be served by keeping the applicant in further custody.

31. The plea of the prosecution with regard to the present applicant threatening or influencing the witnesses or tampering with the evidence if released on bail, can be taken care of by putting appropriate conditions.

32. In view of the above, the present applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/-



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with one surety of the like amount subject to the satisfaction of the learned Trial Court/Duty MM/Link MM, on the following conditions:

- a. The applicant shall not leave the country without the prior permission of the learned Trial Court;
- b. The applicant is directed to give his mobile number to the concerned Investigating Officer and keep it operational at all times;
- c. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner whatsoever;
- d. The applicant shall not, in any manner, communicate with, or come in contact with the prosecutrix or any of the prosecutrix's family members;
- e. The applicant shall report to the local police station once in every week;
- f. The applicant shall appear before the learned Trial Court as and when directed;
- g. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO.

33. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the respondent to seek redressal by way of filing an application seeking cancellation of bail.

34. It is clarified that any observations made in the present order are

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for the purpose of deciding the present bail application and should not influence the outcome of the Trial.

35. The present bail application is allowed in the aforesaid terms.

AMIT MAHAJAN, J

MARCH 18, 2024
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