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

+ **BAIL APPLN. 3614/2023**

ARUSH @ VIKAS PANWAR

..... Petitioner

Through: Mr. D.K. Singh with Mr. Sidharth,
Ms. Nandini and Ms. Varsha
Shaikhla, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for State with SI
Reena, P.S. Anand Vihar, Delhi.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

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06.02.2024

1. The instant application has been filed under Section 438 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') on behalf of applicant seeking grant of anticipatory bail in case bearing FIR no. 388/2023 registered at Police Station Anand Vihar for offence punishable under Sections 328/376 of Indian Penal Code, 1860 ('IPC').
2. Brief facts of the case are that the present FIR was registered on the complaint lodged by the prosecutrix wherein she had stated that on 17.09.2023, she and her fiancé had come to a house in Arya Nagar for purpose of shifting their flat and her fiancé had gone out to purchase something. It is alleged that during this time, the present accused/applicant



had entered the flat and after making the prosecutrix inhale some intoxicating substance, he had committed rape upon her. On receipt of this complaint, the prosecutrix was medically examined, and the FIR was registered. During the course of investigation, the police team had inspected the premises i.e. site of alleged incident and had also prepared the site plan. The statement of the prosecutrix was also recorded under Section 164 of Cr.P.C. In her complaint, the prosecutrix had also given the mobile number of the accused, details of which were obtained by the police and it was found registered in the name of present applicant. However, the applicant could not be found at his address. The anticipatory bail application of the applicant was dismissed by the learned Sessions Court vide order dated 12.10.2023.

3. Learned counsel for the accused/applicant argues that applicant has been falsely implicated in the present case and no incident as alleged has taken place. It is also stated that no PCR call was made by the prosecutrix, but a written complaint was lodged ten hours after the alleged incident. It is further stated that MLC in this case does not support the case of the prosecution. It is argued that this is a case where an innocent person has been trapped by the prosecutrix, at the instance of her 'so-called fiance', who was also present at the spot at the time of alleged incident as per CDR analysis. It is also argued that the house where the alleged incident of rape had occurred, had never been given on rent by the owner, to the prosecutrix or to her fiancée, as alleged in the complaint. It is submitted by the learned counsel that the applicant had joined investigation pursuant to grant of interim protection and the details of CDR demolish the entire case of



prosecution. Therefore, it is prayed that present bail application be allowed.

4. Learned APP for the State, on the other hand, argues that allegations against the applicant are serious in nature and the prosecutrix has supported her case in the statement recorded under Section 164 of Cr.P.C. However, it is submitted that applicant has joined investigation, and as per order of this Court, the CDR details and verification report has been filed on record.

5. I have heard arguments addressed by both the parties, and have perused the material placed on record.

6. In the present case, this Court *vide* order dated 31.10.2023 had directed the I.O. to verify the conversations between the prosecutrix and the accused and place the CDR before this Court.

7. Learned APP for the State has informed this Court that the applicant herein has joined investigation, pursuant to grant of interim protection by this Court *vide* order dated 07.12.2023. The call detail records as well as the transcripts in question have been verified by the I.O. concerned. It has been, thus, verified that CDRs of prosecutrix and accused reveal that there are about 10 calls between their mobile numbers. The first call was made by the accused to the prosecutrix on 15.09.2023 and the victim had called him back on the same day. It further reveals that one call was made by the accused on 16.09.2023. On 17.09.2023 i.e. the date of incident, 7 calls were made, out of which four calls were made by accused and three calls were made by the prosecutrix to him. The telephonic conversation between the accused and the prosecutrix has also been verified and the prosecutrix has accepted the factum of these conversations and the fact that the voice therein relates to



her. Further, the records also reveal that fiancée of the prosecutrix was present at the spot, when the incident in question is alleged to have taken place. The room in question where the alleged incident had taken place has never been rented out to the prosecutrix or her fiancée as per statement of the owner of the premises in question.

8. This Court does not intend to discuss further details or record any other observation, lest it will affect the trial of this case. Suffice it to say, the record produced before this Court including the alleged transcript of the conversation between the parties and the exchange of messages between the parties, persuade this Court to grant relief to the present accused/applicant as prayed for.

9. The applicant has already joined investigation and his custodial interrogation is not required. Thus, considering the overall facts and circumstances mentioned hereinabove, this Court is inclined to grant anticipatory bail to the applicant/petitioner. In the event of arrest, applicant shall be released on his furnishing personal bond in the sum of Rs.10,000/- with one surety of like amount to the satisfaction of the SHO/I.O. concerned on the following terms and conditions:

- i) The applicant shall remain available on mobile numbers; shared by him with the IO/SHO concerned.
- ii) The applicant shall not directly or indirectly make an attempt to influence the witnesses or tamper with the evidence in any manner.
- iii) In case of change of residential address/contact details, the applicant/petitioner shall promptly inform the same to the concerned



IO/SHO.

iv) The applicant shall join and co-operate in investigation, as and when required.

10. Accordingly, the present bail application stands disposed of.

11. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 6, 2024/hs

Click here to check corrigendum, if any