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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4307/2023**
HARISH CHANDRA Petitioner

Through: Mr. Sunil Dalal, Sr. Adv. with Mr. Bharat Gupta, Mr. Mohit Malik, Mr. Ankit Rana, Mr. Rohan Wadhwa and Mr. Tushar, Advs.

versus

THE STATE (GOVT. OF NCT OF DELHI) & ANR..... Respondents

Through: Mr. Ritesh Kumar Bahri, APP for State with W/PSI Akanksha Chillar and W/SI Pratibha Yadav PS Adarsh Nagar
Ms. Shobha Gupta, Ms. Akshita Mishra, Ms. Manasvi Negi, Ms. Sanskriti Shakuntala Gupta and Ms. Simranjeet Kaur, Advs. for complainant.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER
28.05.2024

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1. The present petition has been filed seeking regular bail in connection with FIR No. 0620/2023 under Sections 376/377/201/506 IPC registered at P.S. Adarsh Nagar, Delhi.
2. The case of the prosecution is that the accused and the complainant belong to the same state and the complainant came in contact with the petitioner / accused through one of her batch mates. Being a senior in the



department and belonging to the same place, the accused assured the complainant that she can consider him like her elder brother and ask him for help regarding service/uniforms. This way both the complainant and the accused started talking on phone and whatsapp also. The accused asked the complainant about her Gotra and when she told her gotra, the accused/petitioner told the complainant that his sister-in-law who lives in Dhaula Kuan is of the same gotra and also told her that his sister-in-law wishes to meet her. On this pretext on 09.04.2023 the petitioner called the victim to Dhaula Kuan and took her to Hotel Kohinoor in Mahipalpur, Delhi where he established physical relationship with the complainant and also made objectionable video. It is further the case of the prosecution that in the month of May, 2023 the petitioner again took the complainant to hotel Dev Palace where he again established physical relationship with her and threatened her that he will make those objectionable video viral in her native place and shall send the same to her friend namely, Mamta. Thus, a complaint was made by the prosecutrix which culminated into the registration of aforesaid FIR.

3. Learned Senior Counsel for the petitioner submits that it is a case of consensual relationship gone sour. He submits that the prosecutrix herself is a police official and by no means the petitioner could have established physical relationship with her against her wishes by taking her to different hotels. In cases he was under any pressure or threat, she could have made a complaint to the police or at the department level. According to him, the present FIR came to be registered only when the brother of the prosecutrix came to know about the relationship between the petitioner and the prosecutrix.

4. He submits that as per prosecution version two incidents have been



alleged where the objectionable videos of the victim were made by the petitioner. First time on 09.04.2023 at Kohinoor hotel and the second time, in the month of May, 2023 at hotel Dev Palace.

5. He submits that as per the statement of the I.O. no hotel by the name of Kohinoor exists at the place indicated by the prosecutrix. Insofar as the visit to hotel Dev Palace in the month of May, 2023 is concerned, the statement of the Manager of the said hotel was recorded who stated that there is no entry in the records of the hotel pertaining to the visit of the petitioner and the prosecutrix in the month of May, 2023.

6. He further invites the attention of the Court to the WhatsApp chats obtained by the petitioner by an application under Section 91 CrPC, to submit that a perusal of the said chat indicates that the prosecutrix was in regular touch with the present petitioner and was asking about the details of his family, his caste background etc. at the asking of her brother who had come to know about their relationship.

7. He further submits that the conduct of the friend of the prosecutrix namely, Mamta also creates doubt about the prosecution version. In so far as, it is the case of the prosecution that the petitioner had sent objectionable videos of the prosecutrix to the said friend of the prosecutrix, however, the said friend namely, Mamta reported her phone as lost *vide* NCR 11.09.2023, just a day prior to when her statement under Section 161 CrPC was to be recorded.

8. The learned counsel submits that the petitioner is in custody since 27.07.2023 and his custody is no more required for investigation. Further, the petitioner has already been suspended from his job and there is no possibility of petitioner influencing the prosecutrix in the event he is enlarged on bail. He



also adds that since the prosecutrix herself is a police official, the apprehension expressed in the status report that the petitioner will try to influence her if enlarged on bail, is misplaced.

9. It is also the contention of the learned senior counsel for the petitioner that the petitioner does not have criminal record. He, therefore, urges the Court that the petitioner may be released on bail.

10. *Per contra*, the learned APP has argued on the lines of the status report, a copy of which has been handed over in court and the same is taken on record. He submits that apart from the prosecutrix there are three other material witnesses who are yet to be examined. He thus, urges the court that the present bail application be taken up for consideration only after evidence of the material public witnesses have been recorded.

11. He further submits that the conduct of Mamta in reporting her phone being lost is quite natural since in the FIR itself the prosecutrix had stated that the objectionable video of the prosecutrix was sent to Mamta.

12. The learned counsel for the complainant also reiterates that in case the petitioner is enlarged on bail, he is likely to influence the material witnesses who are yet to be examined. In support of her contention she has invited the attention of the court to the WhatsApp chats to contend that threats have been extended by the petitioner to the prosecutrix even on earlier occasion. She, therefore, urges that the bail application of the petitioner be dismissed.

13. I have heard the learned counsel for the petitioner, the learned APP for the State, as well as, learned counsel for the prosecutrix and have perused the record.

14. It is the case of prosecution that on two occasions the petitioner/accused had taken the prosecutrix to the hotels and made



objectionable video. Once, on 09.04.2023 at Kohinoor hotel and second time, in the month of May, 2023 at hotel Dev Palace. The IO in her statement has stated that no hotel by the name of Kohinoor exists at the place indicated by the prosecutrix. As regards to the visit of hotel Dev Palace in the month of May, 2023, is concerned, it is borne out from the statement of the Manager of the said hotel that there is no entry recorded in the records of the said hotel pertaining to the visit of the petitioner and prosecutrix in the month of May, 2023, though the petitioner and prosecutrix had visited the said hotel in other months. Though the impact of these contradictions in the case of the prosecution will be assessed by the learned Trial Court after the conclusion of evidence but the benefit of such contradictions can be extended to the petitioner at this stage while considering his bail application, as there is a presumption of innocence in favour of the petitioner/accused at pre-conviction stage.

15. It is also the case of the prosecution that the petitioner made objectionable videos of the prosecutrix and sent the same to the friend of the prosecutrix namely, Mamta but no such video has been made part of the chargesheet. Intriguingly, the said friend of prosecutrix reported her phone as lost *vide* NCR dated 11.09.2023, just a day prior to when her statement under Section 161 CrPC was to be recorded which creates doubt in the story of the complainant.

16. At this stage the submission of petitioner's counsel to the effect that prosecutrix is a police official, therefore, the petitioner could not have taken her to various hotels against her wishes and in case she was under any kind of threat or pressure from the petitioner she could have made a complaint at the department level or with the police, cannot be negated all together.



17. That apart the petitioner is in custody since 27.07.2023 and his custody is no more required as the investigation has been concluded. Even otherwise in the facts and circumstances of the case, the petitioner cannot be kept in custody for an indefinite period to await the outcome of the trial when the prosecution evidence has not yet commenced.

18. In so far as the apprehension expressed that the petitioner may try to influence the prosecutrix and other witnesses if enlarged on bail is concerned, suffice is it to note that the petitioner has already been suspended from Delhi Police. In any case conditions could be imposed to dispel such apprehension.

19. It is also not in dispute that the petitioner does not have a criminal record nor he is a flight risk.

20. Considering the aforesaid circumstances, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs. 25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

21. The petition stands disposed of.



22. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.
23. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
24. Order *dasti* under signatures of the Court Master.
25. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

MAY 28, 2024
N.S. ASWAL