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

+ **CRL.M.C. 7117/2023**

ABC

.....Petitioner

Through: Mr. Abhay Gupta, Mr. Paramjeet Singh, Mr. Sargam Jain, Advs.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Sanjeev Sabharwal, APP for the State.
SI Dipika, PS Adarsh Nagar.
Mr. Gajraj Singh, Ms. Sakshi, Mr. Tarun Inder Dev, Advs. For R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

% **19.05.2025**

1. This hearing has been done through hybrid mode.
2. The present petition under Section 482 of the CrPC seeks the following prayers: -

“A. Allow the petition and set aside the order dated 29.08.2023 passed by Ld. Additional Session Judge, Rohini Delhi granting bail to Resp. NO.2 / accused.

B. Pass any such other order or orders as this Hon'ble Court may deem fit and proper interest he interest of justice.”

3. Learned counsel appearing on behalf of the petitioner submits that the offence was allegedly committed on 03.03.2023, when the latter was under intoxication and, therefore, the same would not amount to any consent. It is further submitted that the frauds played upon the petitioner by respondent no.



2 had come to her knowledge after 10.08.2023 and, thereafter, she sought return of her phone, which was not done and, therefore, after realising the fraud played upon her the present complaint was filed. It is further submitted that the learned Trial Court while granting bail to the present applicant did not appreciate the said facts and granted bail to the applicant on the ground that the petitioner during the course of hearing had admitted to be in a live-in relationship with respondent no. 2. It is further submitted that the FSL report has now been received which shows that certain obscene images and videos have been retrieved from the respondent no. 2's phone.

4. Learned counsel appearing on behalf of the respondent no. 2 submits that the learned Trial Court while passing the aforesaid order has discussed all the material that was available on record, and after examining the said material, the learned Trial Court granted bail to the present applicant. It is further submitted that the proceedings are presently at the stage of the prosecution evidence where the petitioner is under examination-in-chief.

5. Heard the learned counsel for the parties and perused the records.

6. As per the status report dated 15.02.2024, authored by the SHO, P.S. Adarsh Nagar, it is the case of the prosecution that on 20.08.2023, the petitioner/complainant, aged about 29 years, came to Police Station Adarsh Nagar and alleged sexual assault had been committed by respondent no. 2 on the pretext of marriage. It is further the case of the prosecution that statement of the petitioner was recorded under Section 164 of the CrPC in which she corroborated the allegations made in the FIR, thereafter, respondent no. 2 was arrested on 20.08.2023.

7. Learned Trial Court while granting bail to respondent no. 2 observed as under: -



“During the course of proceedings, the court enquired from the complainant about the genuineness and authenticity of the photographs and Whatsapp chat annexed by the accused along with application. After going through the same, complainant submitted that photograph and chat are genuine, however, some messages have been deleted by the accused. I have gone through the chat history wherein accused has disclosed his birthday as 11th of September and not 3rd of March as alleged by the complainant. Both of them were chatting with each other on 04.03.2023 around 12 midnight which is in contradiction with the contents of the FIR that complainant was raped when she was in unconscious condition in the intervening night of 03/04.03.2023. Accused has also made certain payments into the account of the complainant on several occasions. There is an inordinate delay in registration of FIR as the alleged incident occurred on 03.03.2023 whereas the FIR was registered on 20.08.2023. It is also surprising to observe that if, accused had raped forcibly on 03.03.2023 then, how come complainant agreed to have a live in relationship with him.

As per report filed by 10, last sexual relations were made on 08.07.2023. Accused was arrested on 20.08.2023 and his potency test has already been conducted. Investigation qua accused is complete and he has also handed over his phone to the IO. Considering the fact that prosecutrix came in contact with the accused on Social Media App 'Instagram', they had physical relation on many occasions, no complaint was ever lodged by the prosecutrix since 03.03.2023 till registration of FIR, prosecutrix had denied for her medical examination and there is no threat perception involved from the side of accused, I deem it appropriate to admit the accused/applicant to bail. Accordingly, **accused/applicant Shubham Dhingra is admitted to bail subject to furnishing a personal bond in the sum of Rs. 50,000/- with one surety in the like amount on the following conditions to the satisfaction of Ld. MM/Ld. Link MM./Ld. Duty MM,**

- i) That the applicant/accused shall not leave Delhi without prior intimation to the IO/Court either by written intimation or through SMS to, IO on mobile phone in advance;
- ii) That the applicant/accused will supply all numbers of his functioning phones/mobile phones to the IO as well as about his whereabouts.
- iii) That the applicant/accused shall not tamper with the



evidence;

iv) That the applicant/accused shall not try to contact in any manner or threat the prosecution witnesses;

v) That in case of change of his residential address, he shall intimate the court about the same;

vi) That the applicant shall attend the Court on each and every date of hearing without fail

vii) In case of involvement in any criminal case during bail period the bail shall be liable to be cancelled.

Nothing stated above herein shall tantamount of any expressions on the merits of this case.

A copy of this order be sent to the Jail Superintendent concerned for further communication to the accused/applicant. Copy of this order be also forwarded to Jail Superintendent concerned through E-Mail.”

8. On a pointed query from the learned counsel appearing on behalf of the petitioner with regard to any incorrect findings by the learned Trial Court, it is stated that no incorrect findings have been recorded, however, the fact that petitioner was intoxicated and, therefore, her consent would be immaterial has not been considered.

9. The aforesaid observation had been made by the learned Trial Court after examining the material on record. The allegations with respect to alleged intoxication is the matter of trial which shall be considered by the learned Trial Court after completion of evidence led by the prosecution. The present case is listed at the stage of prosecution evidence. No adverse circumstances have been placed on record to show that respondent no. 2 in any manner violated the conditions of the bail. The FSL report which has come on record would again be a matter of trial, and the same cannot be a ground today to cancel the bail granted to respondent no. 2 *vide* order dated 29.08.2023.

10. In the aforesaid circumstances, the petition is dismissed and disposed of accordingly.



11. Learned Trial is requested to ensure that evidence in the present FIR is recorded as expeditiously as possible without giving any undue adjournments.
12. Order be communicated to the learned Trial Court for necessary information and compliance.
13. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

MAY 19, 2025/kr/sc

[Click here to check corrigendum, if any](#)