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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2737/2024**
MOHD HASAN @ SMEERPetitioner
Through: Mr. Mukesh Kalia, Mr. Sunny
Sharma and Ms. Kanika Vohra,
Advocates.

versus

THE STATE GOVT NCT OF DELHIRespondent
Through: Mr. Pradeep Gahalot, APP for State
with SI Aditi, P.S. Burari.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
29.11.2024

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1. This petition has been filed seeking bail in FIR No. 348/2020 under Section 376D/506/342/323/34 of IPC. The petitioner has been in custody since 29th August 2020 (*about 4 years 2 months in custody*).
2. The Nominal Roll indicates that petitioner has no previous involvements and his jail conduct has been satisfactory.
3. The case of the prosecution is based on a complaint of the victim, that she used to talk to the co-accused Aabid over the phone. In February-March 2020, Aabid went to Seelampur to meet her, and from there, he brought the victim to Burari and allegedly raped her and when the victim told him that she will complain to the police, Aabid promised her to marry her.
4. On the pretext of marriage, she alleged that Aabid made physical relations with her, multiple times.
5. On 18th August 2020, accused Aabid called the victim and took her to



an office and called his two friends, one CCL and the Petitioner and all three of them raped her. She stated further incidents, about subsequent sexual assault.

6. In support of the bail application, Mr. Mukesh Kalia, counsel for petitioner, argues that the complaint against main accused, Aabid, was in the background of a prior relationship between Aabid and the prosecutrix, in which regard the incidents of February to August 2020 have been alleged.

7. The incident relating to petitioner, Hasan and the CCL, is of 18th August 2020, where the prosecutrix alleged that they had committed rape on her.

8. He contends that subsequent sequence of events, would make her statement highly improbable and unbelievable, considering that she went to the police station on 19th August 2020 to lodge the complaint and thereafter, Aabid's family arrived and she went along with them to Aabid's home and stayed there overnight and then went to her home, the next morning. This was part of her statement recorded under Section 164 Cr.P.C.

9. He further states that the FSL report did not return a finding of DNA match of the accused/petitioner with that of the prosecutrix. The allegation of the video being made, is also untenable, since no video was recovered during the course of investigation.

10. Further, the prosecutrix was 22 years of age at the relevant time; petitioner has been in custody for about 4 years and as per the Nominal Roll, has no previous involvements and has not sought any interim release in the meantime.

11. Counsel for the petitioner further states that the alleged incident is of 18th August 2020, whereas, the FIR was registered after 11 days.



12. The Court had issued intimation to the prosecutrix on 05th August, 2024 and the matter has been listed on subsequent dates. However, prosecutrix has chosen not to appear in Court, personally or through a representative. Today prosecutrix is not present, despite fresh intimation.

13. In these circumstances, having perused the record, including DNA analysis, which read the petitioner's DNA profile did not match with the mixed DNA profile traced from the bed sheet on the spot, as well as, the fact that the petitioner has been in custody for more than 4 years and has no previous involvements and taking into account the contention of the petitioner's counsel, this Court is inclined to release the present petitioner on bail.

14. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.



- iv. Petitioner shall join investigation as and when called by the IO concerned.
 - v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
 - vi. Petitioner will mark presence physically before the concerned I.O. every first and third Thursday of every month at 4 p.m. and will be not kept waiting for more than an hour.
 - vii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.
15. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.
16. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
17. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.
18. *'Dasti'*.
19. Order be uploaded on the website of this Court.

ANISH DAYAL, J

NOVEMBER 29, 2024/AB