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

+ **BAIL APPLN. 612/2025**

SUNIL

.....Petitioner

Through: Mr. Devesh Prakash Gautam,
Advocate.

versus

STATE GOVT NCT OF DELHI

.....Respondent

Through: Mr. Rajkumar, APP for State along
with S.I. Dharmveer, P.S. Chhawla
Ms. Anjali Singh and Ms. Vishakha,
Advocates.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER
28.02.2025

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1. By way of the present bail application filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, the applicant is seeking grant of regular bail in case arising out of FIR No. 450/2023, registered at Police Station Chhawla, Delhi for the offences punishable under Sections 376/328/201 of Indian Penal Code, 1860 [hereafter 'IPC'] and Section 67 of Information Technology Act, 2000 [hereafter 'IT Act'].

2. Brief facts of the case are that the present applicant and the victim were in a consensual relationship and they initially had intended to marry each other. However, it is alleged that the present applicant had entered into sexual relationship with the victim on multiple occasions without her consent and had prepared her obscene videos and photographs while she was



unconscious and thereafter had circulated them on social media applications including Instagram and Facebook.

3. The learned counsel appearing for the applicant argues that the applicant is innocent and has been falsely implicated in this case. It is argued that the obscene videos and photographs which were allegedly circulated on social media platforms including Facebook and Instagram, could not have been posted by the accused/applicant herein since he is illiterate and does not know how to operate any social media application. It is further stated that the victim herein is a working educated woman and she has been in a consensual relationship with the accused/applicant herein. The learned counsel for the applicant also draws the attention of this Court towards the cross-examination of the victim and states that the applicant and the victim had undergone a marriage ceremony in a temple and the applicant intended to get married to her. Later on, it was the victim who had refused to get married to the applicant under pressure from her parents. It is also contended that it could not be proved by the prosecution during the investigation that the alleged obscene videos and inappropriate photographs were captured by the applicant herein. Therefore, it is prayed that the applicant be granted bail.

4. On the other hand, the learned counsel appearing for the victim argues that the victim herein was in a friendly relationship with the applicant but she had not given her consent for any sexual relationship. It is argued that the victim had realised that she had been raped by the applicant only after the inappropriate videos and photographs of hers were shown to her. It is further argued that the applicant, thereafter, had threatened her that in case she does not concede to his demand for a sexual relationship, he will post



the videos and photographs on social media platforms and therefore, there was no consent given by the victim herein.

5. The learned APP for the State also opposes the present bail application and argues that the allegations against the applicant are serious in nature and considering the gravity of the offence, the bail application be dismissed.

6. This Court has heard arguments and perused the material available on record.

7. Having gone through the material on record, this Court notes that the contradictions which have been pointed out by the learned counsel for the applicant in the statements of the victim recorded before the learned Trial Court, learned Magistrate under Section 164 *Cr.P.C.*, and the initial statement given to the police cannot be appreciated, at this stage, when the bail application is being considered. Further, this Court takes note of the fact that the victim in her statement clearly records as to how, though, she was in a friendly relationship with the accused, she had been administered some stupefying substance and when she was not fully conscious, she was for the first time raped by the applicant herein. On the second occasion, she was shown her inappropriate photographs and videos by the accused and on being threatened that these videos and her photographs showing them in sexual relationship will be made public, and under the said threat, the applicant had made sexual relationship with her on three different occasions. Therefore, from the record before this Court, at this stage, *prima-facie*, the statements of the victim recorded, reflect that she had not given her free consent for sexual relationship to the present applicant. The first episode of sexual relationship was under the influence of a stupefying substance and



the rest under threat of making public the inappropriate video of the victim and the accused in sexual relationship. Thus, this contention is found unmerited.

8. As far as the contention of the learned counsel for the applicant that the applicant had neither circulated or posted the obscene videos and nude photographs of the victim on Instagram or Facebook nor circulated it to the brother or other family members or friends of the victim is concerned, the record at this stage, *prima-facie*, points out to the contrary. The Forensic Science Laboratory report and the testimony of the concerned witness in this regard reveals that the meta report collected during the investigation points out that the videos and photographs that were posted on Instagram as well as Facebook and sent to other mobile phones of the friends and relatives of the victim, were retrieved from the phone seized from the applicant, registered in his name.

9. The learned counsel for the applicant also argued that even if for the sake of arguments, it is presumed though not admitted that the photographs were posted on the social media platforms by the accused, the punishment for the said offence is about three years and therefore, the accused be released on bail. This contention is bound to be rejected, since the act of posting such nude and obscene photographs, cannot be seen in isolation. It is to be kept in mind that it was on the strength of these photographs itself that he had forced the victim into sexual relationship, the victim had at no point of time given him consent to either capture or circulate the photographs.

10. The Court also while deciding bail applications cannot remain oblivious of the societal perspective of the case. The Court notes that when an unmarried young girl's nude photographs and inappropriate obscene



videos in a sexual act are circulated by a person who has made those videos on sly without the knowledge of the young girl and the young girl is threatened after being shown those videos that in case she will not concede to the demand for further sexual relationships, it will add to the gravity of the offence. In such cases where sexual relationships take place on the strength of such threats are being extended to the victim, the alleged offence of 67 of IT Act cannot be read in isolation. This Court, therefore, is of the opinion that prima-facie from the material on record and the testimony of the witness who has prepared the FSL report recorded before the learned Trial Court, the FSL report and the description of the photographs which emerges from the record, the offence assumes seriousness. Moreover, the photographs of the victim, in this case who is about 24 years of age, have been allegedly sent to the father and brother of the victim and thereafter, posted on social media platforms such as Instagram and Facebook from the ID of the phone registered in the name of the applicant. The mental agony and embarrassment, and at times in Indian context social stigma faced by the victim and his family, cannot be described in a court order.

11. In a recent order of the Hon'ble Supreme Court in *X v. State of Rajasthan & Anr.: SLP (Crl.) 13378/2024*, it has been observed that ordinarily in serious offences like rape, murder, etc., once the trial commences and the prosecution starts examining its witnesses, the Courts should be loath in entertaining bail applications of the accused.

12. Considering the aforesaid, this Court is of the opinion that at this stage, when public witnesses are yet to be examined before the learned Trial Court, there is no ground for grant of bail, at this stage.

13. Accordingly, the present bail applicant stands dismissed.



14. It is clarified that aforesaid findings were recorded by this Court since detailed submissions were made on behalf of the applicant and this Court was requested by the learned counsel for the applicant to deal with the contentions raised by him.

15. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 28, 2025/vc

Click here to check corrigendum, if any