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

+ **BAIL APPLN. 2846/2024**

NITIN KUMAR @ NAINU

.....Petitioner

Through: Mr. Ashok Kumar, Ms. Reema
Bharti, Ms. Pooja Sharma and Mr.
Ankit, Advs.

versus

THE STATE (N.C.T. OF DELHI)

.....Respondent

Through: Mr. Aman Usman, APP with SI
Sanjeet Rathee, P.S. Malviya Nagar,
New Delhi.
Mr. Dharmendra Singh, Adv. for
victim/complainant.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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10.01.2025

1. The present petition has been filed under Section 439 of CrPC seeking regular bail in connection with FIR No.196/2024 under Sections 376/323/506/509 IPC registered at P.S. Malviya Nagar, New Delhi.
2. The case of the prosecution is that a complaint was made by the prosecutrix alleging that she came in contact with the petitioner through Instagram and they became friends. Later, he took her to a hotel and developed physical relations forcibly and also took her obscene photos and recorded video from his phone. Thereafter he started blackmailing her by threatening to make her photos and video viral. The said complaint culminated into the aforesaid FIR.



3. The learned counsel appearing on behalf of the petitioner submits that the complainant/prosecutrix had made various improvements in her statement recorded under Section 164 CrPC. He further submits that the prosecutrix also refused for her internal medical examination which creates doubt about the truthfulness of her allegation.

4. He contends that the relationship between the petitioner and the prosecutrix were consensual in nature and the relationship started four years prior to the registration of the FIR.

5. He further submits that the petitioner is in custody since 16.03.2024, investigation is complete and chargesheet has already been filed, therefore, the petitioner is no more required for any further investigation.

6. It is further contended that the petitioner is a young boy of 20 years and long incarceration will affect his future. He submits that the petitioner is no more staying in the vicinity of prosecutrix's residence and further he is not a flight risk. It is, therefore, urged that the petitioner may be released on bail.

7. *Per contra*, Mr. Aman Usman, the learned APP appearing on behalf of the State has argued on the lines of the status report. He submits that the petitioner was also previously involved in an Excise case. The learned counsel appearing on behalf of the prosecutrix submits that threat has also been extended to the prosecutrix, in respect of which she had made a compliant. Accordingly, prayer is made to dismiss the bail application.

8. I have heard learned counsel for the petitioner, the learned APP for the State, as well as, the learned counsel appearing on behalf of the prosecutrix.



9. It is the case of the prosecution that the prosecutrix had met the petitioner through Instagram and their relationship had continued for a period of four years. It is also the case of the prosecution that the petitioner had taken the prosecutrix to a hotel and developed physical relationship with her, however, it is not the case of the prosecution that the prosecutrix was taken to the hotel forcibly or under any threat. It is not in dispute that at the time of alleged incident, the age of the prosecutrix, as well as, that of the petitioner was 19 years and thus, *prima-facie* it cannot be said that the prosecutrix lacked maturity and intellect to understand the consequence of her action of accompanying the petitioner to a hotel, though the question as to whether the relationship was consensual will be decided in the trial.

10. In the status report, it has been stated that the prosecutrix had refused for her internal examination. In this backdrop, the submission of the learned counsel for the petitioner that such refusal on part of the prosecutrix creates doubt about the truthfulness of her allegations, cannot be brushed aside altogether.

11. On a query posed by the court, the learned APP, on instructions from the IO, fairly states that the complaint of the prosecutrix as regards threat having been extended to her was investigated but no substance was found in the same and, accordingly, the same was filed. In any case, the apprehension of threat, if any, can be allayed by imposing appropriate conditions.

12. It is also a matter of record that the petitioner is incarcerated since 16.03.2024 and chargesheet has been filed, therefore, the custody of the petitioner is no more required for the purpose of investigation. Further, the petitioner is presently aged about 20 years and keeping him in jail for long



period in the company of hardened criminal will do more harm than good.

13. Insofar as another offence alleged to have been committed by the present petitioner, is concerned, the same is under the Excise Act in which the petitioner is stated to be on bail.

14. In the status report, it is not the case of the prosecution that the petitioner is a flight risk. However, to ensure the availability of petitioner during trial, appropriate conditions can be imposed.

15. Having regard to the aforesaid circumstances, this court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs. 20,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CJM/Duty JMFC, further subject to the following conditions:

- (a) Petitioner shall appear before the court as and when the matter is taken up for hearing.
- (b) Petitioner shall provide mobile number and present address to the IO concerned. The mobile shall be kept in working condition at all times. He shall not change the mobile number or his address without prior intimation to the Investigating Officer concerned.
- (c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the prosecutrix or any family members of the prosecutrix or any other witness.

16. The petition stands disposed of.

17. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.



18. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
19. Order *dasti* under signatures of the Court Master.
20. Order be uploaded on the website of this Court.

JANUARY 10, 2025

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VIKAS MAHAJAN, J