



2024:DHC:7184



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

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*Reserved on: 30<sup>th</sup> August, 2024*

*Pronounced on: 18<sup>th</sup> September, 2024*

+ **BAIL APPLN. 2498/2024**

SHANU KHAN

.....Petitioner

Through: Mr. Bharat Bhushan Jain and Mr.  
Keshav Bansal, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for the State  
with SHO Ajit Kumar, PS Burari.

**CORAM:**  
**HON'BLE MR. JUSTICE ANISH DAYAL**

**JUDGMENT**

**ANISH DAYAL, J.**

1. This application is filed by petitioner under Section 439 of Criminal Code of Procedure, 1973 ('CrPC') seeking regular bail in FIR No. 564/2023 PS Burari under Section 376 OF Indian Penal Code, 1860 ('IPC'). As per the Nominal Roll dated 6<sup>th</sup> August 2024, the petitioner aged 23 years, has been in custody since 27<sup>th</sup> May 2023, has no previous involvements and overall jail conduct has been satisfactory.

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2. As per the case of the prosecution, on 26<sup>th</sup> May 2023, a PCR call was received in PS Burari stating that, “*Sanu name ka ladka malik k nokar ka bhai tha jisne mere sath rape kiya hain 23.05.2023 ko or mara pita bhi hai usne or bol raha hai ki 5 lakh rs lele or faisla kar lo need help police lady abhi apne ghar hai*”. The complainant/victim was contacted on the mobile number mentioned in the PCR call, but was not reachable. She was traced after efforts of 1-1.5 hours. The counselor from Delhi Commission for Women (‘**DCW**’) was called upon and complainant’s counseling was conducted. Complainant’s statement was recorded, where she stated that she worked at Dreams Heaven Banquet Hall where the accused/petitioner also worked and he had committed rape upon her on the night of 23<sup>rd</sup> May 2023 at around 10:00-11:00 P.M., when there was nobody else present.

3. As per the status report dated 19<sup>th</sup> July 2024, according to the complainant/victim, she was habitual of consuming alcohol and had done so on the night of 23<sup>rd</sup> May 2023, when the accused/petitioner took advantage of the victim’s condition and committed rape upon her. Medical examination of the victim was conducted on 27<sup>th</sup> May 2023, which reported that there was a history of alcohol intoxication, as stated by the victim herself. She further stated that contraception had been used by the accused and samples of clothes had been given. Statement of the victim was recorded under Section 164 CrPC which stated that the accused had committed rape upon her but she was ready to take back her complaint, if he would accept his mistake, as he was very young and his family was requesting her to take back the complaint.



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4. The accused was arrested on 27<sup>th</sup> May 2023 and sent to judicial custody. His bail applications were dismissed by the Trial Court. A supplementary chargesheet regarding the FSL result has been placed on record, as per which the DNA profile generated from source of exhibit '1' (gauze cloth piece of accused) and '3' (gauze cloth piece of victim) is matching in the mixed alleles generated from the source of '2b' (*salwar* of victim). However, another male DNA profile was also generated from the source of exhibit '2b' (*salwar* of victim). The testimony of the victim has been completed and all material witnesses have been examined.

5. Despite notice to the prosecutrix, she did not appear before the Trial Court, even when efforts were made to ensure that she appeared and placed her submissions. It is noted by the Trial Court that the IO contacted the victim telephonically but she denied to give her current address and stated that she had met with an accident and needed 20-25 days to recover. Further, it was stated that she did not have an android mobile phone and, therefore, could not join through VC. The mother of the victim was also served, however, she also failed to appear on behalf of the prosecutrix.

6. Counsel for petitioner, in support of the bail petition, points out to the statement of the victim recorded under Section 164 CrPC, where she stated that she was raped by the accused and that if he accepts his mistake, she was willing to withdraw her complaint as he was a very young boy and the family of the boy was requesting her to take back the complaint. It was pointed out that the complainant had consistently been blackmailing the accused and had in fact stated in her cross-examination as PW-1, when she was confronted

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with a conversation recorded on the phone with the brother of the accused, that she was making a demand of Rs.50,000/- to settle this case. She further stated that on the day of the incident, she had physical relations with another friend. The physical engagement with the friend took place during the lunch hours but she had not told the police about this during her initial statement. She further stated in her cross-examination that she used to consume liquor at home, as well as, in the Banquet Hall where she worked. She admitted that she purchased half a bottle of liquor for Rs.100/- and at the time of the incident, she had consumed alcohol. The shop from which she purchased the liquor was 15-20 minutes walking distance from the Banquet Hall and on the date of the incident, at about 8:30 P.M., she had bought liquor. She stated that she used to stay back late in the Banquet Hall at the instance of the owner, otherwise, her duty hours were from 9:00 A.M. to 7:00 P.M. On the day of the incident, the owner had gone to the village. She stated that the accused at 7:00 PM, had asked her to stay on in the Banquet Hall for cleaning up and that he made forcible physical relations with her. She stated that the accused had also manhandled her, due to which she suffered injuries as well.

7. Counsel for petitioner pointed out, that in the medical examination of the victim, no injuries had been noted and, therefore, her testimony itself was unreliable. Besides, it was submitted that the date of the incident was 23<sup>rd</sup> May 2023, while the PCR call was made on 26<sup>th</sup> May 2023 and the FIR was registered on 27<sup>th</sup> May 2023. It was further contended that the accused had previously complained about the complainant to the owner, saying that she used to consume alcohol and, therefore, she has lodged this complaint to

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falsely implicate the accused. The owner's testimony as PW-3 was adverted to, where during the cross-examination the owner of the Banquet Hall stated, that the accused had told him that the complainant used to drink liquor at the Banquet Hall and had sent some photographs to the owner as well. Further, the owner had told the accused to communicate to the prosecutrix, to not come to work anymore and that he would make the balance payments to her, when he returns from Punjab. The owner in his statement '*neither admitted nor denied*' the suggestion that the prosecutrix had falsely implicated the accused. He also stated that the accused had never misbehaved with any staff of the Banquet Hall.

8. As per the testimony of the prosecutrix as PW-1, she stated that on 23<sup>rd</sup> May 2023 at 11:00 P.M. the accused had made forcible relations with her that night, in the Banquet Hall. She went back home after that and the next morning called the owner of the Banquet Hall, who did not pick up her call. Thereafter, she called the brother of the accused and told him about the incident to which he adverted, that he would inquire the matter from the owner and get back to her. Subsequently, he did not pick her call and it was only on 26<sup>th</sup> May 2023, in the evening, that she called the police. She was taken for a medical examination, where the concerned doctor seized her clothes, which were worn at the time of the incident.

9. As regards the issue of the age of the petitioner, it was noted that his birth date had been verified, as being 1<sup>st</sup> January 2007. The statement of the Gram Panchayat head of Tahsil Laharpur of District Sitapur dated 30<sup>th</sup> June 2023, has also noted and confirmed that on the day of the incident, he was 16

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years of age, and his date of birth is 1<sup>st</sup> January 2007. On 4<sup>th</sup> July 2023, the MM allowed the application for ossification test of the petitioner. As per the ossification test, he was 22-25 years of age. However, the petitioner was aged about 30 years on the date of the incident and had been married twice earlier and as per the FIR she was staying with her husband and a 6-year-old daughter.

10. On 19<sup>th</sup> July 2024, when notice was issued on the bail application, intimation through the IO was also sent to the prosecutrix. On the next date of 09<sup>th</sup> August 2024, though prosecutrix had been intimated, she did not appear. Yet another opportunity was given by sending intimation through the IO again for the next date. On the next date of 30<sup>th</sup> August 2024, since she had still not appeared, the Court considered it fit to proceed ahead with the matter, heard the counsel for the petitioner and the APP for the State finally and reserved the judgment.

11. Considering these facts and circumstances, the context in which complaint was made relating to forcible physical relations, is clouded due to a number of factors. There is some merit in contention by the petitioner that the testimony of the prosecutrix was unreliable *inter alia* on the ground that she complained about the incident 3 days later, admitted that she drank alcohol on the date of the incident and was a habitual drinker, also that she submitted her clothes from the date of the incident 3 days later when the medical examination was conducted. Further that, she herself admitted she was open to withdrawing the complaint since the petitioner was a young boy. Moreover, there is an allegation that the prosecutrix had contacted the brother of the



accused and asked for settling the matter and made a demand for Rs.50,000/-, which the complainant also admitted in her cross-examination. Moreover, the fact that the petitioner was 30 years of age at the time of the incident whereas, the victim has been found to be of 17 years of age as per the birth certificate, also serves as one of the factors to be considered by this Court, as per the decision in *Dharmander Singh v. State (NCT of Delhi)* 2020 SCC OnLine Del 1267. As per the FSL report, two sets of semen stains were found on the *salwar* of the prosecutrix and there were mixed alleles and the prosecutrix admitted to physical relations with another man on the same day. The allegation by the petitioner that he had been falsely implicated since he had complained about the victim's habit of drinking alcohol during work, was also partly corroborated by the testimony of PW-3 by the Banquet Hall owner.

12. In these facts and circumstances, considering that the petitioner, complainant and the owner of the Banquet Hall being only material witnesses, their testimonies having been recorded, and there is no previous involvement of the petitioner, and he has already been in custody for about 1 year 4 months, this Court considers it fit to grant bail to the petitioner.

13. In light of the above, and that the trial in the matter is likely to take some time, it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the



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like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

14. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.



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15. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
16. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.
17. Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)**  
**JUDGE**

**SEPTEMBER 18, 2024/MK/na**

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