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

+ BAIL APPLN. 4645/2024, CRL.M.A. 37989/2024 & CRL.M.(BAIL)
2147/2024

MOHD. AMIR MALIK

.....Petitioner

Through: Mr.Nishaank Mattoo, Mr.S.N.Khan,
Mr.Rishabh Munjal and Ms.Tanya
Sharma, advts.

versus

STATE OF N.C.T. OF DELHI

.....Respondent

Through: Mr.Hemant Mehla, APP for the State.
SI Doli Tewathia, PS Adarsh Nagar

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

17.12.2024

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1. At the outset, learned counsel for the petitioner submits that though the name of the victim has been masked in the pleading file but inadvertently at PDF page no.168, the name of the victim is left to be masked. Let the masked copy be filed. The registry is directed to ensure that it does not get circulated in any manner. In future also, the Registry is directed to ensure that if the name of the victim is left to be masked, the registry should be careful while passing/circulating.
2. Copy of the order be sent to the learned Registrar General for compliance and necessary action.
3. The present application has been moved for anticipatory bail in case FIR no.0726/2020 registered under Section 376D/313/506 IPC at PS



Adarsh Nagar. Learned counsel for the petitioner submits that the petitioner is a third-year M.B.B.S. student and has been falsely implicated in the present case.

4. Learned counsel for the petitioner submits that in the charge sheet filed against the co-accused persons, namely Akib and Nadeem Malik, it was stated that the supplementary charge sheet had been filed against Mohd. Amir, however, subsequently purportedly, the petitioner was apprehended, and he was remotely seen by the prosecutrix, who stated that the petitioner was not the person involved in the offence.
5. Learned counsel for the petitioner submits however thereafter as a knee-jerk reaction in view of the order passed by the learned Additional Sessions Judge on 16.08.2024 whereby irregularity in the investigation was noticed, the NBWs were issued against the petitioner. Learned counsel for the petitioner submits that the fact that earlier the petitioner was exonerated was not brought to the notice of learned ASJ while the order 16.08.2024 was passed. Learned counsel submits that NBWs were issued wrongly and the same could not be executed as the petitioner was pursuing his medical course.
6. Issue notice. Learned APP has accepted the notice.
7. Mr. Hemant Mehla, learned APP submits that the present petition is not at all maintainable as the process under Section 82 Cr.P.C. has already been issued against the petitioner. Learned APP submits that in view of certain fresh developments, the police need to conduct an investigation qua the petitioner for his custodial interrogation as deemed necessary.
8. The FIR in the present case was lodged by the prosecutrix, and the allegations therein are deeply distressing. According to the prosecutrix,



she went to the room of the co-accused, Aqib, at his insistence, where several of his friends were present but later left. She alleged that Aqib forcibly established a sexual relationship with her despite her resistance, assuring her of marriage. On March 15, 2020, the prosecutrix informed Aqib about her pregnancy and went to meet him. During this meeting, a pregnancy test was conducted, which confirmed the pregnancy. Allegedly, Aqib reacted abusively, forcibly removed her clothes, and called another accused, Samar, stating they would ensure no one could identify whose child she was carrying. The prosecutrix alleged that Aqib forcibly held her mouth and raped her. Samar held her hands and touched her breast with his private part. Thereafter, Aqib called Amir, who emerged from the bathroom and allegedly raped her as well. When she resisted, Samar reportedly threatened to kill her and brought out an acid bottle, further intimidating her. The prosecutrix alleged that all three accused committed rape.

9. The counsel for the petitioner, while arguing for bail, pointed out inconsistencies in the investigation. The charge sheet initially named Aqib and Nadeem as accused, with a statement from the investigating officer indicating a supplementary charge sheet would be filed against Amir Malik. However, in a reply dated 10.02.2021 to the bail application of Aqib Malik, it was stated that Amir Malik, who had joined the investigation on 08.01.2021, was remotely identified by the prosecutrix out of her free wish and told that he is not the same Amir who was present on 15.03.2020 at the time of the rape.
10. The manner in which the investigation was conducted raises serious concerns. The procedure adopted for identification was not in



accordance with statutory requirements, reflecting a lack of diligence and oversight by the investigating officers. In cases involving serious allegations such as gang rape, the police are expected to conduct a thorough and discrete investigation. The superficial exoneration of an accused based on an informal identification undermines the gravity of the offense and the investigation process. The investigating officer's handling of the matter displayed a lack of competence and supervision. Such serious lapses have the potential to derail the investigation and compromise justice. Further, the jurisdiction for anticipatory bail is meant to be exercised in exceptional circumstances where harassment of the accused is evident, not in cases where the investigation itself has been tainted with carelessness.

11. In light of the above, the present petition is dismissed. A copy of this order shall be sent to the Commissioner of Police for appropriate action against the concerned officials to ensure accountability.

DINESH KUMAR SHARMA, J

DECEMBER 17, 2024

Rb/ht