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

+ **BAIL APPLN. 2380/2024**

NASEEM @ KALE

.....Petitioner

Through: Mr. Nasimuddin, Advocate.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for the State
with Mr. Darpan Balyan, Mr. Gaurav
Wadhwa, Mr. Sarthak Mann, Mr.
Rishab Sharma, Mr. Kartikey Nayyar,
Mr. Harkeerat, Ms. Pooja Gupta,
Advocates.
SI Vineet, PS Madhu Vihar
Mr. Rakshpal Singh, Advocate for
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CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

06.09.2024

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1. The Petitioner has approached this Court for grant of regular bail in FIR No. 212/2017 dated 05.07.2017 registered at Police Station Madhu Vihar for an offence under Section 376 IPC.
2. After investigation, chargesheet has been filed for offences under Section 376D, 365, 506 IPC.
3. The FIR has been registered on the complaint of the Prosecutrix. A perusal of the material on record indicates that on 04.07.2017 at about 7:00 PM, she had gone for work and way back at about 8-8:30 PM, three boys were sitting in a black colour Echo car pulled her inside and committed rape



on her. The three persons who have been identified as Naseem, Shahid and Wasim. Later on, in her statement under Section 161 CrPC, one more accused, namely, Mashroof @ Goonga, has been added.

4. The Petitioner was arrested on the very same date when the FIR was registered, i.e., 05.07.2017 and he is in custody for the last 7 years. All the co-accused barring the Petitioner have been granted bail. It is stated that Wasim @ Monu, whose role is similar to the Petitioner herein, has been granted bail by this Court *vide* Order dated 09.05.2024 in BAIL APPLN. 3191/2020.

5. It is stated that there are 23 prosecution witnesses and 20 of them have been examined and only three witnesses who remain to be examined who are: one doctor and two Investigating Officers.

6. Learned Counsel for the Petitioner states that since the role of the Petitioner is similar to the co-accused Wasim who has been granted bail by this Court *vide* Order dated 09.05.2024 and keeping in mind the period of custody, which is almost 7 years, the Petitioner be granted bail.

7. *Per contra*, learned APP for the State and the learned Counsel for the Prosecutrix, vehemently opposes the bail application contending that the offence is heinous in nature wherein the Petitioner can be sentenced to life and the minimum sentence is 20 years.

8. Learned Counsel for the Prosecutrix further contends that even applying the law laid down by the Apex Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India & Ors., (1994) 6 SCC 731, that the accused would be entitled to bail if the accused has undergone more than 50% would not apply to this case and the Petitioner must undergo at least 10 years of incarceration. He also states that



the Prosecutrix has sustained her case and in all likelihood, the Petitioner would be convicted. He states that there is a possibility of the Petitioner fleeing from justice if released on bail. He further states that if the Petitioner is released on bail, there is a threat to the life of the Prosecutrix.

9. Heard learned Counsel for the parties and perused the material on record.

10. It is stated that as noted by the Coordinate Bench, the accused are likely to lead defence evidence which can prolong the trial.

11. Admittedly, from the date of arrest, i.e., 05.07.2017, the Petitioner has already been in incarceration for almost 7 years barring 22 days when he was granted interim bail. This Court vide Order dated 09.05.2024 in BAIL APPLN. 3191/2020 has already been granted bail to co-accused Wasim whose role is more or less identical to the Petitioner, the said order has not been challenged either by the Prosecutrix or by the State.

12. Undoubtedly, the Petitioner is accused of a very heinous crime which is of gang rape but that alone cannot be only the reason that the Petitioner should be in kept custody more so because the Petitioner is already in custody since 7 years and almost all the witnesses have been examined except three witnesses, i.e., one doctor and two Investigating Officers.

13. This Court is of the opinion that stringent conditions can be imposed on the Petitioner to ensure that the Petitioner does not flee from justice or does not take any step to threaten the Prosecutrix. Resultantly, the Petitioner be released on bail, subject to the following conditions:-

- i. The Petitioner shall furnish a personal bonds in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the Trial Court.



- ii. The Petitioner shall reside at the address which has been provided by the Petitioner in the memo of parties, i.e., H.No.246/64, Gali No.5, School Block, Mandawali, Delhi-92, and shall continue to reside at the same address.
 - iii. The Petitioner shall appear before the concerned SHO/Investigating Officer every Monday, Wednesday and Friday at 10:00 AM and shall be released by 11:00 AM after completing all the formalities.
 - iv. The Petitioner shall not leave the city of Delhi without the permission of the Trial Court.
 - v. The Petitioner shall provide all the mobile numbers to the Investigating Officer and keep them operational at all times.
 - vi. The Petitioner is directed not to contact the Prosecutrix or her family members directly or indirectly.
 - vii. Any complaint by the Prosecutrix or the family members that the Petitioner has attempted to threaten the Prosecutrix or has attempted to contact the family members would result in cancellation of bail.
14. With these observations, the bail application is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 6, 2024

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