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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3428/2022**

LADDOO

..... Applicant

Through: Mr. Hemant Chaudhary,
Mr. Akhil Kumar, Mr.
Nikhil Tuteja & Mr. Paras
Dua, Advs.

versus

STATE & ANR.

..... Respondents

Through: Mr. Utkarsh, APP for the
State with SI Priyanka, PS
Hauz Qazi.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
13.02.2024

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in FIR No. 175/2020 dated 19.09.2020 for offence under Sections 376(D)/120B/370/506/34 of the IPC.

2. The brief facts relevant for the adjudication of the present application are as under:

2.1 The FIR in the present case was registered at the behest of the prosecutrix/complainant alleging that her husband/accused namely, Nadimmudin used to beat her, due to which she went to her mother's house along with her children and came back during Ramzan.

2.2 It is alleged that after 5-6 days the complainant along with her husband and children attended a party at the house of her

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husband's employer namely, Farhan. It is alleged that during the party accused/Farhan offered Limca to the complainant, and after consuming the same, she felt giddiness and could only remember waking up at Farhan's house with her children sleeping beside her.

2.3 The complainant alleged that she over heard the conversation between her husband and Farhan that, Farhan had paid ₹15,000/- to her husband for spending a night with her and when the complainant threatened to report the same to the police, both her husband and Farhan showed her a video, in which she was lying unconscious and four different persons sexually assaulted her. They further threatened to viral the said video.

2.4 It is alleged that after a week, her husband and Farhan took her to a building situated at Tereya Beram Khan Chatta Lal Miyaan near Fool Mandi School. Farhan stayed downstairs; however, her husband took her to a room at 5th floor and left her with some unknown persons who forcibly made physical relations with her.

2.5 On 16.09.2020, the complainant's husband again took her to the 1st floor of a building near Masjid inside Teraya where 3 unknown persons made physical relations with her.

2.6 It is alleged that on 17.09.2020, the complainant went back to her mother's house and narrated the alleged incidents and her brother reported the matter to the police. On the basis of the statement the present FIR was registered.

2.7 On 19.09.2020 the complainant was medically examined vide MLC No. 3267.

2.8 Subsequently, both Nadimuddin and Farhan were arrested.

2.9 During investigation, it was found that the house where the alleged incident took place on 16.09.2020 belonged to one person

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namely, Md. Sabir. The complainant identified him to be one of the accused persons pursuant to which he was arrested in the present case.

2.10 On the disclosure statement of the accused Sabir, co-accused Safiq and the present applicant were arrested on 20.09.2020. They were alleged to be the persons who committed rape upon the prosecutrix.

2.11 The statement of the complainant was recorded under Section 164 of the CrPC before the learned MM on 22.09.2020.

2.12 The chargesheet in the present case was filed under Sections 376(D)/120B/370/506/34 of the IPC and Sections 4/5 of the Immoral Traffic (Prevention) Act, 1956.

3. The learned counsel for applicant submits that there is nothing on record against the applicant in the complaint made by the prosecutrix or her statement under Section 164 of the CrPC as the applicant is not named therein. He submits that the prosecutrix has failed to identify the applicant in her examination in chief recorded on 30.05.2022 and has turned hostile.

4. He submits that co-accused namely, Md Sabir and Shafiq have already been granted bail by the learned Trial Court by orders dated 16.01.2024 and 18.01.2024 respectively.

5. Learned counsel for the applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution. It is further stated that the prosecutrix has denied any recovery of bedsheet in her presence from the alleged place of incident and the same has been recorded by the learned Trial Court in the orders granting bail to the co-accused.



6. The learned counsel submitted that the chargesheet in the present case has been filed, and charges have been framed hence the custody of the applicant is not required.

7. The learned counsel submitted that the applicant has been incarcerated for almost four years, and that he has clean antecedents.

8. *Per Contra*, the learned Additional Public Prosecutor appearing on behalf of the State vehemently opposed the present application on the ground that there are grave and serious allegations against the applicant, and the investigation clearly reveals that the applicant in furtherance of the common intention and in connivance with the husband of the prosecutrix and other accused persons committed gang rape upon the prosecutrix.

9. He further submits that the applicant has been arrested at the instance of the prosecutrix and the FSL result shows that DNA of the applicant was found from the bedsheet recovered from the co-accused Sabir's house.

ANALYSIS

10. The prosecutrix has clearly given a no objection to the bail granted to the co-accused Sabir before the learned Trial Court and clearly stated that the co-accused Sabir did not commit any sexual intercourse with her. It is not denied that the present applicant was arrested on the disclosure statement of co-accused Sabir.

11. No doubt, at this stage, the Court is not required to meticulously examine the testimony of the witnesses. However, this would not imply that the court is entirely precluded from having a bird's eye view of the witnesses' testimony.

12. Certainly, it could be contended that, at this stage, the court is not to thoroughly scrutinize the evidence, such as identifying
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consistent or inconsistent elements, as such deliberation is reserved for the learned Trial Court. Nevertheless, in the instances where the prosecution's case appears to be faltering, warranting grant of bail, this court may undertake a limited *prima facie* view of the evidence.

13. The prosecutrix has been examined. She had categorically stated that she does not identify the applicant. She had further stated that no incident as alleged happened on 16.09.2020. She further stated that she did not see the co-accused Sabir, and that the co-accused Sabir has not committed any crime. She further stated that the applicant also did not commit any crime.

14. The prosecution relies upon the statement given by the prosecutrix on an earlier occasion. It is significant to note that even on an earlier stage, the prosecutrix has identified the co-accused Sabir to be one of the three persons who established physical relations with her on 16.09.2020. The applicant is alleged to be one of the persons who established physical relations on 16.09.2020. However, even on an earlier stage, the victim had stated that she had not seen the faces of the applicant or the other co-accused persons due to darkness and the applicant's name was disclosed by the co-accused Sabir. The co-accused Sabir has already been granted bail by the learned Trial Court noting that the prosecutrix has denied that the co-accused Sabir committed the alleged rape. The role of the present applicant, at this stage, cannot be said to be graver than the co-accused Sabir.

15. In view of the above, 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 / Duty MM / Link MM on the following conditions:

- a. The applicant 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. The applicant under no circumstances leave the boundaries of the National Capital Region of Delhi without informing the concerned Investigating Officer;
 - c. The applicant shall appear before the learned Trial Court as and when directed;
 - d. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
16. 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.
17. 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.
18. The bail application is allowed in the aforementioned terms

AMIT MAHAJAN, J

FEBRUARY 13, 2024

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