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

+ **BAIL APPLN. 3281/2023**

JITENDRA

.....Petitioner

Through: Ms. Priyanka Deo and Mr. Amit Kumar, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI)

.....Respondent

Through: Mr. Ajay Vikram Singh, APP.
W/SI Kumari Neeraj, PS: Palam Village.
Mr. Vijit Singh, Mr. Dhruv Chaudhry and Mr. Shubham Sourav, Advocates for Prosecutrix.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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24.07.2025

1. The present application filed under Section 483 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 439 and Section 482 of the Code of Criminal Procedure, 1973²) seeks regular bail in proceedings arising from FIR No. 147/2021 dated 14th April, 2021, registered under Sections 365/376D/377/328/34 of the Indian Penal Code, 1860³ at P.S. Palam Village. A chargesheet has been filed *qua* the Applicant, under Sections 376D/34. The Applicant's previous bail application has been

¹ "BNSS"

² "Cr.P.C."

³ "IPC"



rejected by order dated 6th March, 2023 passed by the ASJ, Fast Track Special Court (RC), Dwarka Courts, New Delhi.

2. Briefly, the case of the prosecution is as follows:

2.1 On 14th April, 2021 at around 1:49 AM a PCR call was received at P.S. Dwarka South wherein the caller stated that his sister had been kidnapped by his brother-in-law and she had informed him about her whereabouts in Mandoli, Uttar Pradesh. Pursuant to this information, recorded *vide* DD No. 9A, L.Ct. Risha and PSI Amit proceeded to Police Chowki Mandola, Ghaziabad, where they met the Prosecutrix and her brother. The Prosecutrix was then brought to the police station and subsequently counselled by NGO representatives.

2.2. The detailed complaint of the Prosecutrix was recorded at the police station wherein she stated that on 13th April, 2021, at around 1-1:30 PM, while she was waiting at Palam Phatak to travel to AIIMS Hospital, a vehicle stopped near her and she was forcibly pulled inside the vehicle by a person. Two muffled individuals were also inside the car. They tied her hands behind her back and also shut her mouth to prevent her from raising any alarm. She was then forced to drink an unknown substance and, shortly thereafter, lost consciousness. Upon regaining consciousness, she found herself in a semi-nude condition in a hut located in *Sankraud* Village, in an open farm. The two individuals who had abducted her were present there. She later managed to escape and reached a shop in Mandola Vihar, Ghaziabad. There, a 16–17-year-old boy assisted her in contacting her brother using his phone. After some time, the boy closed his shop and left, but his uncle remained present. She was then allegedly sexually assaulted by the boy's uncle and another man, later identified as one Daulat and Sonu @



Jitendra (the present Applicant), respectively. Jitendra sexually assaulted the Prosecutrix in a nearby open area and Daulat assaulted her inside a truck, in which she was then locked overnight. She managed to escape from the truck and approached the UP Police for help.

2.3. Upon registration of the FIR, the Prosecutrix's statement under Section 164 of Cr.P.C was recorded on 17th April, 2021, wherein she reiterated her allegations. The crime scene at Mandola village was inspected on 20th April, 2021 in the presence of the Prosecutrix and FSL team. Several exhibits were seized, and witness statements were recorded under Section 161 Cr.P.C. One witness, Tara Chand, stated that on the date of the incident, the accused persons Daulat and Sonu @ Jitendra were seen talking to the Prosecutrix.

2.4. On 22nd April, 2021, accused Daulat was arrested after being identified by the Prosecutrix. On 29th May, 2021, Test Identification Parade⁴ of the accused Daulat was conducted and he was identified by the Prosecutrix. The Prosecutrix also identified the truck at the location where she was raped by Daulat. The said truck was seized and later released on *superdari*.

2.5. On 9th June, 2021, Jitendra, appeared before the police and was arrested for the offence under Section 376D IPC. His medical examination was conducted, and biological exhibits were collected and sent to FSL, Rohini. However, he refused to participate in the TIP proceedings scheduled on 15th June, 2021, before the Duty MM at Tihar Jail.

⁴ "TIP"



3. On 6th May, 2025, taking note of the fact that the present bail application had been pending since 2023, this Court had called upon the counsel for the Applicant to address arguments. However, the counsel had sought for an adjournment, stating that she would address the arguments after recording of the testimony of the Prosecutrix (PW-1) before the Trial Court. Accordingly, the Trial Court was requested to expedite the recording of the testimonies of PW-1 to 3.

4. The Court is apprised that while testimony of PW-1 has since been concluded, testimonies of PW-2 and 3 are yet to be recorded. In the given circumstances, and considering the prolonged pendency of the present Application, the Court has called upon the counsel to address arguments on merits.

5. Ms. Priyanka Deo, counsel for Applicant, urges the following grounds in support of the Applicant's request for bail:

5.1 The FIR was lodged with *mala fide* intent and the Applicant has been falsely implicated as a means to settle personal scores. The allegations, appear to be an outcome of a vendetta by the Prosecutrix to take revenge against her husband and in-laws, who are the other co-accused in the case. The Applicant has no connection whatsoever with the Prosecutrix or her family. The Applicant and co-accused Daulat reside in proximity to the alleged place of occurrence and were wrongly implicated on the basis of the Prosecutrix's complaint, which lacks credibility.

5.2. There are glaring inconsistencies in the versions of the Prosecutrix across her statements recorded under Section 161 Cr.P.C, Section 164 Cr.P.C, and her deposition before the Trial Court. These contradictions



strike at the root of the Prosecution's case and *prima facie* indicate that the Applicant has been falsely implicated.

5.3. Apart from the contradictory statements of the Prosecutrix, there is no other material on record to implicate the Applicant. The Prosecutrix refused to undergo internal medical examination. If the allegations of forcible sexual assault were truly genuine, there would ordinarily be some corroborative medical evidence in the form of bodily injuries, abrasions, or other signs of resistance. In the absence of such scientific or medical evidence, the allegations remain uncorroborated.

5.4. There was a significant delay in the recording of the Prosecutrix's statement before the competent authorities. While the delay was attributed to her need for rest and sleep, such delay raises doubts about the authenticity of her version. The delayed statement appears to be an after-thought, possibly a tutored and fabricated narrative for filling in inconsistencies and loopholes in her account.

5.5. The analysis of the Call Detail Records reveals that upon being contacted by the Prosecutrix, her brother instead of immediately approaching the police, contacted certain advocates, who thereafter appear to have constructed the case against the Applicant.

5.6. It is an undisputed fact that the Prosecutrix was carrying a mobile phone at the time of the alleged incident. In ordinary circumstances and, as is expected from a victim of sexual assault, she would have made a call to the police or at least to the near and dear ones. However, there is a gap of nearly six hours between the time of the alleged incident and time at which the call was made to her brother. Her brother also reached with the police nearly four hours after that call. This huge time gap between the time of the



alleged incident and reporting to the brother, among other unexplained gaps, further undermine the case of the Prosecution.

5.7. There is a break in the chain of custody of the exhibits i.e., the clothes of the Prosecutrix, which form the basis of the forensic analysis. The said exhibits were handed over by the Prosecutrix herself to the police after a delay of three days, and not directly to the forensic team. This casts serious doubt on their evidentiary value.

5.8. It is well-settled that bail is the rule and jail is the exception. The Prosecutrix has already been examined during the course of the trial, and there is no risk of the Applicant influencing her testimony. The chargesheet has also been filed, and no material evidence remains to be collected. In these circumstances, the possibility of tampering with the evidence is minimal, and the Applicant is now entitled to be released on bail.

5.9. The Applicant has clean antecedents and there is hardly any chance of him attempting to flee from justice or to tamper with evidence in any manner whatsoever.

6. Mr. Ajay Vikram Singh, APP for the State, on the other hand, opposes the grant of bail on the following grounds:

6.1. The Applicant is accused of committing a grave and heinous offence involving gang rape of the Prosecutrix along with another co-accused. In view of the seriousness of the allegations and the nature of the offence, he ought not to be released on bail.

6.2. There is scientific evidence in the nature of FSL report wherein DNA profile of the Applicant has been found on the specimens provided by the Prosecutrix during investigation. This scientific evidence, along with the testimony of the Prosecutrix, is sufficient to establish the offence.



6.3. The statement of the Prosecutrix is clear and unequivocal. She has, in her statements, clearly identified the Applicant as one of the persons who assaulted her.

7. The Court has considered the aforementioned submissions. It is a well-established principle that while considering a bail application, the Court must keep in mind several factors relating to the case, such as whether there is any *prima facie* reasonable ground to believe that the accused has committed the offence, the nature and gravity of the accusation, severity of potential punishment, risk of the accused absconding or fleeing if released on bail, the likelihood of the offence being repeated, etc.⁵ However, it is equally well settled that while deciding a bail application, the Court is not required to conduct a detailed examination of evidence which would make the bail proceedings akin to a mini-trial.⁶ At the stage of bail, the Court must only take a *prima facie* view of the material on record to assess the involvement of the accused.

8. In the opinion of the Court, the arguments advanced by counsel for the Applicant, which primarily pertain to the appreciation of evidence, cannot be considered at the stage of bail. Doing so would amount to conducting a mini-trial, an exercise impermissible at the stage of bail. This principle was reiterated by the Supreme Court in ***Sangitaben Shaileshbhai Datanta v. State of Gujarat***.⁷

9. The trial is underway and the Prosecutrix has already been examined as a witness, the Court cannot undertake a meticulous evaluation regarding

⁵ Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr. (2010) 14 SCC 496

⁶ Brijmani Devi v. Pappu Kumar & Anr., (2022) 4 SCC 497

⁷ (2019) 14 SCC 522



the consistency of the testimonies of the Prosecutrix, as urged by the Counsel for the Applicant.

10. Moreover, as regards the existence of a *prima facie* case against the Applicant, the material placed on record is sufficient to satisfy the threshold at this stage. The Prosecutrix has consistently identified the Applicant as one of the persons who sexually assaulted her in her statements. Her account of the incident is detailed and coherent and aligned with the sequence of events described in the FIR.

11. In addition to her testimony, there is also scientific evidence on record in the form of an FSL report, which reveals that the DNA profile extracted from the specimens recovered during investigation matches that of the Applicant. This corroboration between the Prosecutrix's account and the forensic findings supports the conclusion that a *prima facie* case is made out against the Applicant.

12. It is settled law that ordinarily, in serious offences like murder, rape, dacoity etc., bail applications of the accused should not ordinarily be entertained by the Trial Courts and the High Courts and the Court must exercise its discretion judiciously and not as a matter of course.⁸

13. In view of the above, the Court is of the view that sufficient grounds are not made out for grant of bail at this stage and the Court finds no reason to accede to the Applicant's request for being released on bail.

14. Accordingly, the application is dismissed.

15. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence

⁸ X v State of Rajasthan & Anr. 2024 INSC 909; see also Ram Govind Upadhyay v Sudarshan Singh, (2002) 3 SCC 598



the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

SANJEEV NARULA, J

JULY 24, 2025
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