



2025:DHC:4091



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

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Judgment Reserved on: 13th May, 2025
Judgment pronounced on: 21st May, 2025

+ **BAIL APPLN. 2680/2024 & CRL.M.A. 22388/2024**
EXEMPTION FROM FILING CERTIFIED COPIES ETC.,
CRL.M.A. 37836/2024 FOR VACATION OF INTERIM
PROTECTION, CRL.M.A. 38208/2024 EARLY HEARING.

MONTI

.....Petitioner

Through: **Mr. Pardeep Kadiyan,**
Adv. through VC

versus

THE STATE NCT OF DELHI

.....Respondent

Through: **Mr. Hitesh Vali, APP.**
Mr. Vivek Kumar
Gaurav, Advocate for
complainant through VC.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. This is a petition for the grant of anticipatory bail filed on behalf of the petitioner in case FIR No. 498/2023, under Section 376 IPC and Section 6 of POCSO Act, PS Prem Nagar.
2. Learned counsel for the petitioner submits that petitioner is not named in the FIR. Rather, at the time of lodging of the FIR, petitioner



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made allegations against her father. However, as an afterthought and the instigation of her mother, victim made allegations against the present petitioner. It is further submitted that petitioner has already joined the investigation. FSL result does not implicate him. Petitioner has roots in the society and there is no likelihood of his absconding or tampering with the prosecution evidence.

3. Learned APP submits that petitioner was not named in the FIR out of fear as petitioner had threatened to kill the victim. It is submitted that considering the nature of offence and severity of punishment, petitioner is not entitled for grant of pre-arrest bail.

4. FIR in this case has been registered on the complaint of the victim, who was aged about ten years at the time of the incident. She alleged that in the night of 02.09.2023, her father forcefully raped her. She alleged that in the night of 02.09.2023 at about 3.00 am, her father asked her to come on the bed. She did not answer anything to her father and fell asleep. Her father then lifted her in his lap and told in her ear to keep quiet and not to make noise and threatened that in case she made noise, he will kill her and her mother. She got scared and did not make any noise. Her father then made her lie on the bed and unzipped his pant and removed her clothes. Firstly, he inserted his finger in the private part of the victim and thereafter raped her. Victim did not tell anything to her mother because of the threats of her father.

5. The victim was got medically examined at SGM Hospital. She corroborated the facts of the FIR before the doctor. Her statement was



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recorded under Section 164 Cr. PC, wherein also, she reiterated the allegations against her father.

6. The father of the prosecutrix was arrested and on completion of investigation, charge sheet was filed against him. Later on, he was released on bail.

7. In the meanwhile, on 20.10.2023, the mother of the prosecutrix gave a letter/application at DCP Office, Rohini, stating that few days back, her daughter narrated her true fact that she was not raped by her father but was raped by Raj (petitioner), who is a barber in the neighbourhood. Since the prosecutrix was threatened of dire consequences by the petitioner, in case she disclosed his name, she falsely stated that she was raped by her father.

8. Prosecutrix, through her mother, filed a writ petition before the High Court, seeking *denovo* investigation in the case. The court directed that supplementary statement of the prosecutrix be recorded under Section 164 Cr. PC.

9. In her supplementary statement recorded under Section 164 Cr. PC, she stated that incident was of the year 2022 and in the night when she had gone to urinate, petitioner dragged her, pressed her mouth and raped her, that she narrated the incident to her mother after about a month. According to her, the incident was of the year 2022 and it was winter season.

10. In her supplementary complaint dated 20.10.2023, prosecutrix stated that the incident was of 02.09.2023 and not of the winter of



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2022, as stated by her in her statement under Section 164 Cr. PC.

11. It is thus evident that prosecutrix gave two totally conflicting versions. In the FIR as also before the doctor and in her first statement under Section 164 Cr. PC, she made allegations of rape against her father. Even in narration of the incident before her mother, she made accusations of rape against her father. However, in the subsequent statement under Section 164 Cr. PC, she narrated altogether a different version of the incident, implicating the present petitioner. Not only this, there is also contradiction with regard to the date of incident, inasmuch as, as per first version, the incident took place in the night of 02.09.2023, but in her supplementary statement, prosecutrix stated that it took place during winter season in the year 2022.

12. It may not be apposite at this stage to make any observation on the merits of the allegations as any observation made at this stage may prejudice the trial. However, needless to state that there are conflicting statements of the prosecutrix at this stage. Petitioner has already joined the investigation. The vaginal swab and smear of the victim along with her underwear was sent to FSL. However, as per FSL result, no male DNA profile could be generated from the source of the exhibits. Thus, forensic evidence is not supporting the version of the prosecutrix.

13. Keeping in view the facts and circumstances and in particular the fact that prosecutrix gave conflicting versions at different intervals as also considering the fact that petitioner has already joined the



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investigation, I deem it appropriate to direct that in the event of arrest, petitioner shall be released on his furnishing a personal bond in the sum of Rs. 30,000/- with one surety of the like amount to the satisfaction of Arresting Officer/IO with the condition that petitioner shall not try to contact the prosecutrix and shall not threaten and intimidate her and her family members and shall join the investigation as and when directed.

14. The application is accordingly allowed.

15. It is clarified that any observation made in this order is only for the purpose of adjudication of bail application and shall not be treated as an expression on the merits of the case.

16. The pending applications, if any, also stand disposed of.

RAVINDER DUDEJA, J.

May 21, 2025/*RM*