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

+ **BAIL APPLN. 3077/2024**

RATNAKAR@KARUNAKAR UPADHYAYPetitioner

Through: **Mr. Mukesh Kalia and Ms. Kanika Vohra, Advocates.**

versus

THE STATE N.C.T OF DELHI & ANR.Respondents

Through: **Mr. Utkarsh, APP for the State with SI Arun, P.S.: Paharganj.**
Mr. Harsh Vardhan Sharma, Adv for R2 with R2 in-person.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER
05.09.2024

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BAIL APPLN. 3077/2024

By way of the present petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner seeks regular bail in case FIR No. 0770/2023 dated 21.09.2023 registered under section 376 of the Indian Penal Code, 1860 ('IPC') at P.S.: Pahar Ganj, New Delhi. Consequent upon completion of investigation, the offence under section 506 IPC has also been added *vide* chargesheet dated 22.11.2023.

2. Notice on this petition was issued on 30.08.2024; pursuant to which status report dated 05.09.2024 has been handed-up in court. The same is taken on record.



3. Nominal Roll dated 06.04.2024 has also been received from the Jail Superintendent.
4. The court has heard Mr. Mukesh Kalia, learned counsel appearing for the petitioner; Mr. Harsh Vardhan Sharma, learned counsel appearing for respondent No.2/prosecutrix; as well as Mr. Utkarsh, learned APP appearing on behalf of the State at length.
5. At the outset, Mr. Kalia submits, that other things apart, the prosecutrix had made a statement before the learned ASJ, Tis Hazari Courts, New Delhi to the effect that she has no objection to the petitioner being granted regular bail, which statement was recorded by the learned ASJ in order dated 22.08.2024.
6. Mr. Kalia submits that petitioner has been falsely implicated in the case, which is evident from the run of events and the circumstances of the case. Learned counsel explains, that the prosecutrix is a married woman, who is sufficiently educated and is engaged as a social worker and runs an NGO by the name of *Samarpan Seva Sansthan* in Lucknow, Uttar Pradesh.
7. Mr. Kalia submits that it is also relevant to note that the prosecutrix is about 43 years old and the petitioner is about 35 years of age.
8. Counsel states that a perusal of the FIR will show that it is the prosecutrix's allegation that she was called to Delhi for a meeting in relation to raising money for her NGO, for which purpose the petitioner even sent her a railway ticket; whereupon the prosecutrix reached Delhi on 20.07.2023 at about 08:00 a.m. at the New Delhi Railway Station, where she was received by the petitioner.



9. The FIR further alleges that the petitioner took the prosecutrix in an auto-rickshaw to a hotel situate in Pahar Ganj, New Delhi and after a brief meeting, he told the prosecutrix that if she wanted to receive payment for her project, she would have to establish physical relations with him whereupon, the prosecutrix says that despite protestation by her, the petitioner forced himself upon her.
10. Mr. Kalia submits, that as the record would show, the prosecutrix had declined internal medical examination and nothing adverse was found in her MLC conducted otherwise. Counsel also points-out that the MLC was conducted *some 02 months after the date of the alleged incident*; and even the FIR was registered on 21.09.2023, which is about 02 months after the date of alleged commission of the offence.
11. Mr. Kalia submits, that in her court deposition the prosecutrix has turned hostile; and has said that she was feeling dizzy at the relevant time and therefore she is not even sure whether she was subjected to a sexual act.
12. Counsel also informs the court that the deposition of the prosecutrix is complete; that the petitioner has admitted to certain documentary evidence under section 294 of the Code of Criminal Procedure 1973 ('Cr.P.C.');
- and that 13 of the 15 prosecution witnesses have either already deposed or their deposition is no longer required in view of the admission on the part of the petitioner.
13. On the other hand, learned APP submits, that even though the prosecutrix has turned hostile, and the petitioner's potency test also does not support the allegation in the present matter, it must be noticed that that the prosecutrix's previous counsel Mr. Avanish Kumar (Mr.



Avanish Kumar Panday) who has represented her before the learned trial court, before a Co-ordinate Bench and even before this court in the present proceedings, has *received from the petitioner* and his relatives various monetary remittances *via* UPI, which aggregate to about Rs. 1.5 lacs. Worse still, learned APP points-out, that the *prosecutrix has visited the petitioner in prison*. He submits that these facts are seen from screenshots of the UPI payments and from a Visitor Pass Slip dated 09.01.2024, copies of which have been appended to the petition.

14. Learned APP states that, it would appear therefore, that the prosecutrix and her previous Advocate are engaged in some kind of an illicit transaction with the petitioner and his relatives, which casts a serious shadow over the genuineness of the allegations made in the subject FIR. Learned APP accordingly states, that perhaps action may be warranted against the prosecutrix and her previous Advocate, after requisite enquiry is conducted in that behalf.
15. Learned APP submits that a perusal of the chargesheet would show that the petitioner also has 06 other criminal involvements, which however relate to the State of Uttar Pradesh, and are therefore not on the record of the Jail Authorities in Delhi and do not find mention in the nominal roll.
16. In view of what is discernible from the record, the court has queried the prosecutrix. Upon being asked to explain the monetary transactions between herself, her previous Advocate, and the petitioner, she states that the petitioner owed some money to her NGO, which money has been refunded by the petitioner by way of the aforementioned



remittances. The prosecutrix is however unable to explain as to why the remittances were received *not by her NGO* but *by her Advocate*.

17. On a pointed question, the prosecutrix informs the court that she gave her no-objection to the grant of the bail to the petitioner in the proceedings before the learned trial court, since she is facing social embarrassment; and is unable to follow-up the case against the petitioner before the learned trial court any longer. She also says that since the petitioner is a heart patient, she does not wish to oppose his bail.
18. Upon a conspectus of the above, it is evident that the role of the prosecutrix as well as her previous Advocate Mr. Avanish Kumar (Mr. Avanish Kumar Panday) requires closer scrutiny.
19. On the other hand the nominal roll shows that the petitioner has been in judicial custody for over 06 months; and that his jail conduct has been 'satisfactory'. The nominal roll also records that the petitioner has been released on interim bail on 02 prior occasions, on 05.12.2023 and 06.04.2024; and there is no allegation that he violated any condition of interim bail so granted.
20. Upon an overall consideration of the facts and circumstances of the case, and especially in view of the conduct of the prosecutrix and her previous Advocate Mr. Avanish Kumar (Mr. Avanish Kumar Panday) as set-out above, this court is persuaded to admit the petitioner – **Ratnakar @ Karunakar Upadhyay s/o Shrish Chandra Upadhyay** – to *regular bail* pending trial, subject to the following conditions :
 - 20.1. The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Rs. Twenty-five Thousand Only) with 01 surety in the



like amount from a family member, to the satisfaction of the learned trial court;

- 20.2. The petitioner shall furnish to the Investigating Officer ('I.O.') a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 20.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 20.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial. In particular, the petitioner shall not communicate, or engage in any manner, with the prosecutrix;
- 20.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
21. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of bail.
22. Most importantly, considering the conduct of the prosecutrix as well as her previous Advocate Mr. Avanish Kumar (Mr. Avanish Kumar Panday), the learned trial court is directed to independently conduct an enquiry into the transactions between the said Advocate, the



prosecutrix, and the petitioner; and if any material is found thereby, to take such action against the errant parties, as may be made-out, in accordance with law.

23. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
24. A copy of this order be sent to the concerned Jail Superintendent and the learned trial court *forthwith*, for information and compliance.
25. The petition stands disposed-of in the above terms.
26. Pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 5, 2024

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