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

+ **BAIL APPLN. 1723/2024**

ASHFAQ

.....Petitioner

Through: Mr. Mohd. Zahid and Mr. Brahm
Kumar Pandey, Advocates.

versus

STATE GNCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State
with SI Savita Solanki, P.S.: Punjabi
Bagh.

Mr. (appearance not given), Advocate
for complainant alongwith
complainant/prosecutrix.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

01.10.2024

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By way of the present petition filed under section 439 read with section 482 of the Code of Criminal Procedure 1973, the petitioner seeks regular bail in case FIR No.576/2022 dated 06.09.2022 registered under sections 376/506 of the Indian Penal Code, 1860 ('IPC') at P.S.: Punjabi Bagh, New Delhi. Consequent upon completion of investigation, offences under sections 468/471/201 of the IPC have been added *vide* charge-sheet dated 26.02.2023.

2. Notice on this petition was issued on 15.05.2024; consequent whereupon Status Report dated 22.07.2024 has been filed.
3. Nominal Roll dated 18.07.2024 has also been received from the Jail Superintendent.
4. The prosecutrix is present in court alongwith her counsel.



5. The court has heard Mr. Mohd. Zahid, learned counsel appearing for the petitioner; Ms. Shubhi Gupta, learned APP appearing for the State; as well as learned counsel for the prosecutrix. The prosecutrix has also briefly addressed the court.
6. Learned counsel appearing for the petitioner submits that the petitioner and the prosecutrix were known to each other through *TikTok*, after which they had exchanged their mobile numbers. Counsel submits, that other thing apart, it is the prosecutrix's own version that on the date of the alleged commission of the offence, the petitioner had stayed overnight at the house of the prosecutrix's cousin sister, on which night he is stated to have made physical relations with the prosecutrix.
7. Counsel submits, that in her court deposition recorded on 20.07.2023, the prosecutrix (appearing as PW-1) categorically says that the petitioner had *never* made physical relations with her *except* at the 'house' of her cousin sister. It is pointed-out that this 'house' is in fact a *jhuggi* in Shaheed Bhagat Singh Camp, Paschim Vihar, New Delhi; and that therefore, the prosecutrix's version that anything was done upon her forcibly is highly unbelievable.
8. Counsel further submits, that it may also be noticed, that the subject FIR was registered on 06.09.2022, about 3-5 months after the date of alleged commission of the offence, and in-fact the prosecutrix has not disclosed the exact date on which the offence was allegedly committed; and on the other hand, the prosecutrix's cousin sister, who has deposed as PW-4 before the learned trial court, has said that the prosecutrix never informed her of any such incident nor did she complain about it to anyone else.



9. Counsel also points-out that since PW-4 had turned hostile, in the course of her cross-examination by the learned Public Prosecutor, she has stated that the petitioner had stayed at her house *some time in 2020* and *not in 2022*, which is when the prosecutrix says the offence was allegedly committed.
10. On the other hand, Ms. Shubhi Gupta, learned APP appearing for the State submits, that not only has the petitioner committed the offence under section 376 of the IPC against the prosecutrix, he has also forged his birth certificate, which is the basis of the charge under sections 468/471/201 of the IPC, which (latter) charge is borne-out by the court deposition of a clerk who was summonsed from the Office of the Registrar of Birth & Deaths, Municipal Board, Bahraich, Uttar Pradesh ('U.P.'). Learned APP submits that the petitioner was thereby attempting to show himself to be a juvenile, to escape the clutches of the law.
11. Learned counsel appearing for the prosecutrix, on her instructions, submits that the prosecutrix is fearful that if the petitioner is enlarged on bail, he may threaten or harm her.
12. Upon a conspectus of the facts and circumstances of the case, the following aspects weigh with the court, at this stage :
 - 12.1. Admittedly, the prosecutrix was about 30 years old, with 02 children and was estranged from her husband for many months, when she says she befriended the petitioner through *Tik-Tok*;
 - 12.2. A perusal of the prosecutrix's statement dated 20.07.2023 (PW-1) available on the record of the Investigating Officer ('I.O.'), shows that it is the prosecutrix's own case, as per her cross-



examination, that the petitioner had *only* made physical relations with her *once* at the house of her cousin sister and nowhere else. In her deposition she also says that the petitioner had stayed-over at the house of the prosecutrix's cousin with their consent;

- 12.3. In her cross-examination conducted by the learned Public Prosecutor on 10.01.2024 (PW-4), the prosecutrix's cousin says that the petitioner had stayed at her house *in 2020* and *not in 2022*, though the prosecution case is that the offence was committed in 2022;
- 12.4. Though the prosecutrix does not indicate any specific date on which the offence is alleged to have been committed, admittedly, the subject FIR was lodged about 3-5 months later on 06.09.2022;
- 12.5. Of the 18 prosecution witnesses, 15 witnesses have already been examined, including the prosecutrix and her cousin sister; and only formal witnesses and the I.O. remain to depose before the learned trial court;
- 12.6. The petitioner's Nominal Roll dated 18.07.2024 shows that he has already suffered about 01 year and 08 months of custody as an under-trial; that his overall jail conduct has been 'satisfactory'; and that he has no other criminal involvements; and
- 12.7. Insofar as the concern raised on behalf of the prosecutrix that the petitioner would threaten her, it is noticed that the petitioner is ordinarily a resident of District Bahraich in U.P. whereas the prosecutrix resides in Delhi.



13. In the circumstances of the case, this court is persuaded to admit the petitioner – **Ashfaq S/o Late Riyasat Ali** – to *regular bail* pending trial, subject to the following conditions:

- 13.1. The petitioner shall furnish a personal bond in the sum of 25,000/- (Rs. Twenty-Five Thousand Only) with 02 sureties in the like amount from his relatives, to the satisfaction of the learned trial court;
- 13.2. The petitioner shall furnish to the I.O./S.H.O a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 13.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 13.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial. More specifically, the petitioner shall neither contact nor interact, whether directly or indirectly, with the prosecutrix or her family, in any manner whatsoever. The petitioner shall also not visit the locality in which the prosecutrix stays;
- 13.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.



14. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.
15. The petition stands disposed-of in the above terms.
16. Other pending applications, if any, are also disposed-of.
17. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
18. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 1, 2024

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