



2024:DHC:4344



IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 28th May, 2024

+ **BAIL APPLN. 3247/2023**

MR. SUMIT VERMA @ SUMIT SONI

.....Applicant

versus

**THE STATE (GOVT. OF NCT
OF DELHI)**

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. M. Hasibuddin & Mr. Ratneshwar
Kumar, Advs.

For the Respondent : Mr. Mukesh Kumar, APP for the State for
the State with Mr. Himanshu Jain, Adv.
SI Dharmveer, PS-Chhawla
Mr. Amandeep Kadyan, Mr. Sparsh
Chaudhary, Mr. Vikas Poonia & Mr. Vishal
Tomar, Advs. for complainant

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 (CrPC), seeking pre-arrest bail in FIR No. 314/2023 dated 01.08.2023, registered at Police Station Chhawala, for offences under Sections 376/506 of the Indian Penal

Signature Not Verified

Digitally Signed
By: HARMINDER KAUR
Signing Date: 31.05.2024
11:23:08



2024:DHC:4344



Code, 1860 (IPC). The chargesheet has been filed under Sections 376/506/34 of the IPC.

2. The FIR was registered on a complaint given by the prosecutrix alleging that she was raped by the present applicant.

3. As per the FIR, the prosecutrix alleged that, the applicant happens to be a distant relative, and she came in contact with the applicant in the month of August – October 2018, through Facebook.

4. It is alleged that the applicant had approached the prosecutrix in the month of August – October 2018, through Facebook messenger, when the prosecutrix was vulnerable and lonely, since her husband was suffering from various health issues. The applicant and prosecutrix became friends and continued to talk on text / chat. It is alleged that the prosecutrix also shared her mobile number since the applicant also happens to be her relative, and thereafter both also started conversing on WhatsApp as well.

5. It is alleged that the applicant, in the month of January-February 2019, started to pressurize the prosecutrix to leave her family and elope with the applicant, to which she denied and thereafter the applicant forced the prosecutrix to meet. It is alleged that the applicant also started to stalk the prosecutrix near her house and at her husband's shop. The prosecutrix did not inform about the same to anyone under fear.

Signature Not Verified

Digitally Signed
By: HARMINDER KAUR
Signing Date: 31.05.2024
11:23:08



2024: DHC: 4344



6. It is alleged that the applicant got married in December 2019, and stopped stalking to the prosecutrix for two-three months. The applicant again approached the prosecutrix stating that he is not happy in his marriage. It is alleged that both the applicant and the prosecutrix met each other few times and also clicked few pictures together.

7. It is alleged that the applicant in January 2020, started blackmailing the prosecutrix and demanded ₹25,000/- and extended threats that he would show their pictures to her husband and her family members, the prosecutrix being under the threat and fear had given the said amount to the applicant.

8. The applicant again in December 2022, demanded ₹50,000/- on the same pretext that he would show her pictures to her husband, asked the prosecutrix to come alone, and bring the money to 'All in One Hotel' located in Dwarka Modh, New Dwarka, Delhi. The prosecutrix went to the said hotel with ₹40,000/- cash and pleaded the applicant that she could only arrange the said amount and did not have more money, to which the applicant became aggressive and gave beatings to the prosecutrix.

9. It is alleged that the prosecutrix was also forced to consume some liquid, after which she became unconscious and when she regained her conscious, she found herself bleeding since the applicant had raped her. Afterwards, when the prosecutrix came in her proper senses, she started crying, the applicant then warned her that if she tells anyone about the alleged incident, he would kill her daughter and



2024: DHC: 4344



also told her that he had made a video of the prosecutrix which he would make viral on the internet.

10. As per the allegations, the applicant again called the prosecutrix on 10.02.2023 to 'All in one Hotel Dwarka', by threatening her to make her videos viral, and again committed rape upon her. The prosecutrix alleged that the applicant repeatedly asking her to come to different places and also demanded ₹2,00,000/-, due to which she was under depression and only got courage to file the complaint after gaining confidence from her husband.

11. The learned Counsel for the applicant submitted that applicant is falsely implicated in the present case. He submitted that the applicant and the prosecutrix had known each other since August – October 2018, had developed friendly relations with each other and were in constant talking terms.

12. He submitted that both started talking to each other on various social media platforms, and it was the prosecutrix who used to share medical prescriptions of her husband showing his pathetic condition in order to obtain sympathy and monetary benefits from the applicant.

13. He submitted that the applicant and the prosecutrix along with her daughter also celebrated birthday's etc. He submitted that it is admitted that the applicant and the prosecutrix developed friendly relation with each other in the year 2018, thereafter the applicant got married and got settled in his life. He submitted that the applicant



2024:DHC:4344



continued to meet the prosecutrix as a good gesture, but the prosecutrix only got annoyed when the applicant started to avoid having any further relationship with her. He submitted that the present complaint was only given in order to harass the applicant when he started keeping himself distant from the prosecutrix.

14. He submitted that the allegations in the present FIR are an afterthought and it was only when the prosecutrix got jealous of fact that the applicant was moving forward in his matrimonial life, the present FIR was lodged.

15. He submitted that that the applicant has photographs of the prosecutrix which shows their happy moments with each other and also one photograph where the prosecutrix has written / tattooed the name of the applicant below her neck as well as on her hand.

16. He submitted that the applicant is a man of 32 years of age, sole bread earner of the family of old aged parents and a wife, having clean antecedents. He submitted that ever since, the applicant was granted interim protection by this Court by order dated 26.09.2023, he has always joined and cooperated with the investigation.

17. He submitted that there is nothing left to be recovered from his instance, and his mobile phone is already under the custody of the police, and during the pendency of the present application the chargesheet has also been filed.



2024:DHC:4344



18. The learned Additional Public Prosecutor for the State along with learned Counsel for the complainant had opposed the grant of present bail application. They submitted that the prosecutrix after the registration of the FIR reiterated her version, at the time of recording of MLC and subsequently also at time of recording of the statement under Section 164 of Cr.P.C and has supported the case of the prosecution.

19. They submitted that after the registration of the FIR during the course of investigation CCTV footage of 'All in one Hotel' was recovered and it was found that the applicant and the prosecutrix have visited the said place four times.

20. They submitted that the allegations levelled against the applicant are serious in nature and there is an apprehension that if the applicant is enlarged on bail he might try to influence the witnesses or might tamper with the evidence which is yet to be recovered.

21. It was submitted that during the bail hearing before the learned Trial Court one lady namely Meenu, who shared certain material being, the copy of the present FIR, the order dated 12.09.2023 passed by the learned Trial Court along with some photographs of the victim with the applicant and her daughter, on her WhatsApp status. Thereafter a complaint was given by the prosecutrix which was attached with the main case file and Sections 288A/500/34 of the IPC were added. The alleged lady namely, Meenu along with one Ashish –



2024: DHC: 4344



who is alleged to have provided the copy of the FIR and court order to Meenu, are also charge sheeted in the present Case.

Analysis

22. It is true that the statement of the prosecutrix is to be given prime consideration and the conviction can be based merely on the statement even if not corroborated with other evidence as long as the same inspires confidence. However, to hold that the statement of the prosecutrix is to be accepted even if the same appears improbable and belies logic would be doing violence to the criminal justice system.

23. In the present case, at this stage, the case of the prosecution is solely based on the statement of the prosecutrix. It is admitted that the applicant and the prosecutrix were known to each other for quite sometime. The allegations made by the prosecutrix are that the applicant had established forceful sexual relationship with her. The applicant allegedly started demanding money in January 2020 and thereafter the alleged incident is stated to have taken place in December 2022 when he asked for ₹50,000/- and allegedly committed rape. The FIR came to be registered only on 01.08.2023, that is almost after a delay of more than three years and eight months from the date of first incident when the applicant demanded money, and after a delay of more than eight months from the first alleged incident of rape.



2024:DHC:4344



24. It is apparent that the prosecutrix is a literate person and even during the course of alleged incidents, she was in regular touch with the applicant. There is considerable delay in lodging the complaint.

25. The Hon'ble Apex Court, in the case of **Meharaj Singh (L/Nk.) v. State of U.P: (1994) 5 SCC 188**, held as under:

“12. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story.”

26. The prosecutrix in her statement also stated that the applicant had also shared the photographs of them with each other (prosecutrix and applicant) alongwith the daughter of the prosecutrix, to her husband and her other family members, but the same were never shown to the Investigating Officer nor the alleged mobile phone on which they were received was submitted with the Investigating Officer. The prosecutrix in her statement under Section 164 of Cr.P.C stated that the present complaint was only given after she had informed her husband about the alleged incident and she gave the complaint in his presence.

27. It is pertinent to note that as per the version of the prosecutrix she had known the applicant since the year 2018 and became friends. They also met a few times and clicked pictures with each



2024: DHC: 4344



other; in January – February 2019 the applicant forced her to leave her husband and elope with him; thereafter in December 2019 the applicant got married and both did not have any contact for two to three months, and whenever he called, she refused to speak to him on the ground that the applicant was married; whereas in the FIR she also stated that the applicant in the month of January 2020 onwards started threatening her for money and thereafter in December 2022 again demanded money and committed rape on her; lastly on 10.02.2023 the applicant is alleged to have called the prosecutrix to hotel and committed rape.

28. It is pertinent to note there is huge gap of months between every incident as per the version of the prosecutrix. As per the chargesheet it was found that the applicant and prosecutrix both have visited “All in One” Hotel, Dwarka, for a total of four times and also as per the statement of prosecutrix both also went to “Khatu Shyam” temple.

29. From the material on record, it is an admitted case that the prosecutrix had known the applicant for many years and was talking to him of her own will. It is alleged that after the husband of the prosecutrix came to know that she had been talking to the applicant, the complaint was given in the month of the July, 2023. Even though, it is alleged that there was a fear that the applicant would viral the photographs and videos of the prosecutrix due to which she could not make a complainant an earlier stage, the prosecution has not been able



2024:DHC:4344



to find any alleged photographs and videos from the mobile phone seized from the applicant or from any of the alleged recipients.

30. From the facts as narrated above, the statement of the prosecutrix at this stage does not inspire confidence.

31. It is not in doubt that an order for pre-arrest bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that a great amount of humiliation and disgrace is attached with arrest. The purpose of custodial interrogation is to aid the investigation and is not punitive

32. The applicant was granted interim protection by this Court on 26.09.2023 and it is not the prosecution's case that the applicant, after being granted interim protection, has misused the liberty of interim protection or that the applicant has not cooperated with the investigation thereon. The investigation in the present case is complete and the chargesheet has already been filed. It is also not denied that the trial would take a considerable amount of time.

33. It is not alleged that the applicant is a flight risk or that he will tamper with evidence if released on bail. Any apprehension, even otherwise, can be taken care of by putting appropriate conditions. It is trite law that where the court is of the considered view that the accused has joined the investigation and is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided since, a great ignominy,



2024: DHC: 4344



humiliation and disgrace is attached to arrest. [Ref: ***Bhadresh Bipinbhai Sheth v. State of Gujarat* : (2016) 1 SCC 152**].

34. Considering the totality of facts and circumstances, and without further commenting on the merits of the case, the present bail application is allowed, and the applicant is admitted on bail on furnishing a bail bond for a sum of ₹25,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court on the following terms and conditions:

- a. The applicant shall provide his mobile number to the concerned IO / SHO and keep it switched on at all times;
- b. The applicant shall provide his address to the concerned IO / SHO;
- c. The applicant shall not leave the Country with the prior permission from the learned Trial Court;
- d. The applicant shall not in any manner contact the complainant/victim or any of the witnesses;
- e. The applicant shall not reside or visit the locality where the victim resides.
- f. The applicant shall appear before the learned Trial Court on every date of hearing.



2024:DHC:4344



35. 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 way of seeking cancellation of bail.

36. 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 not be taken as an expression of opinion on the merits of the case.

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

AMIT MAHAJAN, J

May 28, 2024

Signature Not Verified

Digitally Signed
By: HARMINDER KAUR
Signing Date: 31.05.2024
11:23:08