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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2812/2024 & CRL. M.B. 1315/2024, CRL. M.A. 27827/2024**

TITU BHATI

.....Petitioner

Through: Mr. Amit Sahni, Mr. Ankur, Mr. Parth Sharma, Ms. Sonali Tiwari and Mr. Vaibhav Mishra, Advocates.

versus

STATE (GNCTD) AND ANR

.....Respondents

Through: Mr. Aashneet Singh, APP for State with SI Priti PS Khajuri Khas, Delhi. Mr. Kumar Bhaskar, Advocate and (Amicus Curiae) and Mr. Devender Kumar, Advocate for respondent no.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

20.09.2024

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1. By way of the present application, the petitioner/applicant seeks regular bail/interim bail in FIR No.94/2024 registered under Sections 376/509 IPC & Sections 4/12 POCSO Act at P.S. Khajuri Khas, Delhi.
2. Learned counsel for the applicant submits that the present FIR came to be registered on 11.01.2024 with respect to an incident dated 28.06.2021. He submits that initially, the mother of the prosecutrix had lodged an FIR 324/2021 dated 29.06.2021 under Sections 323/376(2)(n)/506 at P.S. Khajuri Khas, Delhi. It is stated that in her subsequent statement under Section 164 Cr.P.C, the mother of the prosecutrix had alleged that the present applicant had obtained her number and thereafter consensual physical relations were made with her. It is stated that considering the nature



of allegations, the applicant was admitted to bail in the above case on 07.07.2021. He submits that the incident in the present case relates to one day prior to the lodging of the aforesaid FIR and as per the allegations in the present FIR, it is stated that while the parents of the prosecutrix were at the police station to file their complaint, the applicant along with one Bansi had barged into their house and started fighting and abusing the relatives of the prosecutrix. When she tried to intervene, the applicant dragged her into the room of her grandmother and inserted finger in her private part. The prosecutrix had further alleged that at that time, her uncle, aunt and grandparents were present in the house. The aunt had entered the room and pulled the applicant away. It is also stated that the aunt then also asked the parents of the prosecutrix be called back. He submits that there is an inordinate delay of about two and half years in lodging the instant FIR and at no point of time in the proceedings relating to the FIR filed by the mother of prosecutrix, this incident was mentioned. Further, it is stated that the prosecutrix in the present case has already been examined and there is no other material witness.

3. The bail application is vehemently opposed by learned APP for the State as well as by Mr. Bhaskar, learned *Amicus Curiae*, who was appointed to represent the prosecutrix. Today, the prosecutrix is also additionally represented by Mr. Davender Kumar, Advocate. Mr. Bhaskar submits that in her statement recorded under Section 164 Cr.P.C as well as testimony before the Court, the prosecutrix has explained that because of the threats extended by the applicant, the complaint was not lodged. In fact, the FIR was not initially registered till the prosecutrix approached the concerned Judicial Magistrate First Class under Section 156 (3) Cr.P.C. Learned APP states that



the initial complaint was received in the police station on 06.06.2023 and the present FIR came to be lodged on 11.01.2024. Mr. Davender Kumar, learned counsel for the prosecutrix additionally states that during the pendency of the trial, threats have been extended to the family of the prosecutrix and in this regard complaints dated 30.05.2024 and 01.07.2024 were also made.

Besides above, it is also stated that on 01.07.2024, when the prosecutrix along with her family had gone to Karkardooma Court to attend the present matter, the brothers of the applicant namely Inderraj and Giriraj had quarrelled and assaulted them, in respect of which two PCR calls were made by the mother of the prosecutrix. Even earlier a complaint of threat was given.

4. At this stage, learned APP, on instructions states that while the first complaint was filed, in the second complaint as per CCTV footage, relatives of both sides are seen arguing with each other but no incident of any injury is reported.

5. I have heard the learned counsels for the parties and have perused the material placed on record.

6. As discernible from the record, the incident narrated in the present case allegedly occurred on the eve of the registration of the other FIR bearing No. 324/2021 by the mother of the prosecutrix. However, the complaint with regards to the present offence was made nearly two years after the alleged incident had taken place. While in her 161 Cr.P.C statement the prosecutrix has stated about informing her mother of the incident the very next day; it is noted that the prosecutrix's mother while lodging the FIR 324/2021 had not stated anything as to the alleged offence committed by the



applicant against the prosecutrix. Even during the submissions addressed at the time of consideration of the bail application of the applicant in the above-noted case, no reference was made to the incident which has been alleged in the present FIR.

7. At this stage, it is also pertinent to refer to statement of the prosecutrix recorded under Section 164 Cr.P.C. wherein she has stated that at the time of the alleged offence, while her parents were away, her grandparents, uncle, aunty and younger brother were present with her at home. In fact, it is further stated that it was her aunt who pulled the applicant away from the prosecutrix, however none of this was reported till the registration of the present FIR.

With respect to the alleged incident which occurred on 01.07.2024, a Status Report has been placed on record. A perusal of the same would show that CCTV footage near the concerned court room in Karkardooma Court was procured, however the accused were only seen mingling in the gathering of people and it could not be ascertained if any assault had actually taken place. The mother of the prosecutrix could also not be seen in the footage. In pursuance of the complaint, an MLC of the mother of the prosecutrix was also recorded which shows no signs of any physical injury. A statement of prosecutrix under Section 161 Cr.P.C was also recorded in which she stated that she did not see any such incident.

8. Considering the totality of the facts and circumstances and keeping in mind the material placed on record, it is directed that the applicant be released on regular bail subject to his furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty Judicial Magistrate



First Class and subject to the following further conditions :-

- i) The applicant shall not leave the NCR without prior permission of the concerned Court.
- ii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.
- iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.
- iv) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
- v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.

9. The bail application is disposed of in the above terms alongwith pending applications.

10. Copy of the order be communicated to the concerned Jail Superintendent electronically for information.

11. Copy of the order be uploaded on the website forthwith.

12. Needless to state that this Court has not expressed any opinion on the merits of the case and have made the observations only with regard to present bail applicant and nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present bail application.

MANOJ KUMAR OHRI, J

September 20, 2024/js