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

+ **BAIL APPLN. 2738/2024**

BENJAMIN RIM

.....Petitioner

Through: Mr. Javed Khan and Ms. Mariya,
Advocates.

versus

STATE (GOVERNMENT OF NCT OF DELHI) AND ANR.

.....Respondents

Through: Mr. Amit Ahlawat, APP for State.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

14.05.2025

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1. The present application under Section 483 read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023¹, seeks regular bail in FIR No. 88/2023 under Sections 376, 376D, 354, 323, 498A and 34 of the Indian Penal Code, 1860², registered at P.S. Maidan Garhi, Delhi. Upon completion of investigation, a chargesheet under Sections 376, 376D, 354, 323, 109, 498A and 34 of IPC as well as Section 14 of Foreigner Act, 1946³ has been filed, wherein the Applicant herein has been charge-sheeted for offences under Section 376D of IPC and Section 14 of the Foreigners Act.

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

2.1. The subject FIR was registered on 1st March, 2023, on the basis of a complaint filed by the Prosecutrix (Smt. 'S'), who alleged that she was subjected to sustained physical and sexual abuse at the hands of her husband

¹ "BNSS"

² "IPC"

³ "Foreigners Act"



and his family members, and was further sexually assaulted by third parties, including the present Applicant. The Prosecutrix stated that she got married to Aashu Chaudhary in 2015 and following the birth of their child in July 2016, she was allegedly subjected to cruelty and denied access to her child.

2.2 The Prosecutrix stated that her brother-in-law had inappropriate intentions towards her and molested her, and when she raised this with her husband and mother-in-law, she was beaten up by them.

2.3 Once her child was three years old, she was asked to arrange INR 10 Lakh for a shop of supplements for her husband, out of which she was able to arrange INR 5 Lakhs. It is only after this that the child was brought to her matrimonial home, however, the Prosecutrix was given only limited access to meet her child.

2.4 She alleged that her husband – Aashu Chaudhary, opened the supplement shop, and began administering medicines to her under the pretext that she was physically weak. As a result of these medicines, she would often feel dizzy and drowsy throughout the day. During this period, her brother-in-law allegedly molested her by inappropriately touching her. Upon reporting this to her husband and mother-in-law, they allegedly assaulted her and threatened to prevent her from meeting her child. She further claimed that her husband later began injecting her with substances, which would render her drowsy and unconscious for extended periods of time.

2.5 In January 2021, while the Prosecutrix was staying at her mother's residence, her husband came to pick her up. After she entered the car, he allegedly administered an injection to her, stating that she had not taken her prescribed medication. The injection caused her to feel disoriented and



dizzy. Her husband then drove to Chhattarpur, where he picked up a Nigerian national – the Applicant herein. He then stopped the car at Gummat Mandir Road, where the Applicant forcibly disrobed and raped the Prosecutrix. It is further alleged that following the incident, the Applicant handed over money to her husband. Thereafter, her husband brought her home and threatened her with serious consequences, including tarnishing her father's political reputation, should she disclose the incident to anyone.

2.6 In February 2021, on the pretence of going for dinner, the Prosecutrix's husband again gave her an injection which caused her dizziness. He then took her to Hotel Parth-Inn, where he forcefully disrobed her while she remained in a subdued state. Thereafter, a man came to the room and he along with her husband raped the Prosecutrix in that state. Afterwards, the Prosecutrix was taken back home. Once she regained consciousness, her husband purportedly showed her videos of the incident, which he claimed to have recorded on his mobile phone, and threatened to circulate the footage if she ever disclosed the incident to anyone. As a result of this continued sexual and psychological abuse, the Prosecutrix has stated that she became mentally distressed and was unable to raise any protest.

2.7 Following this incident, her husband would routinely administer sedatives both in the form of oral medication and injections, rendering her unconscious or physically incapacitated. In that state, she was allegedly taken to hotels, including Hotel Parth-Inn, where she was subjected to repeated sexual assault by different men. Significantly, her husband used to also direct her to send explicit messages to different men through her phone. Despite multiple attempts to escape, the Prosecutrix claims that she was repeatedly confined to a room by her husband and mother-in-law, thereby



restricting her movement and isolating her from external help.

2.8 On the morning of 11th February, 2023, when the Prosecutrix's husband once again directed her to visit a hotel later that night, she resisted the demand. In response, she was physically assaulted by him, and thereafter, her mother-in-law allegedly confined her by locking her inside a room. Seizing an opportunity when the back door was momentarily left unsecured, the Prosecutrix managed to escape from her matrimonial home along with her child and took refuge at her aunt's residence.

2.9 Thereafter, the Prosecutrix approached the police and gave a detailed statement, pursuant to which FIR No. 88/2023 was registered on 1st March, 2023 under Sections 376, 376D, 323, 354, 498A and 34 of the Indian Penal Code, 1860, at P.S. Maidan Garhi. Investigation was taken up thereafter.

2.10 On the same day, the Prosecutrix underwent a medical examination at AIIMS Hospital, recorded under MLC No. 1364/2023. In the said MLC, the attending doctor noted the history of sexual and physical abuse as narrated by the Prosecutrix. She disclosed that approximately one year after her marriage, her husband began subjecting her to mental and physical abuse in relation to dowry demands, and around three to four years ago, he began sexually assaulting her. She further informed the doctor that her husband used to administer oral and intra-venous medication that rendered her unconscious, after which he would take her to hotels and various unknown locations, where his acquaintances and other individuals would sexually assault her. She stated that her husband would thereafter receive money from these men. She also alleged that the Applicant and her brother-in-law had repeatedly subjected her to sexual assault. In addition, the Prosecutrix stated that her husband coerced her into sending sexually explicit messages



to other individuals and used intimate photos and videos to blackmail her with threats of leaking the content, harming her father's public image, and endangering her child's safety. Ultimately, she managed to escape from her husband's house with her child and took shelter at her aunt's residence, from where she was eventually taken to her parental home.

2.11 The MLC notes that no forensic evidence could be collected from the Prosecutrix as the sexual assault occurred 2 months before her medical examination.

2.12 Thereafter, the site-plans were prepared at the instance of the Prosecutrix and statements under Section 161 Cr.P.C. of all prosecution witnesses were recorded.

2.13 Subsequently, the Prosecutrix's statement under Section 164 Cr.P.C was also recorded before the Metropolitan Magistrate (Mahila Courts) Saket, wherein she supported the earlier version of events as stated by her in the complaint.

2.14 On 2nd March, 2023, two of the accused persons – Prosecutrix's husband, i.e., Aashu Chaudhary and her brother-in-law were arrested. The Applicant was arrested on 12th March, 2023.

2.15 On 28th March, 2023, the Applicant's mobile phone was retrieved from the Malkhana for forensic examination. Upon analysis, several WhatsApp chats between the Applicant and the Prosecutrix were recovered, extracted, and duly preserved in the case file. Following this, the mobile phone was re-deposited in the Malkhana in accordance with the prescribed procedure under law, as documented in the seizure memo.

2.16 On 24th March, 2023, the brother-in-law of the Prosecutrix - Anshul Chaudhary was granted bail by the ASJ, Saket Courts, Delhi and on 26th



April, 2023, the manager of Hotel Parth-Inn - Ankur Kumar Goyal was also granted bail by the ASJ, Saket Courts, Delhi. Subsequently, the mother-in-law of the Prosecutrix has also been granted anticipatory bail.

2.17 After completion of the investigation, the chargesheet has been filed before the Trial Court and the trial is at the stage of prosecution evidence.

3. Mr. Javed Khan, counsel for the Applicant urges the following grounds for seeking bail:

3.1 The Applicant is a citizen of Cameroon, not Nigeria as erroneously recorded in the FIR. He has been residing in India since 2015. It is submitted that the Applicant was known to the Prosecutrix as a friend, and has been falsely implicated in the present case, which is rooted in a matrimonial dispute between the Prosecutrix and her husband.

3.2 There are material inconsistencies in the statements of the Prosecutrix recorded at different stages. In the FIR, she stated that only the Applicant committed rape upon her while inside a stationary car at Gummat Mandir Road. However, in her statement under Section 164 Cr.P.C., she alleged that both her husband and the Applicant committed rape on that fateful day, and further added that the act was videographed, an element not mentioned earlier. Additionally, her narration about forced messaging also changed: while the FIR suggests she was directed to send messages to several men, in her 161 Cr.P.C. statement, she claimed she was made to chat in an explicit manner with the Applicant and send screenshots to her husband as proof, whereas in her 164 statement she claimed that her husband had control over her phone.

3.3 The statement recorded under Section 164 Cr.P.C. also introduced fresh allegations, such as a trip to Mussoorie with the Applicant in June–July



2022, which were absent from the FIR and Section 161 statement. Likewise, her assertion in the 161 statement that she had an extramarital affair with one Naveen Lakra and that an obscene video was recovered involving him is omitted from her 164 statement. These inconsistencies cast doubt on the reliability of the prosecution's case.

3.4 A crucial piece of evidence in the present case is the WhatsApp chats between the Prosecutrix and the Applicant which depict that they were in regular contact with each other for more than 3 years. The chats further show that the sexual acts between the Prosecutrix and the Applicant were consensual and not against her will, as she was not under any form of intoxication or threat while she gave her consent for the sexual acts. These WhatsApp chats are fundamental to the present case where there is no eye-witness or independent witness to corroborate the version of the Prosecutrix.

3.5 The videos recovered from the mobile phone of the co-accused – Aashu Chaudhary (husband of the Prosecutrix), which have been sent to the FSL depict sexual activity involving the Prosecutrix, the Applicant, and her husband. These videos have been examined by the FSL and found to be untampered. The said videos reflect that the Prosecutrix was a willing participant in the sexual activities and her version that her body froze but her mind remained alert is clearly false and frivolous.

3.6 The last instance of alleged sexual contact between the Prosecutrix and the Applicant, as per WhatsApp records, occurred in January 2023, approximately a month before the FIR was registered. At the time of medical examination, however, no blood or forensic samples were collected to ascertain whether she had been sedated, despite her claims of having been drugged. Moreover, although she alleges repeated beatings and injections,



there are no contemporaneous medical records or complaints supporting such claims.

3.7 The FIR has been lodged after a significant delay of over two years, despite the Prosecutrix alleging a continued pattern of grave sexual and physical assault beginning in January 2021. The delay remains unexplained in legal terms, particularly in light of the claim that the Prosecutrix was in regular contact with others and had opportunities to report the alleged crimes.

3.8 The Applicant has been in custody since 12th March, 2023, and has now spent over two years as an under-trial prisoner. The chargesheet has been filed, and the case is at the stage of prosecution evidence. The Applicant has no prior criminal antecedents, and his continued incarceration is not necessary for the purpose of investigation or trial

4. On the other hand, Mr. Amit Ahlawat, APP for State strongly opposes the present bail application on the following grounds:

4.1 The Applicant has been charged with serious allegations under Section 376D of IPC and Section 14 of the Foreigners Act for committing the grave and heinous offence of gang rape on the Prosecutrix.

4.2 The statements of the Prosecutrix recorded under Sections 161 and 164 Cr.P.C. are consistent and detailed, narrating multiple incidents of sexual assault involving the Applicant. These are not isolated or one-off encounters, but part of a continuing pattern of non-consensual exploitation involving multiple accused persons over a prolonged period of time.

4.3 The mobile phones of the Applicant and co-accused seized contain videos and digital content that appear to depict acts of sexual intercourse involving the Prosecutrix. While the Applicant contends that these videos



are indicative of consensual encounters, such a defence is premature at the bail stage. Whether the acts were consensual or coerced is a matter requiring full trial and evidentiary scrutiny. At this stage, the presence of such material, corroborated by the Prosecutrix's detailed statements, strengthens the prosecution's case.

4.4 The Prosecutrix has consistently maintained that the sexual acts were non-consensual and it was under duress and blackmail, after the husband of the Prosecutrix used to administer sedative injections to her. The claims of consent based on the WhatsApp chats and the alleged relationship has also been explained by her by stating that her husband – i.e., co-accused Aashu, used to force her to send these explicit sexual messages to the Applicant and demand a screenshot of the same as proof. Moreover, these contentions are a matter of trial and ought not to be taken into consideration at the stage of grant of bail.

4.5 The delay in lodging of FIR is explained. The Prosecutrix was subjected to serious and grave mental trauma, blackmail with explicit videos, threats to the life of her child, fear of reputational harm and physical assault over a substantial period of time. These factors explain the delayed disclosure and are consistent with judicially recognised reasons for delayed reporting of sexual offences.

4.6 The Applicant is a foreign national from Cameroon and is also facing charges under the Foreigners Act. His release on bail poses a flight risk, particularly as there is a strong apprehension that he may abscond or evade trial. His continued detention is necessary to ensure his presence during trial.

4.7 The Applicant cannot claim parity with other co-accused persons who have been granted bail, as none of them are charged with rape. The



allegations against the Applicant are specific, direct, and supported by digital and testimonial evidence. His role is distinguishable and materially different from that of the other accused persons.

5. The Court has considered the submissions of the parties. 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, etc⁴. At the same time, 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 lead to a mini-trial⁵. At this stage, the task is limited to forming a *prima facie* view of the evidentiary material available on record.

6. The allegations against the Applicant are of a grave and serious nature, involving repeated sexual assault on the Prosecutrix while she was allegedly sedated and subjected to coercion by her husband and others. The FIR, the statements of the Prosecutrix recorded under Sections 161 and 164 Cr.P.C., and the medical documents placed on record reveal a consistent pattern of abuse. While the Applicant has sought to highlight discrepancies and alleged improvements in the statements of the Prosecutrix, it must be noted that the core allegation, that she was subjected to forced sexual acts under the influence of sedatives, remains consistent throughout. At this stage, such alleged contradictions cannot be adjudicated upon and are to be

⁴ *Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr.* (2010) 14 SCC 496

⁵ See also: *Brijmani Devi v. Pappu Kumar & Anr.*, (2022) 4 SCC 497 and *Mahipal v. Rajesh Kumar @*



tested during the course of trial.

7. The contention that the WhatsApp chats between the Prosecutrix and the Applicant reflect a consensual relationship also does not weigh in favour of the Applicant at this juncture. The Prosecutrix has explained the context in which such chats were sent, alleging coercion and control by her husband, including threats and blackmail. The evidentiary value, whether such communications were voluntary, and whether they negate the element of coercion or consent, is a matter for trial and cannot be conclusively determined at this stage.

8. Similarly, the submission that certain sexually explicit videos recovered from the mobile phones of the accused establish the willing participation of the Prosecutrix also raises evidentiary questions that fall squarely within the domain of the Trial Court. Whether such content reflects consensual activity, or whether it was created under duress, as alleged by the Prosecutrix, must be determined after full evidence is led. At this stage, the Court refrains from drawing any conclusion on this issue.

9. As regards the delay in lodging the FIR, the explanation offered by the Prosecutrix, relating to sustained mental and physical abuse, threats to her child, and blackmail through explicit videos, are not uncommon in cases involving sexual offences. It is now settled law that delay in reporting such offences is not, in itself, a ground to discard the prosecution case, especially when allegations involve prolonged abuse, coercion, and fear. Whether such explanation is credible or sufficient is again a matter to be appreciated at trial.

10. On a *prima facie* appreciation of the material on record, including the

Polia, 2020 (2) SCC 118



consistent narrative of the Prosecutrix and the digital evidence recovered during investigation, this Court is of the view that the Applicant has not made out a case for grant of bail. The Applicant does not dispute the occurrence of sexual acts but claims them to be consensual. In light of the allegations of sustained coercion, physical abuse, and the power dynamics alleged to have been exerted by the co-accused husband of the Prosecutrix, this contention cannot be accepted at face value and must be tested during trial.

11. Although the Applicant has urged that he has no past criminal antecedents and has been in custody since 12th March, 2023, this alone does not tilt the balance in his favour, especially in a case involving allegations of repeated gang rape. The Applicant is also a foreign national and the risk of flight or evasion from the jurisdiction of the Court, though not decisive, is a relevant consideration, particularly when trial is still underway and material witnesses remain to be examined.

12. While this Court remains conscious of the principle that bail is the rule and jail the exception, such a principle is not absolute. In cases involving heinous sexual offences, where the material discloses a *prima facie* case and the possibility of interference with the administration of justice cannot be ruled out, the liberty of the accused must yield to the interest of justice.

13. Accordingly, the application is dismissed. Pending applications, if any, also stand disposed of.

SANJEEV NARULA, J

MAY 14, 2025/ae