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

+ **BAIL APPLN. 2177/2023 & CRL.M.A. 25525/2023**

SAHIL

..... Applicant

Through: Mr. Shailendra Singh, Ms.
M Begum, Mr. Ishaan
Jain, Advocates.

versus

**STATE THROUGH CHIEF SECRETARY GOVT OF
NCT OF DELHI**

..... Respondent

Through: Mr. Y.S. Chauhan, APP
for the State with Adv.
Ashwani Kumar.
SI Ashish Yadav, P.S.
Rajouri Garden.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

01.04.2024

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1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') for grant of regular bail in FIR No. 1088/2021 dated 23.12.2021, for offences under Sections 365/367/368/307/506/34/120B of the Indian Penal Code, 1860, registered at Police Station Rajouri Garden.

2. The present FIR was registered on a complaint given by the complainant/ victim. It was stated that around three years earlier he had befriended a girl, namely Maneka. It was stated that the victim and Maneka were in relationship and wanted to get married. However, Maneka's family was against the same. On 11.12.2021, the victim and Maneka eloped to Jaipur. Thereafter, they got married on 21.12.2021 in a temple and came back to Delhi on 22.12.2021. On coming back to Delhi, they



informed Maneka's family, which got agitated on hearing the same and threatened the victim.

3. It is alleged that on 22.12.2021, Maneka's father, her uncle Bhanu, two of her brothers, that is Abhishek and Raghav, and her brother-in-law Aman forcefully took the victim and Maneka to their house in Sagarpur. In the house, another brother of Maneka, that is Akshay, her uncle Anil, her mother Geeta, her grandmother Kaushalya and her aunt Sandhya were also present along with other persons.

4. It is alleged that all of them together gave beatings to the victim with sticks and belt. It is further alleged that Maneka's grandmother shouted that the victim's genitals should be chopped off, pursuant to which Maneka's uncle Bhanu brought an axe from the inside of the house. It is alleged that the family members of Maneka then held down the victim, and Maneka's uncle Bhanu gave the blow which led to the dismembering of the victim's genitals.

5. It is further alleged that the family members of Maneka thereafter threw the victim near the Sagarpur drain.

6. It is also the prosecution's case that the applicant, who is the son of Maneka's aunt, was present at the spot during the incident. It is further alleged that the accused persons had also beaten Maneka and some of the accused persons, not including the applicant, had wrongfully confined Maneka for a period of two months, that is, from 22.12.2021 till 06.03.2022.

7. The learned Trial Court by order dated 03.05.2023 has framed charges for offences under Sections 120B, 365, 367, 307, 506, 323/324, 342 and 201 read with Section 120B of the IPC against the applicant. The complainant/ victim has already been examined in the present case.

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8. The learned counsel for the applicant submits that the applicant is a law-abiding citizen and has been falsely implicated in the present case.

9. He submits that the applicant was not present during the alleged commission of the offence and he has not been named in the present FIR.

10. He further submits that no specific role has been attributed to the applicant and in such circumstances, *prima facie*, the alleged offences are not made out against the applicant.

11. He submits that the victim has given contrary versions of the events which makes his complaint and statement under Section 164 of the CrPC unreliable.

12. He submits that co-accused person, namely Naina Rana, was granted bail by this Court by order dated 13.10.2022 due to no active role having been assigned to her. He further contends that this Court, by separate orders dated 19.02.2024, has also granted bail to co-accused persons, namely, Sandhya, Dharmender and Vicky Anand. He further submits that co-accused Kajal Rana was also granted bail by this Court by order dated 21.02.2024.

13. He submits that the charges framed against the said co-accused persons, and the role attributed to them, are not graver than that of the applicant, whereby the applicant is entitled for bail on the ground of parity.

14. He submits that the present bail application cannot be dismissed merely because the victim Maneka is yet to be examined as the delay in her examination cannot be attributed to the applicant.

15. He submits that the order sheet of the trial clearly indicates that the examination of victim Maneka has been deferred on

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account of requests made by the prosecution for want of the FSL report of the DVR, which was allegedly seized from the place of incident.

16. The learned Additional Public Prosecutor for the State opposes the grant of any relief to the applicant. He submits that the complaint given by the victim is corroborated by his statement under Section 164 of the CrPC.

17. He submits that the victim's brother had also categorically stated that the victim had told him that Maneka's family members had beaten the victim and had dismembered his genitals.

18. He further submits that the allegations are also corroborated by the statement given by Maneka under Section 164 of the CrPC.

19. It is pointed out by the parties that the evidence of the victim was recorded by the learned Juvenile Justice Board on 21.04.2023 and before the learned Juvenile Justice Board, the victim has denied that he has given any complaint to the police in regard to the incident.

20. The statement of the victim was recorded by the learned Trial Court on 25.11.2023, where he stated that four persons had misbehaved with his wife Maneka, which led to a quarrel. He alleged that those persons hit him on the head with a flower pot due to which he became unconscious. He claimed that Maneka called his elder brother. Thereafter, he was taken to Safdarjung Hospital and he is not aware of anything that happened thereafter. He further claimed that police officials have taken his signatures and thumb impressions on the blank paper.

21. It is thus, apparent that the victim has turned hostile. It is settled law that the statement of a witness is only a piece of



evidence, and for the purpose of conviction, the corroborated part of the evidence of a hostile witness regarding the commission of the offence is to be treated as admissible [Ref. *Mrinal Das v. State of Tripura* : (2011) 9 SCC 479]. The Trial Court while deciding the case has to consider the entire material on record, and can definitely look into the circumstances and other evidence put forth by the prosecution while passing the judgment.

22. However, this Court cannot lose sight of the fact that the present case relates to the injury of the victim. From the statement of the victim, as discussed, the very foundation of the allegations, at this stage, becomes doubtful.

23. The allegation against the applicant is that he was present when the victim was beaten. It is also alleged that the applicant had himself given beatings to Maneka. However, in the present circumstances, it cannot be said with certainty that the applicant was aware that the victim would be beaten and injured in the manner that has been alleged. It is also not alleged that the fatal blow to the victim was given by the applicant. The allegation in relation to the fatal blow is made against co-accused Bhanu.

24. No specific role has been attributed to the applicant and his role, in any case, is not graver than that of the co-accused persons who have already been granted bail by this Court.

25. It is also not denied that the applicant has no antecedents and is in incarceration since 25.12.2021.

26. It is also relevant to note that the prosecution has been delaying the examination of victim Maneka on the ground that the FSL report in relation to the seized DVR is awaited. Despite repeated adjournments, the examination of victim Maneka has not been done. No time has been indicated as to when the FSL report would be placed before the learned Trial Court. In such

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circumstances, incarceration of the applicant for an endless period on account of non-examination of victim Maneka falls foul of Article 21 of the Constitution of India.

27. The learned APP states that security has already been provided to the witness Maneka under the witness protection scheme.

28. The apprehension in regard to the witness being tampered or there being a threat to the victims though is not without merits. However, the same cannot be the sole ground for denying the bail to the applicant. In the opinion of this Court, appropriate conditions can be put to allay the threat in relation to the apprehension of there being threat to the complainant or the witnesses being tampered. Moreover, it is the duty of the State to protect every witness and as noted above witness Maneka has been provided security by the State.

29. In view of the above, the applicant is directed to be released on bail on furnishing a bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. He shall under no circumstance leave the boundaries of Delhi without the permission of the Trial Court;
- c. He shall appear before the learned Trial Court as and when directed;
- d. He shall provide the address where he would be residing



after his release and shall not change the address without informing the concerned IO/ SHO;

- e. He shall, upon her release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

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

31. 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.

32. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

APRIL 1, 2024

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