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

+ **BAIL APPLN. 1980/2024**

RAJBEER

.....Applicant

Through: Mr. Jaspreet Singh Rai,
Ms. Sukhdeep Kaur Rai,
Mr. Abhishek Sisodia and
Mr. Anurag Sharma, Advs.

versus

STATE

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State with
Insp. Balihar Singh and SI
Ashish Kumar, PS
Chanakya Puri.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

11.09.2024

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1. The present application is filed seeking regular bail in FIR No. 160/2022 dated 29.08.2022, registered at Police Station Chanakya Puri, for offences under Sections 365 /384 / 323/ 506/ 120B/ 370 of the Indian Penal Code, 1860.

2. The present FIR was registered at the behest of the complainant, namely, Mr. Shubham Sinha, Secretary-Delhi for Empowering Humanity, who had forwarded the statement received from the victims at the NGO office. The brief facts of the case are that seven victims, who are citizens of Uzbekistan, were trafficked and forced into prostitution in India by the accused persons. It was alleged that the victims were brought to India either *via* Nepal or directly on the strength of tourist and medical visa. It was alleged that the passport and other documents of the victims were taken away. It was alleged that the victims were brought to India on the pretext of jobs, however, on arrival, they were forced into prostitution and sexual slavery.

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When the victims resisted, they were also allegedly threatened that they will be put in Jail as they were living in India without valid documents.

3. The victims managed to escape and reach the gate of the Uzbekistan Embassy, however, accused Aziza Sher and her husband kidnapped one of the girls at gun point. It is alleged that the said woman was released after she was contacted over phone. The Uzbekistan Embassy handed over the victims to the NGO called Empowering Humanity, whereafter, the victims made the statement with the help of Google Translate that was forwarded by the complainant.

4. Insofar as the applicant is concerned, it is the case of the prosecution that one of the victims, in her statement on 11.09.2022 under Section 161 of the Code of Criminal Procedure, 1973 ('CrPC'), mentioned that she was brought to India on the pretext of providing work in a Hospital, however, on reaching Delhi, her documents were taken away and she was threatened to work as a prostitute. She alleged that one of the clients she was sent to was a broker in Panchsheel Vihar where a man named 'Rajveer' used to threaten to send her to jail. She alleged that the said man claimed that he was a police officer and used to show her a gun to instill fear. She alleged that he used to have sexual intercourse with her, however, the broker did not charge him for the same. On 13.09.2022, in her statement under Section 164 of the CrPC, the victim supported her statement and she also showed a photograph of herself with the applicant on her phone.

5. It is alleged that on 11.10.2023, a supplementary statement in the name of the victim 'MD' was recorded to the effect that



when she had visited the police station to enquire about the status of her case, she saw the applicant there and recognised him as 'Rajveer'.

6. It was contested that the victim 'MD' was not in India on 11.10.2023, whereafter, it has been clarified in the updated Status Report that it was victim 'ZK' instead of victim 'MD' who had tendered the statement on 11.10.2023 and the supplementary chargesheet has been submitted to that effect.

7. The applicant was arrested on 11.10.2023 and is in custody since then.

8. On 15.01.2024, the victim 'ZK' in her supplementary statement under Section 161 of the CrPC, stated that she was taken to Panchsheel Vihar where she was introduced to the applicant and told that she will be staying in a house arranged by him. She also alleged that when she refused to work as a prostitute, the applicant along with accused Mohd. Arup and some goons gave her beatings. The applicant also threatened her with a gun. She alleged that the applicant used to collect money from customers. She stated that she knew 'MD' was also a victim of forced prostitution and trafficking and 'MD' had shown her the photo of the applicant on her phone.

9. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case and he played no role in the alleged offence.

10. He submits that the allegations levelled by the victim 'MD' are also limited to the allegations that the applicant used to beat her and threatened to send her to jail by posturing as a police officer. He submits that the said victim has not alleged that the applicant had any role in her trafficking.



11. He submits that even though the applicant was named way back in September, 2022 and the victim had allegedly also shown his photograph, yet the applicant was not arrested till a year later.

12. He submits that the arrest of the applicant was made under peculiar circumstances when he allegedly visited the police station at the same time as one of the victims. He submits that the crucial supplementary statement through which the applicant was recognised suffers from a glaring irregularity.

13. He submits that while the prosecution has now contested that the statement on 11.10.2023 was instead tendered by victim 'ZK', however, they had contested before the learned Trial Court that it was tendered by victim 'IZ'. He submits that the same shows that the said statement was fabricated and casts a doubt over the recognition and arrest of the applicant.

14. He further submits that the number attributed to the applicant by victim 'MD' was found to not be registered in his name.

15. He submits that the applicant has been charge sheeted in the supplementary charge sheet and he is suffering in custody since 11.10.2023.

16. The learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that the allegations involved are grave and heinous in nature.

17. He submits that the number attributed by the victim to the applicant was found to be registered in the name of one person, namely, Moinuddin. He submits that Moinuddin in his statement had stated that he knows the applicant since the year 2016 and the applicant had worked under him at a construction site. He



stated that he had two sim cards issued in his name during that period, out of which, the number mentioned by the victim had been given by him to the applicant.

18. He submits that out of the eleven people arrested in relation to the present case, one person has been discharged and the remaining ten people are still in custody.

19. I have heard the counsel and perused the record.

20. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind. The Hon'ble Apex Court in the case of **Ram Govind Upadhyay v. Sudarshan Singh : (2002) 3 SCC 598** had elucidated the principles for exercising discretion to grant bail. The relevant portion of the judgment is reproduced hereunder:

“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

(emphasis supplied)



21. It is the case of the prosecution that the applicant was named on 11.09.2022 by one of the seven Uzbekistani nationals who had been allegedly trafficked and forced into the work of prostitution. The victim 'MD' had alleged that she had met the applicant when she had been sent to a broker in Panchsheel Vihar and he had claimed to be a police official. She also alleged that he had threatened her with a pistol. She had also mentioned the number allegedly used by him. On 13.09.2022, when the statement of the said victim was recorded under Section 164 of the CrPC, she had also shown his photo on her phone.

22. As per the prosecution, on 11.10.2023, when one of the other victims had gone to the police station to enquire about the status of her case, she happened to see and recognise the applicant by sheer coincidence.

23. It is relevant to note that no reason is stated as to why the applicant was present at the police station at that time.

24. Initially, no investigation was done regarding the number mentioned by the victim either. Later, it was found that the same did not belong to the applicant and instead was registered in the name of one Moinuddin. It is stated that the statement of Moinuddin was obtained only a couple days back wherein he stated that the said number had been given by him to the applicant, who had worked under him at a construction site.

25. It is not denied that no steps were taken by the prosecution to arrest the applicant in relation to the present case for more than an year after he was named by one of the victims.

26. Admittedly, the name of the wrong victim was also recorded in the supplementary statement dated 11.10.2023. A supplementary chargesheet has been filed to clarify the same. It



is argued by the learned counsel for the applicant that the same was done only after it was pointed out that the victim 'MD' (to whom the statement had been attributed) was not in India at that time. It is also argued that it was argued before the Trial Court that the said statement was tendered by victim 'IZ' instead of victim 'ZK'.

27. While the prosecution has tried to plug the gaps in its case, it cannot be denied that the applicant has been able to raise some contentious grounds, including, the name of the wrong victim being recorded on 11.10.2023 as well as the lack of the initiative of the prosecution to take steps to arrest the applicant for more than a year.

28. Even though serious allegations have been levelled in the present case, however, doubt has been created in the prosecution's version.

29. No doubt that the accused should not be allowed to go scot free for fault of the investigating agency. Mere negligence in the investigation cannot be allowed to cause miscarriage of justice and adversely impact the case of the prosecution. However, the veracity of the allegations and defences along with the cogency of the entire material on record is to be seen during the course of the trial. At this stage, the limited question is of grant of bail and the benefit of frivolity of prosecution cannot be denied to the applicant.

30. The applicant has been in custody since 11.10.2023. Supplementary chargesheet against the applicant has already been filed in the present case.

31. In view of the aforesaid discussion, in the opinion of this Court, the applicant has made out a *prima facie* case for grant of



bail.

32. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

33. Considering the aforesaid discussion and without further on the merits of the case, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, 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 informing the concerned SHO;
- c. He shall under no circumstance leave India without the permission of the learned Trial Court;
- d. He shall appear before the learned Trial Court as and when directed;
- e. 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;
- f. He shall, upon his release, give his mobile number to the concerned IO/SO and shall keep his mobile phone switched on at all times.

34. 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.

35. 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.

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

AMIT MAHAJAN, J

SEPTEMBER 11, 2024