



2024:DHC:8109



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on: 21.10.2024
+ **BAIL APPLN. 1731/2024 & CRL.M.A. 14973/2024**
RAVIApplicant
versus
STATE OF NCT OF DELHIRespondent

Advocates who appeared in this case:

For the Applicant : Mr. Suraj Prakash Sharma, Mr. Mayank Chauhan, Mr. Ankit Sharma, Mr. Akash Sharma and Ms. Sukriti Pratap, Advs. (through VC)
For the Respondent : Mr. Ajay Vikram Singh, APP for the State with SI Sompal Singh, PS Prasad Nagar. Mr. Hariom, Adv. for the Complainant (through VC)

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 regular bail in FIR No. 31/2019 dated 20.01.2019, registered at Police Station Prasad Nagar, for offence under Section 308 of the Indian Penal Code, 1860 ('IPC'). The chargesheet has been filed against the applicant for the offences under Sections 306/366/376/376D/109/201/34 of the IPC.

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2. The brief facts of the case are that on 17.01.2019, information was received regarding a girl having fallen from the roof. On receipt of the information, the police officers reached the spot and found that the victim had been taken to LHMC Hospital.

3. During the course of investigation, the victim was identified and it was found that a missing report had been registered by her parents on 17.01.2019 as she had left her home on 16.01.2019 for job training and not returned home. The victim succumbed to her injuries on 20.01.2019.

4. During the course of investigation, the co-accused CCL 'S' was arrested. He disclosed his involvement in the crime and revealed that he had interviewed the victim and she had been working with him for over 10 days. He disclosed that the victim had also refused his sexual advances. He further disclosed that he had made a plan with the other co-accused persons, including the applicant, that he would bring the victim to the house of co-accused Janak and they would "adjust" together with her.

5. It is alleged that the co-accused CCL 'S' took the victim to the house of co-accused Janak on the pretext of providing her with another part time job with better pay. It is alleged that the victim talked to co-accused Pardeep on call about the opportunity and went to meet co-accused Pardeep at his house with co-accused CCL 'S'. It is alleged that at the house, the applicant along with co-accused persons Pardeep and CCL 'S' committed gang rape with the victim in the presence of co-accused Janak and his wife— co-accused Soni. It is alleged that

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as per the disclosure of CCL 'S', the applicant made relations with the victim twice.

6. The learned counsel for the applicant submitted that the applicant has clean antecedents and he has been falsely implicated in the present case.

7. He submitted that there is no scientific evidence that links the applicant to the alleged offence. He submitted that the FSL report of the applicant also tested negative and his DNA was not found in the samples seized from the deceased victim.

8. He further submitted that the mobile location of the applicant was also not found at the place of the incident where the alleged offence took place.

9. He submitted that the applicant was arrested on 24.01.2019 and the matter is still at the stage of prosecution evidence and only 21 out of 48 witnesses have been examined. The trial is likely going to take long to conclude and no purpose would be served by subjecting the applicant to further incarceration.

10. He submitted that the material witnesses have already been examined and there is no apprehension of influencing the witnesses. He further submitted that the applicant was enlarged on interim bail twice as per HPC guidelines and he did not misuse the liberty and surrendered on time.

11. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposed the grant of any relief to the applicant. He submitted that specific allegations have been levelled against the applicant and the offence as alleged against



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him is heinous in nature.

12. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a prima facie case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, the period of incarceration is also a relevant factor that is to be considered.

13. The allegations in the present case are grave in nature. It is alleged that the accused persons raped the victim by calling her to the residence of one of the co-accused persons on the pretext of offering her a job. It is alleged that the victim committed suicide by jumping off a building on the very same day.

14. The applicant has denied the story of the prosecution and contended that there is no scientific evidence to connect the applicant to the present offence. It is stated that the CDR of the applicant also does not support the prosecution's case about the location of the applicant at the place of incident.

15. At this stage, it cannot be denied that there is no eye witness to the incident. It is settled law that when the case is based solely on circumstantial evidence, the chain of circumstances has to be so complete that it leaves no reasonable ground for any other conclusion except for the hypothesis of

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guilt of the accused person.

16. It is not disputed that the applicant has been implicated in the present case on the basis of the disclosure of the co-accused in the present case. While the veracity of the same and probative value of the evidence will be considered at the time of final argument, at this stage, prima facie, the involvement of the applicant cannot be presumed in the absence of any other evidence to link the applicant to the alleged offences.

17. It is settled law that in the event of there being even some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to bail. [Ref: **Ram Govind Upadhyay v. Sudarshan Singh : (2002) 3 SCC 598**].

18. The investigation in the present case already stands concluded and the material witnesses have already been examined by the learned Trial Court. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

19. The applicant was arrested on 24.01.2019 and as per the nominal roll, he has spent more than 4 years in custody. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time. In the opinion of this Court, no purpose would be served by keeping the applicant in further custody.

20. The Hon'ble Apex Court in the case of **Union of India v. K.A. Najeer** : AIR 2021 SC 712 held that once it is obvious that a timely trial would not be possible, and the accused has



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suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

21. It is pertinent to note that the applicant was enlarged on interim bail and he surrendered on time. It is not the case of the prosecution that the applicant misused the liberty in any manner. However, appropriate conditions ought to be put to allay the apprehension of tampering with the evidence and hampering the witness.

22. Considering the aforesaid discussion, in the interest of upholding the principles enshrined under Article 21 of the Constitution of India, this Court is of the opinion that the applicant has established a prima facie case for the grant of bail.

23. The applicant is a resident of Delhi and he is unlikely to abscond. Even otherwise, appropriate conditions can be imposed to allay any apprehension of the applicant evading trial or intimidating the witnesses.

24. In view of the same, without commenting further on the merits of the case, this Court is of the opinion that the applicant ought to be enlarged on bail. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall cooperate in any further investigation as and when directed by the concerned IO;
- b. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted



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with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;

c. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;

d. The applicant shall appear before the learned Trial Court as and when directed;

e. 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;

f. The applicant shall, upon his release, give his mobile number to the concerned IO/SO and shall keep his mobile phone switched on at all times.

25. 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.

26. 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.

27. The bail application is allowed in the aforementioned terms. Pending application also stands disposed of.

AMIT MAHAJAN, J

OCTOBER 21, 2024

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