



2024:DHC:6784



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 2nd September, 2024***+ **BAIL APPLN. 2562/2024****ANIL**

.....Petitioner

Through: Ms. Gunjan Sinha Jain, Advocate
(DHCLSC), Mr. Akshay Kumar &
Mr. Devashish, Advocates.

versus

**THE STATE (GOVT OF NCT) DELHI THROUGH SHO, P.S.
PASCHIM VIHAR WEST & ANR.**

.....Respondents

Through: Mr. Hemant Mehla, APP for State.
Complainant in person.
S.I. Anup Rana, PS Paschim Vihar
West, Delhi.

**CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

J U D G M E N T (oral)

1. Bail Application under Section 439 read with Section 482 Cr.P.C. has been filed on behalf of the petitioner for grant of Regular Bail in case FIR No.705/2020 registered at Police Station Paschim Vihar under Sections 376D/394/397/506/34 IPC.
2. It is submitted that the *first* Bail Application was rejected by the learned ASJ on 11.05.2021. Thereafter, the *second* Application was rejected on 16.05.2024.
3. The petitioner has claimed that he is a peace loving law abiding citizen, who has been languishing in Central Jail since 18.08.2020. It is

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claimed that the statement of the Prosecutrix has been recorded as PW1 but it suffers from improvements. There are also contradictions in regard to identity of the petitioner as she in her testimony has stated that she saw the applicant 3-4 days later in the Police Station. There is also discrepancy about the clothes which she was wearing at the time of alleged offence. While at one point she claimed that she had not washed her clothes, at another place she has asserted that she had washed her clothes. Even the *salwar* which she was allegedly wearing had also gone missing. Furthermore, at one place she has claimed that the applicant had committed the offence on gun point, however, at other place she claimed that it was at knife point. The material contradiction in her testimony creates a doubt about the entire prosecution case.

4. He has sought bail on the grounds that he has been implicated falsely be planting evidence. The forensic Report does not support the allegations of rape. Moreover, she as per the MLC had not suffered any injury. There was no semen found from the clothes of the applicant as well as from the clothes of the prosecutrix. Her testimony suffers from marked improvements and cannot be considered reliable. Only seven witnesses out of twenty five witnesses have been recorded till date and the trial would take considerable time for conclusion. No purpose would be served by keeping the petitioner in custody.

5. The applicant has been languishing in jail since long and the material witnesses have already been recorded. He may be released on bail. It is claimed that he is not a flight risk and there is no question of his tampering with the evidence or threatening the prosecution witnesses.

6. In support of his contentions, the applicant has placed reliance on case



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titled Union of India vs. K.A. Najeeb (2021) 3 SCC 713; Rai Sandeep @ Deepu vs. State (2012) 8 SCC 21; and State of Haryana vs. Sahmsher Singh 2001 (3) RCR (Criminal) 345.

7. The **State has filed a Status Report**, wherein the bail Application is opposed on the ground that the offence involved is of serious nature. The prosecutrix and other witnesses have fully corroborated the case of the prosecution and hence, the applicant is not entitled to bail.

8. **Submissions heard.**

9. The FIR has been registered on the complaint of Ms. M., who has been recorded as PW1. She has essentially corroborated her complaint in her testimony. Though, the learned Counsel for the applicant has tried to point out contradictions in her testimony, but at this stage of grant of bail, there can be no microscopic examination of the testimony of the prosecutrix.

10. The Charges against the applicant are of gang rape, but it cannot be over looked that he is in Judicial Custody since 18.08.2020 and since then only seven prosecution witnesses out of twenty five have been recorded. The trial is likely to take long to get concluded.

11. In the cases of Mohd. Muslim v. State (NCT of Delhi), SLP (Crl.) No. 915/2023, Rabi Prakash v. The State of Odisha, SLP (Crl.) No. 4169/2023, and recently in Kalvakuntla Kavitha vs. Directorate of Enforcement, 2024 SCC OnLine SC 2269, it has been held that where there is delay in conclusion of trial, the petitioner is entitled to his right to liberty guaranteed by Article 21 of Constitution of India and must be granted bail during the trial.

12. The applicant in the present case is in Judicial Custody since 18.08.2020 and the trial is likely to take long. The prosecutrix and the



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material witnesses have already been recorded. In the circumstances, the applicant Anil is on the following conditions:-

- a) The petitioner/accused shall furnish a personal bond of Rs.25,000/- and one surety of the like amount, subject to the satisfaction of the learned Trial Court.
 - b) The petitioner/accused shall appear before the Court as and when the matter is taken up for hearing.
 - c) The petitioner/accused shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number, without prior intimate to the Investigating Officer concerned.
 - d) The petitioner/accused shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
 - e) The petitioner/accused shall not leave the country, without permission of this Court.
 - f) The petitioner/accused shall not change his residential address and in case of change of the residential address, the same shall be intimated to this Court, by way of affidavit.
13. The copy of this Order be communicated to the concerned Jail Superintendent as well as to the learned Trial Court.
14. The application is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 2, 2024

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