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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2583/2023**

MUKESH PAL

..... Petitioner

Through: Mr. Anand Verdhan Maitreya and Mr.
Ritam Agrawal, Advocates.

versus

STATE GOVT. OF NCT OF DELHI & ANR. Respondents

Through: Mr. Sanjeev Sabharwal, APP for State
with Insp. Vijay Kumar, P.S.
Mandawali and Insp. Chetan Singh,
P.S. Khyala.
Ms. Astha, Advocate for respondent
No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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28.02.2024

1. By way of the present application filed under Section 439 read with Section 482 Cr.P.C., the applicant seeks regular bail in FIR No. 337/2019 registered under Sections 328/376/506/509 of the IPC, Section 4/6 of the POCSO Act and Section 67 of the IT Act at P.S. Mandawali.
2. It is contended on behalf of the applicant that he has been falsely implicated in the present case. A perusal of the statements of the prosecutrix recorded during investigation as well as in trial would reveal that no specific details of the incident have been given. In all her statements, prosecutrix has stated that the incident occurred in the month of May, 2018 however, the applicant was in judicial custody between 04.05.2018 and 23.05.2018 in another FIR No. 309/2018 registered under Sections 380/411/34 IPC at P.S.



Khoda, Ghaziabad, U.P. The prosecutrix has further alleged that the applicant has repeatedly committed acts of rape upon her while blackmailing her of publicizing her nude photographs taken during the first incident however neither any place nor any dates of the incident have been mentioned. The prosecution has filed 12 photographs in support of the allegations however none of the photographs were ever sent by the applicant. Rather, it has come in the investigation that the same were sent from the mobile phone of one Raja, who though was cited as a prosecution witness but later has been dropped by the Trial Court vide order dated 21.10.2023. Further, 10 out of 12 photographs are not obscene/inappropriate and the remaining 2 photographs indicate that the prosecutrix was in a conscious state and that the same were rather self-clicked photographs. Reliance is further placed on WhatsApp messages between the applicant and the prosecutrix.

It is further submitted that all the material witnesses including the prosecutrix and her mother have been examined. Till date, 10 out of 36 witnesses have been examined and the trial is likely to take time. The applicant is in custody since 05.11.2019 and was released twice on interim bail, which concession he has not misused. It was also contended that there is a delay of approximately 18 months in registration of the FIR and the complainant deliberately did not mention about her complaint filed in the month of June 2019 which was subsequently compromised between the parties on 24.06.2019.

3. The bail is strongly resisted by the learned APP for the State who is duly assisted by Ms. Astha, learned counsel for the complainant/respondent No.2. It is stated that prosecutrix was examined as PW1 wherein she has



completely supported the prosecution case. She has stated that she became the applicant's facebook friend on 22.12.2017 and in the month of May, 2018 she was called by the applicant to join a birthday party at Kailash Apartment, Pandav Nagar where only the applicant was present. He gave her a coldrink and after drinking the same, she fell unconscious. On regaining consciousness, she found herself without clothes and the applicant lying beside her. She was blackmailed on account of her nude videos and photographs and the applicant repeatedly committed rape upon her. Though it is stated that *mausi* and *nana*, to whom the nude photographs were sent, are yet to be examined as well as one witness i.e. prosecutrix's friend namely 'J', however it is stated that the same are not with respect to the incident of rape.

4. I have heard learned counsels for the parties and gone through the material placed on record including testimonies of the witnesses.

5. In her complaint, while prosecutrix has given a specific date of her becoming applicant's facebook friend on 22.12.2017 however she had not specified the date in the month of May, 2018 when the incident of rape had occurred. When she was confronted with the fact that the applicant remained in custody in the month of May, 2018, she has replied that the applicant had gone to jail after her first meeting with him. She further stated that physical relations were not made in the first meeting. Prior to the same, she met the applicant once or twice. At another stage, she stated that after being released from jail in a theft case, the applicant had gone to the house of his relative/bua. She also admitted that prior to registration of the FIR, there was complaint made to the police station in the month of June, 2019 which was compromised between her father and the applicant's father. She



clarified that the same was related to a quarrel. The compromise entered into between the parties was also confronted and was marked as Mark-C. She also admitted that when she was hard pressed, she used to demand money from the applicant. She also admitted that she had gone 2/3 times to bar/lounge with the applicant and other friends. She was confronted with the brief history recorded in MLC that there were two episodes of sexual assaults and the last one occurred in May, 2019 to which she replied that she did not remember.

6. Insofar as the photographs placed on record alongside the charge-sheet is concerned, it has come on record that the same were not transmitted by the phone of the applicant. As per the prosecution case, the same were transmitted from the phone of one Raja who had stated that his phone was hacked by the applicant. On a Court questioning, learned APP, on instructions from the IO, states that no investigation has been carried out on this aspect. Also the witness Raja has been dropped by the Trial Court vide order dated 21.10.2023 . During the submissions, it has also been fairly stated by the learned counsel for the complainant that on a perusal of obscene photographs, the prosecutrix is not seen in an unconscious state. The prosecutrix was admittedly in the age of discretion her date of birth being 09.11.2001 (or 09.09.2001). The prosecutrix as well as her mother stand examined. Although learned counsel for the applicant has sought to highlight on the improvements/ contradictions, however the same are not required to be dealt with in detail at this stage. The applicant is in custody since 05.11.2019. About 24 witnesses remain to be examined. In the totality of the facts and circumstances as noted hereinabove, this Court deems it apposite to direct that applicant be released on regular bail subject to his



furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty M.M. and subject to the following further conditions :-

- i) The applicant shall not leave the NCR without prior permission of the concerned Court.
- ii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.
- iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.
- iv) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
- v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.

7. The bail application is disposed of in the above terms.

8. Copy of the order be communicated to the concerned Jail Superintendent electronically for information.

9. Copy of the order be uploaded on the website forthwith.

10. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present bail application.

MANOJ KUMAR OHRI, J

FEBRUARY 28, 2024/ga