



2024: DHC: 2647



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 03.04.2024

+ **BAIL APPLN. 3616/2023**

MD. ADIL

.....Applicant

versus

THE STATE GOVT. OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Manoj Kumar, Adv.

For the Respondent : Mr. Pradeep Gahalot, APP for the State with
SI Omkant Yadav, PS Hauz Qazi, Delhi.
Mr. Vikram Seth, Mr. Yuvraj Seth, Mr. Amit
Chadha and Mr. Ajay Sharma, Advs. for
complainant with complainant in person

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking regular bail in FIR No. 206/2020 dated 15.12.2020 registered at Police Station Hauz Qazi for offences punishable under Sections 328/376/506 of the Indian Penal Code, 1860 ('IPC').

2. The FIR was registered on a complaint given by the prosecutrix alleging that she was raped by the present applicant. The applicant was

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arrested on 15.01.2021.

3. As per the FIR, the prosecutrix had alleged that she knew the applicant since her school time and it was after six years of her marriage, in February, 2019 she started talking to the applicant on Facebook and, thereafter, started speaking on phone with him.

4. On 28.02.2019, the applicant had invited the prosecutrix to celebrate her birthday at Dilshad Garden. It is alleged that the applicant picked up the prosecutrix with her elder son and her friend named Parul, from Dilshad Garden, in his car and took them to a house at Mir Jumla on the pretext of celebrating her birthday. It is stated that son and friend of the prosecutrix were made to sit outside.

5. It is alleged she became unconscious after consuming the cold drink served by the applicant, and when she woke up, she found herself undressed from lower side and alleged that there was a used condom lying there. She further stated that thereafter the applicant dropped her, along with her son and her friend near Dilshad Garden, and at that time, she enquired the applicant if he had made any sexual relations with her, to which he denied.

6. It is alleged that thereafter, the applicant called the prosecutrix and threatened her that he has photographs and videos of the prosecutrix, and would show the same to her husband, if she did not come to meet him.

7. As per the allegations, the applicant used to call the prosecutrix forcefully and committed rape on multiple occasions, and also during the time when she was pregnant. On 14.12.2020, when complications



arose in her pregnancy, her friend informed the husband of the prosecutrix with respect to her alleged forceful sexual relations with the applicant.

8. The learned Counsel for the applicant submitted that applicant and the prosecutrix had friendly relations with each other and were in constant talking terms with each other. He submitted that she herself started talking to the applicant on social media platforms. He submitted that it was the prosecutrix who used to force the applicant to meet and talk to her.

9. He submitted that the allegations in the present FIR are an afterthought and it was only when the husband of prosecutrix came to know about the alleged affair between the prosecutrix and the applicant, the present FIR was lodged.

10. He submitted that there are material contradictions and inconsistencies in the statements recorded during the cross examination of the prosecutrix and her husband. He submitted that during the cross examination of the prosecutrix, she admitted the fact that she herself used to send messages to the applicant and used to chat with him.

11. He submitted that the prosecutrix being a married women used to force the applicant to talk to her. He also stated that as per the allegations with respect to the applicant making objectionable videos/ photographs of the prosecutrix from his mobile phone, nothing is recovered from the said mobile phone.

12. He submitted that there is no medical evidence which shows



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that there were sexual relations between the applicant and the prosecutrix since she had refused to get herself medically examined.

13. He submitted that the investigation in the present case is complete, the chargesheet has already been filed, and all material witnesses are examined. The applicant is in custody since 15.01.2021, and no purpose would be served by keeping the applicant in further incarceration.

14. The learned Additional Public Prosecutor for the State has opposed the grant of present bail application. He submitted that the present applicant has committed a heinous offence of rape on the prosecutrix.

15. He submitted that the prosecutrix in her statement under section 164 of the Cr.P.C., has supported the case of the prosecution. He further submitted that the prosecutrix during further investigation had stated that it is quite possible that the applicant had given some other phone and the same was found to be correct, it was found that the applicant had produced a mobile phone which was manufactured only on 19.11.2019 whereas the first incident is dated February 2019. He submitted that a supplementary chargesheet in regard to offence under Section 201 of the IPC has also been filed.

16. He submitted that the applicant is also an accused in another FIR 05/2021 under Sections 326/34 of the IPC registered on a complaint given by the prosecutrix alleging that the applicant had thrown acid on her and is trying to threaten her. He submitted that there is an apprehension of threatening the prosecutrix if the applicant



is released on bail.

17. I have heard learned counsel for the parties and have also perused the records.

18. It is true that the statement of the prosecutrix is to be given prime consideration and the conviction can be based merely on the statement even if not corroborated with other evidence as long as the same inspires confidence. However, to hold that the statement of the prosecutrix is to be accepted even if the same appears improbable and belies logic would be doing violence to the criminal justice system.

19. In the present case, at this stage, the case of the prosecution is solely based on the statement of the prosecutrix.

20. It is not denied that prosecutrix and the applicant were in constant taking terms with each other. The allegations made by the prosecutrix are that the applicant had established forceful sexual relationship with her. The alleged incident is stated to have taken place on 28.02.2019 and was continuing thereafter. The FIR came to registered only on 15.12.2020, that is almost after a delay of more than twenty-one months from the date of first incident. The prosecutrix during her examination also stated that her husband got to know about her talking to the applicant in the month of April 2019, after which she states that she never spoke with the applicant.

21. It is admitted that the prosecutrix and the applicant were in constant talking terms and it was the prosecutrix who texted the applicant in the first place. The prosecutrix was in regular taking terms with the applicant.



22. It is apparent that the prosecutrix is a literate person and even during the course of alleged incidents, she was in regular touch with the applicant. There is considerable delay in lodging the complaint.

23. The Hon'ble Apex Court, in the case of ***Meharaj Singh (L/Nk.) v. State of U.P.: (1994) 5 SCC 188***, held as under:

“12. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story.”

24. Certain screenshots have been placed on record, and it is contended that the prosecutrix was forcing the applicant to talk to her.

25. The complaint is admittedly filed after the husband of the prosecutrix was allegedly informed by the friend of the complainant.

26. From the material on record, it is an admitted case that the prosecutrix had known the applicant for many years and was talking to him on her own will. It is alleged that after the husband of the prosecutrix came to know that she had been talking to the applicant, she stopped talking and it was only in the month of December, 2019 that the husband came to know about the physical relations between the applicant and the prosecutrix. The complaint was given belatedly in the month of the December, 2020. The prosecutrix was 26 years of age at the time of giving the complaint. Even though, it is alleged that there was a fear that the applicant would viral the photographs and videos of the prosecutrix due to which she could not make a complaint



at an earlier stage, the prosecution has not been able to find any alleged photographs and videos from the mobile phone seized from the applicant.

27. The applicant is in custody since 21.01.2021. It is not denied that the trial would take a considerable period of time and the prosecutrix has already been examined.

28. The applicant has thus, *prima facie*, established the case for grant of bail.

29. Considering the totality of facts and circumstances, and without commenting further on the merits of the case, the present bail application is allowed; and the applicant is directed to be released on bail on furnishing a bail bond for a sum of ₹25,000/- with one surety of the like amount to the satisfaction of the learned Trial Court subject to the following terms and conditions:

- i. The applicant shall upon his release provide his mobile number to the concerned IO / SHO and keep it switched on at all times;
- ii. The applicant shall not take unwarranted adjournment and attend the Trial Court proceedings on every date;
- iii. The applicant shall not leave the boundaries of the National Capital Region without informing the concerned IO / SHO;
- iv. The applicant shall not in any manner contact the complainant/victim or any of the witnesses;



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- v. The applicant shall upon his release furnish a proof of residence where he shall reside upon his release to the concerned IO/SHO, and in the event of change in address he shall intimate the same to the concerned IO/SHO.

30. In the event of there being any FIR/DD Entry/complaint lodged against the accused/applicant, it would be open to the State to seek redressal by filing an appropriate application for cancellation of bail.

31. It is clarified that the observations made in the present judgement/order are for the purpose of deciding the present bail application, and should not influence the outcome of the Trial. The said observations should not be taken as an expression of opinion on the merits of the case.

32. The present application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

APRIL 3, 2024
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