



2024 : DHC : 2648

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

%

Judgment delivered on:03.04.2024

+ **BAIL APPLN. 3659/2023**

MD. ADIL

.....Applicant

versus

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 seeking grant of regular bail in FIR No. 0005/2021 dated 04.01.2021, under sections 326A/34 of the Indian Penal Code, 1860 ('IPC'), registered at Police Station Seema Puri, Delhi. The chargesheet was subsequently filed under sections 326A/34 IPC on 20.04.2021.

2. The FIR was lodged on a complaint given by the complainant/prosecutrix on 04.01.2021, alleging that the applicant along with his associate threw acid on the complainant/prosecutrix.

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3. It is alleged that on 04.01.2021 at around 6:30 PM the complainant/prosecutrix along with her husband was going to pick up her son from his tuition classes in Dilshad Garden. On her way, she got down from her husband's car bearing no. DL7CR6796 to buy milk in the J&K Pocket, Dilshad Garden. Upon buying milk, the complainant/prosecutrix proceeded towards her car and reached J&K Bus Stand when the accused/applicant along with his associate on a black colour bike passed and threw some liquid on the complainant/prosecutrix.

4. It is alleged that when the said liquid was thrown on her the same fell on her clothes which led to burning sensation on her right shoulder. It is further alleged that the complainant/prosecutrix does not know the person who was riding the bike but knows the pillion rider who had thrown the liquid i.e. the applicant in the present application.

5. It is alleged that the applicant along with his associate fled the place of incident. Upon hearing the screams of the complainant/prosecutrix her husband rushed towards her and removed her shawl and sweater which was quite burnt. Thereafter, her husband called PCR and then took her to SDN Hospital. Subsequent to this, a written complaint was filed by the complainant/prosecutrix and presented to the Police Station Seema Puri. The said complaint was written by the husband of complainant/prosecutrix as she had burning sensation in her hand.

6. It is also stated by the complainant/prosecutrix that on her complaint, another FIR No. 0206/2020 has been registered under



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sections 328/376/506 IPC at Police Station Hauz Qazi against the applicant. As a result of this, the applicant has been threatening her and her family members to withdraw her case against him. In order to achieve the said objective, the applicant had allegedly thrown acid on her.

7. The applicant had filed an application under section 439 Cr.P.C. for grant of regular bail before the court of Ms. Ravinder Bedi, Ld. ASJ-02/E-Court/Shahdara, Karkardooma Courts, Delhi but the same was disposed of as having been withdrawn vide order dated 11.05.2021.

8. Again an application was filed under section 439 Cr.P.C. for grant of regular bail before this court, however, the same was withdrawn with liberty to file fresh application before the learned Trial Court vide order dated 28.09.2021. This court issued directions to the learned Trial Court to expedite the framing of charges as well as the examination of the prosecutrix. It was further directed that the charges be framed and the prosecutrix be examined within six months.

9. In accordance with the directions, the learned Trial Court framed the charges vide order dated 03.02.2022 and the cross-examination of the prosecutrix was completed vide order 09.01.2023.

10. Thereupon, the accused/applicant again filed an application under section 439 Cr.P.C. for grant of regular bail before the court of Ld. ASJ-07, Karkardooma Courts, Delhi and the same was dismissed vide order dated 17.05.2023. Hence, the present application is filed

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before this court for grant of regular bail under section 439 Cr.P.C. by the accused/applicant.

11. The learned Counsel for the accused/applicant submitted that he is being falsely implicated by the complainant/prosecutrix at the instance of her husband. He further submitted that the accused/applicant, in the present case, is in judicial custody since 21.01.2021.

12. He submitted that all the material witnesses in the present case have already been examined and only the formal witnesses are left to be examined, therefore, there is no possibility of accused/applicant threatening the witnesses or tampering with evidence.

13. It is further submitted that the complainant/prosecutrix has been examined and cross-examined, hence, there is no apprehension of causing harm to her. There are several contradictions and inconsistencies in the testimony of the complainant/prosecutrix.

14. Lastly, he submitted that the MLC dated 04.01.2021 of the complainant/prosecutrix indicates that she had suffered grade 1 burn of around less than one percent thereby causing simple injury over her right shoulder.

15. The learned Additional Public Prosecutor for the State, on the other hand, submitted that the allegations against the accused/applicant are serious in nature. It is submitted that the burnt clothes of the prosecutrix were sent to Forensic Science Laboratory (“FSL”) for chemical examination. The result of the said examination states “on chemical analysis of exhibit 1 i.e. clothes of the victim that



she was wearing at the time of incident was found containing sulphuric acid.”

16. He submitted that the MLC shows that the complainant/prosecutrix has suffered grade 1 burn injury of around 1% over her right shoulder.

17. He further submitted that the complainant/prosecutrix had also registered an FIR No. 206/20 under sections 328/376/506 IPC at Police Station Hauz Qazi against accused/applicant. As a result of the said FIR, the accused/applicant has been threatening the complainant/prosecutrix to withdraw the case.

Analysis

18. Section 439 Cr.P.C confers jurisdiction upon High Court and Court of Sessions for grant of bail. The bail jurisdiction has to be exercised cautiously by relying upon the well-settled principles and having regard to facts and circumstances of the case.

19. In the case of ***Prahald Singh Bhati v. NCT of Delhi &Anr.:(2001) 4 SCC 280***, the Hon’ble Supreme Court held that:

“8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also



to be kept in mind that for the purposes of granting the bail the Legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

20. In another case of ***Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr. : (2004) 7 SCC 528***, the Hon'ble Supreme Court held that:

“11. ...Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind...”

21. Certain conditions have to be borne in mind at the time of deciding the bail application in relation to serious offences such as the nature of accusation, severity of punishment, the nature of supporting evidence, reasonable apprehension of tampering with the evidence or threatening the complainant and witnesses, etc.

22. The case of prosecution is that on 04.01.2021 at around 6:30 PM the prosecutrix was going to pick up her son from his tuition classes in Dilshad Garden along with her husband. On her way, she got down from her husband's car bearing no. DL7CR6796 near J&K Pocket, Dilshad Garden to buy milk. While going back to her car, two



men i.e., the accused/applicant and his associate on a bike passed by her and threw a liquid on the prosecutrix. As per the MLC of the prosecutrix, she suffered 'grade 1 burn injury of less than 1 percent' over her right shoulder. Further, the report furnished by the FSL has confirmed that the liquid thrown on the prosecutrix was acidic and corrosive in nature. The accused/applicant is alleged to have used 'sulphuric acid' as stated in the report of the FSL. It is the case of the prosecution that alleged acid attack on the prosecutrix was a consequence of another FIR bearing no. 206/2020 under sections 328/376/506 IPC registered against the accused/applicant at Police Station Hauz Qazi. The prosecutrix and her family members had been facing threats from the accused/applicant to withdraw the said FIR. The applicant was arrested on 15.01.2021 in FIR no. 206/2020, and consequently, was formally arrested on 21.01.2021 in present FIR and remanded to judicial custody on the same day.

23. The evidence on record indicates that the clothes belonging to the prosecutrix i.e. the shawl and the sweater which were sent to the FSL for chemical examination confirms the presence of sulphuric acid on the said clothes.

24. This court has gone through the medical report of the prosecutrix which is on record. The medical report shows that the prosecutrix suffered grade 1 burn injury of less than 1% as a result of throwing of acid on her, thereby causing injury on her right shoulder.

25. The learned Counsel for the accused/applicant has argued that the accused/applicant has been in judicial custody since 21.01.2021,



and the conclusion of trial of will take further time. It is further argued that all the material witnesses have been examined and only the formal witnesses are left to be examined. It is also argued that the prosecutrix has been examined and cross-examined and therefore, there can be no apprehension of any harm being caused to the complainant or other witnesses during the course of trial. The learned Counsel for the accused/applicant has brought to the notice of this court that there are certain inconsistencies in the testimony of the prosecutrix, therefore, the same cannot be relied upon.

26. This court is presented with a proposition in which the heinousness of an offence needs to be weighed against the length of incarceration undergone by the accused/applicant while deciding the present bail application.

27. The act of throwing or attempting to throw acid on a person resulting in permanent or partial damage or deformity or burns or disfigurement of any part of the body of such person with the intention or knowledge of likelihood of causing harm or injury amounts to an offence of heinous nature under s. 326A IPC. At the same time, this court has to appreciate the agony of the accused/applicant who has been incarcerated for such a long duration due to prolonged trial. The accused/applicant is in judicial custody since 21.01.2021 and the trial is at the stage of recording of evidence. The medical report of the prosecutrix indicates that the prosecutrix has sustained grade 1 burn injury less than 1%. Perusal of record also shows that there are



inconsistencies in the testimony of prosecutrix which raises doubt in the prosecution story.

28. The case against the applicant is solely based on the testimony of the victim. It is not in doubt that the conviction can be based solely on the statement of the victim, as long as the same inspires confidence.

29. The offence alleged in the present FIR was committed subsequent to the lodging of FIR bearing no. 206/2020, which was lodged at the behest of the prosecutrix, alleging that she was raped by the present applicant and the offence as alleged in the present FIR was committed in order to threaten the prosecutrix. At this stage, there is no material on record, to corroborate the presence of the applicant on the alleged place of incident and, therefore, the veracity of the statement of the prosecutrix and the motive attributed towards the applicant would be seen during the course of the trial.

30. This Court by separate judgment dated 03.04.2024 passed in BAIL APPL. 3616/2023, has granted bail to the applicant in relation to the FIR No. 206/2020.

31. The accused/applicant is in judicial custody since 21.01.2021 and the chargesheet has been filed, and no further investigation is stated to be pending. Any apprehension of the accused/applicant threatening the prosecutrix is minimal, in view of examination and cross-examination of prosecutrix already being complete.

32. In the view of this Court, when tested on the considerations as set out above, the circumstances of the present case, would favour grant of bail to the applicant.



33. 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 subject to the satisfaction of the learned Trial Court / Duty Metropolitan Magistrate/ Link Metropolitan Magistrate on 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 proceedings before the learned Trial Court 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 contact the complainant/victim or any of the witnesses or tamper with the evidence in any manner whatsoever;
- v. The applicant shall upon his release shall 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.

34. 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.



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35. 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.

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

AMIT MAHAJAN, J

APRIL 3, 2024

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