



2025:DHC:3911



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

% **Date of decision: 15.05.2025**

+ **BAIL APPLN. 1290/2024**

AKHLESH

.....Petitioner

Through: Mr. Samrat Nigam, Sr. Adv.
with Mr. Abhimanue Shrestha,
Mr. Gaurav Tyagi, Ms. Arpita
Patni and Mr. Pritesh Patni,
Adv.

versus

THE STATE GOVT OF NCT OF DELHIRespondent

Through: Mr. Satish Kumar, APP for
State.
Ms. Gunjan Sinha Jain, Adv.
for R-2.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

SHALINDER KAUR, J (ORAL)

1. By way of the present petition under Section 439 of the Code of Criminal Procedure, 1973 (CRPC), the petitioner seeks grant of Regular Bail in FIR No.289 of 2023 dated 28.05.2023 for the offences punishable under Section 365, 376 and 506 of the Indian Penal Code, 1860 (IPC) registered at Police Station Prasad Nagar.

PROSECUTION'S CASE

2. Prior to the registration of the FIR, the mother of the prosecutrix made two PCR calls on 27.05.2023, reporting to the police that her



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daughter, aged 20, had been subjected to certain wrongful acts by an individual named Akhilesh (petitioner). The information was relayed to SI Ankit, who arrived at the scene. A counsellor from the Delhi Commission for Women (DCW) was also called for the purpose of counselling the prosecutrix.

3. The prosecutrix was taken to Lady Hardinge Medical College Hospital for medical examination under MLC No.108 dated 28.05.2023. It is recorded in the MLC that the prosecutrix declined an internal medical examination.

4. As per the allegations, the prosecutrix first came into contact with the petitioner, a 55 year-old cab driver, in May 2022 during a visit to Khatu Shyam, along with her mother and a family friend named Kiran. The vehicle for the journey had been booked through Kiran, and during this trip, the petitioner allegedly exchanged contact details with the prosecutrix and her mother.

5. It is further alleged that after the initial meeting, the petitioner began to communicate with the prosecutrix through phone calls and text messages. The prosecutrix stated that on one occasion, the petitioner called her to Kundan Dhaba on Padam Singh Road, from where she was taken to Hotel Venus Deluxe, Paharganj, purportedly owned by an acquaintance of the petitioner. It is alleged that the petitioner sexually assaulted her at the said hotel despite her resistance. The prosecutrix did not inform her family of the incident out of fear.



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6. The prosecutrix further alleged that in April 2023, she was again called by the petitioner, who took her on his motorcycle to the same hotel in Paharganj, where a similar incident allegedly took place. The prosecutrix has claimed that she was threatened by the petitioner with severe consequences should she disclose the incidents to anyone.

7. During the investigation, the statement of the prosecutrix was recorded under Section 164 of the Code of Criminal Procedure, 1973 (CRPC), before the learned Metropolitan Magistrate on 28.05.2023. Her statements under Section 161 of the CRPC were also recorded on 28.05.2023, 29.05.2023, and 07.06.2023. In her statement the prosecutrix reiterated the allegations against the petitioner and further alleged that he had promised to marry her and used that pretext to establish physical relations.

8. The investigation led to the filing of the Charge-Sheet dated 25.07.2023 before the learned Additional Sessions Judge. The Charge-Sheet included statements of witnesses, Call Detail Records (CDR) of the prosecutrix, her mother, her father, and the petitioner. The CDR analysis indicated telephonic communication between the petitioner and the prosecutrix, as well as with the prosecutrix's mother..

9. During the investigation, the petitioner was apprehended on 30.05.2023 and was formally arrested, his mobile phone was seized and deposited in the *Malkhana*.

10. It is further recorded in the Charge-Sheet that during the course of the investigation, the prosecutrix stated that the petitioner had taken explicit photographs and videos of her and had allegedly used them to



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blackmail her. The prosecutrix stated that the petitioner had sent certain photographs and videos to her mobile phone, which were retrieved and submitted to the forensic laboratory for examination.

11. The petitioner had previously moved three bail applications, which were declined on the grounds that the prosecutrix had expressed apprehension of threat from the petitioner, and the trial was at a stage where the testimony of the prosecutrix was yet to be recorded.

12. The documents on record indicate that during the pendency of the case, several complaints were made by the prosecutrix at the Police Station. These complaints, dated 21.11.2023, 25.01.2024, 10.02.2024, 21.06.2024 and 05.07.2024, allege incidents of verbal abuse, threats, stalking, and receipt of obscene material from unknown numbers. The complaints include allegations against one Kiran and Monika for threatening the prosecutrix, and against the petitioner for sending obscene videos and following her to Court.

13. The learned Senior Counsel for the petitioner, Mr. Nigam, submits that the complaint alleges two separate incidents of sexual assault, once in October 2022 and again in April 2023. However, the prosecutrix's statements are devoid of specific dates.

14. He submits that the written complaint mentions that the second incident allegedly occurred on a Monday in April 2023, yet the CDR analysis indicates that the prosecutrix's mobile number did not reflect her presence at any hotel or specified location during the entirety of April 2023. It is further argued that the prosecutrix's mobile location history does not correspond with the allegations. The mobile location



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of the prosecutrix, as per the CDRs, was at her residence throughout October 2022, except for 28.10.2022, when she had travelled to Vrindavan with her family. It is submitted that this conclusively disproves the allegation of any incident at Paharganj during October 2022.

15. The learned Senior Counsel further submits that the prosecution has failed to produce any corroborative evidence from the hotel staff or CCTV footage to substantiate the claim that the prosecutrix and the petitioner were present at the hotel on the alleged dates.

16. He submits that the prosecutrix was previously known to the petitioner, as is apparent from the statement given by the prosecutrix herself. The prosecutrix was in consensual relationship with the petitioner; nonetheless, she has falsely got him implicated in the case.

17. He submits, the testimonies of the prosecutrix (PW-1) as well as her mother (PW-2) have been recorded. Further, 7 out of the 16 witnesses in the present case have been examined and the recording of the evidence of the remaining witnesses would take considerable amount of time. Moreso, one of the prosecution's witnesses, Kiran, has not supported the prosecution case. Keeping in view the long incarceration of the petitioner and the other discrepancies in the prosecution's case, the petitioner be released on bail.

18. Opposing the grant of bail, the learned APP for the State submits that the accused not only committed the offence of rape, but also threatened the prosecutrix with dire consequences should she disclose the incident to anyone. He submitted that the accused warned



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her that he would harm her and her family, if she reported the matter to the police. It is argued that this element of threat and intimidation is a crucial factor that reflects the accused's influence over the prosecutrix, which cannot be overlooked.

19. It is further contended that considering the age gap between the two, the probability of a friendship amongst the two is highly unlikely. The learned APP submits that on the basis of certain photos and videos taken by the petitioner, he was blackmailing the prosecutrix and forcing her to remain in a relationship with him. In addition to this blackmail, the petitioner would also threaten the prosecutrix stating that he would kill his mother. He submits one of such photograph, when shown to the prosecutrix while rendering her deposition before the learned Trial Court; the prosecutrix has admitted to be that of her.

20. In addition, while seeking dismissal of the bail application, the learned counsel for the prosecutrix submits that the introduction of the prosecutrix to the accused was facilitated by her aunt namely Kiran, who not only played a significant role in enabling the initial interaction but has also been actively attempting to interfere with the investigation. It is contended that Kiran's repeated attempts to intimidate the prosecutrix and her family are documented through various complaints, which reveal a concerted effort to pressurize the prosecutrix to withdraw the case.

21. It is further submitted that whenever the prosecutrix or her family members visited the Police Station for investigation or follow-up, Kiran was invariably present, actively engaging in coercive tactics



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to prevent cooperation with the authorities. This persistent interference, it is argued, has resulted in significant emotional distress for the prosecutrix and has hampered the investigation process, therefore, she could not pursue the several subsequent complaints sent by her to the police.

22. Having heard the learned counsel for the petitioner, the complainant and the learned APP for the State, as also perused the record. It is relevant to note the prosecution version alleging that the petitioner, a cab driver aged 55, came into contact with the prosecutrix for the first time, when a trip to Khatu Shyamji was arranged through Kiran, a family acquaintance. The prosecutrix, along with her family, travelled with the petitioner in his cab, during which the petitioner allegedly exchanged contact information with the prosecutrix and her mother.

23. The prosecutrix has alleged that subsequent to their initial acquaintance, the petitioner began communicating with her through phone calls and text messages. It is further alleged that on multiple occasions, the petitioner lured the prosecutrix to a hotel in Paharganj, where he established physical relations against her consent. These incidents, as narrated by the prosecutrix, were reinforced by threats of harm should she reveal the same to her family.

24. A significant concern raised by the prosecutrix is the repeated threats she has been subjected to, which have been documented through various complaints made to the police. These complaints, dated 21.11.2023, 25.01.2024, 10.02.2024, 21.06.2024, and



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05.07.2024, allege incidents of verbal abuse, stalking, and the sending of obscene materials. The prosecutrix has further alleged that these threats have been enabled and supported by her aunt, Kiran.

25. The learned Senior Counsel for the petitioner, however, contends that the prosecutrix did not respond to the Investigating Officer (IO) when called upon subsequent to her complaints so as to investigate the matter. The learned Senior Counsel brought to the notice of this Court the Status Report filed by the respondents, submitting admittedly that the prosecutrix did not respond to the enquires made by the IO.

26. It is further submitted that despite claims of photographs and videos being sent, the prosecutrix has not handed over any such material to the IO. Thus, all the complaints are concocted and filed to create a fear of threat

27. Refuting these submissions, the learned counsel for the prosecutrix urges that the threats are genuine and ongoing. It is submitted that out of fear instilled by Kiran, who has turned hostile to the prosecution case, the prosecutrix has been unable to approach the police for further investigation. Whenever she went to the Police Station in pursuance to the complaints made by her, Kiran used to be present in the Police Station, which compelled her to further divulge into the threats.

28. The learned APP for the State emphasises on one photograph in particular, contained within the exhibit marked as Exhibit P3, which the prosecutrix has identified as her own, it is argued that the said



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photograph was retrieved from the mobile of the petitioner by the IO, reinforcing the prosecutrix's allegations of blackmail and coercion.

29. The learned APP also submits that the prosecutrix has supported the case of the prosecution, during the testimony rendered before the learned Trial Court coupled with the fact of receiving various threats puts her in a vulnerable position, in addition to the complaints made by her.

30. It is not disputed that the petitioner and the prosecutrix came to know to each other as being a cab driver; he was hired thrice to travel to different locations. As per the petitioner, from the initial complaint made by the prosecutrix, what emerges is that the relationship was consensual; however, from a reading of the complaint, it *prima facie* emerges that petitioner threatened the prosecutrix and forced her into engaging into physical relations.

31. The petitioner has also placed on record the CDR of the prosecutrix, stating that it did not show her presence at the hotel where the alleged incident took place. It is needless to say that the petitioner is yet to prove the CDR, which is a matter of trial.

32. The trial is currently underway, with the testimony of the prosecutrix already recorded. However, it is urged by the State that the ongoing threats, coupled with the prosecutrix's tender age, amplify her vulnerability. The age difference between the petitioner and the prosecutrix, it is argued, negates the probability of a consensual relationship, pointing instead to manipulation and exploitation. *Prima*



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facie, the serious and grave allegation made against the petitioner cannot be brushed aside.

33. In view of the nature of allegations, the stage of the trial, and the prosecutrix's stated apprehensions, this Court is of the considered opinion that the petitioner does not merit the grant of bail at this stage. The possibility of influence over witnesses, the ongoing threats, and the vulnerability of the prosecutrix weigh heavily against the petitioner's plea for bail.

34. Accordingly, the bail application is dismissed.

SHALINDER KAUR, J

MAY 15, 2025/FRK

Click here to check corrigendum, if any