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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 4189/2024 & CRL.M.A. 34466/2024
BABUL CHAUHANApplicant
Through: Mr. Akhilesh Kumar
Meena, Advocate.

versus

STATE THROUGH SHO MOHAN GARDEN
& ANR.Respondents
Through: Mr. Raj Kumar, APP for
the State.
ASI Sunita & SI Partap
Singh.
Prosecutrix-in-Person.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
19.12.2024

1. The present application is filed seeking regular bail in FIR No. 159/2023 dated 03.06.2023, registered at police station Mohan Garden, for offences under Sections 376D/370/342/323/366/120B/34 of the Indian Penal Code, 1860. The chargesheet has been filed in the present case.

2. The FIR was registered pursuant to a complaint made by the prosecutrix. It is stated that after the prosecutrix met the co-accused Suraj at the house of an acquaintance, he started messaging her and calling her. It is alleged that after December, 2022, the co-accused Suraj had taken the prosecutrix to the house of his sister-in-law– Neelam. The co-accused Suraj kept the prosecutrix there for 15 days, and thereafter, he forcefully established physical relations with the prosecutrix for the first



time. It is alleged that the applicant is a relative of co-accused Neelam and he had also forcefully established sexual relations with the prosecutrix at the house of co-accused Neelam.

3. The prosecutrix was allegedly also taken to Rohtak, Haryana by co-accused Neelam and the applicant, where she was forcefully married to one Pradeep.

4. The prosecutrix is present in person in Court today and states that she has no objection if the applicant is admitted on bail.

5. Undisputedly, the co-accused Suraj, against whom the allegation was made in regard to having sexual intercourse with the prosecutrix, has already been admitted on bail by the learned Trial Court by order dated 02.01.2024.

6. The learned Trial Court noted that the prosecutrix had appeared with her counsel and had no objection if the co-accused Suraj was admitted on bail. It was also noted that the prosecutrix, in her cross-examination, has not supported the case of the prosecution and has categorically stated that the co-accused Suraj did not commit any wrong and that they are good friends.

7. The learned Trial Court, thus, considering the evidence of the prosecutrix and that no allegation is made against the co-accused for having established physical relations, released the co-accused Suraj on bail.

8. A bare perusal of the cross-examination of the prosecutrix shows that she has resiled and she has not supported the case of the prosecution. It is thus, apparent that the prosecutrix has turned hostile.

9. It is settled law that the statement of a witness is only a piece of evidence, and for the purpose of conviction, the corroborated part of the evidence of a hostile witness regarding the commission of the offence is to be treated as admissible. (Ref. **Mrinal Das v.**

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State of Tripura : (2011) 9 SCC 479). The Trial Court while deciding the case has to consider the entire material on record, and can definitely look into the circumstances and other evidence put forth by the prosecution while passing the judgment.

10. However, this Court while considering the application of bail cannot lose sight of the fact that the present case is based on the statement of the prosecutrix. From the stand taken by the victim in her cross examination, the very foundation of the case has become doubtful.

11. Moreover, the applicant's role cannot be said to be graver than the role of the co-accused Suraj.

12. In such circumstances, in the opinion of this Court, the applicant is therefore entitled for release on bail on the ground of parity.

13. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall provide the address where he would be residing after his release and shall not



change the address without informing the concerned IO/ SHO;

- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

14. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an appropriate application seeking cancellation of bail.

15. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application only and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

16. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

DECEMBER 19, 2024

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