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

+ **BAIL APPLN. 3661/2024**

RAHUL KASHYAP

.....Petitioner

Through: **Mr. Gautam Khazanchi (DHCLSC)**
and **Ms. Aditi Kukreja, Advocates.**

versus

STATE (NCT OF DELHI)

.....Respondent

Through: **Mr. Amit Ahlawat, APP for State**
with **Mr. Akkash Bhadana, Advocate.**
Mr. Sachin, SI, PS-Khajuri Khas.
Mr. Archit Upadhayay, Advocate
(DHCLSC) for Prosecutrix.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **14.02.2025**

1. The present petition filed under Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in SC No. 12/2023 pending before the ASJ (FTSC) (RC), Karkardooma Courts. The proceedings arise from FIR No. 457/2022 dated 9th July, 2022 registered under Sections 376/342/506 of the Indian Penal Code, 1860³ at P.S. Khajuri Khas.

2. In brief, the case of the prosecution is as follows:

2.1. On 29th June, 2022 a PCR call was received by one Ms. 'L', the

¹ "BNSS"

² "Cr.P.C."

³ "IPC"



Prosecutrix, following which the aforesaid FIR was registered. The Prosecutrix alleged that around April, 2022, the Applicant visited her residence to invite her husband to his sister's birthday celebration. The Prosecutrix, her husband and their minor daughter attended the event. Subsequently, the Applicant began frequenting the Prosecutrix's residence. The Prosecutrix alleges that during these visits, the Applicant would stare at her inappropriately, making her uncomfortable.

2.2. The Prosecutrix has further alleged that she required INR 30,000/- for a job opportunity, of which she managed to arrange INR 14,500/-, and requested the Applicant to arrange the remaining INR 15,500/-. The Applicant allegedly informed the Prosecutrix's husband that a friend was willing to lend the money, but would only hand it over to the Prosecutrix. On 22nd May, 2022, the Prosecutrix visited the Applicant's house in Shastri Park to collect the amount. Upon her arrival, the Applicant allegedly pulled her inside, locked the door, and forcibly established physical relations with her. The Prosecutrix further alleges that the Applicant threatened to kill her if she disclosed the incident.

2.3. Subsequently, on 26th June, 2022, the Applicant came at the Prosecutrix's house and again made physical relationship with her when no one was around. Thereafter, on 28th June, 2022, the Applicant attempted to commit the same act at the Prosecutrix's residence; however, he fled the scene when her mother-in-law noticed him.

2.4. On the basis of the afore-noted complaint, the instant FIR was registered and the matter was investigated. The medical examination of the Prosecutrix was conducted at JPC hospital however, she declined to undergo internal examination. Her statement under Section 164 of Cr.P.C. was



recorded, and thereafter, a chargesheet was filed. On 4th July, 2023, the Trial Court framed charges against the Applicant under Sections 376(1)(n) and 506 of the IPC.

2.5. A supplementary chargesheet has also been filed before the Trial Court which includes the CDR analysis of the Applicant's mobile number.

2.6. The Applicant's bail application has been rejected on two occasions by the Trial Court by orders dated 4th July, 2023 and 23rd July, 2024.

3. In this background, counsel for the Applicant seeks grant of regular bail on the following grounds:

3.1. There is a considerable delay on the part of the Prosecutrix in registering the complaint which casts doubt on the veracity of the allegations. The last alleged incident occurred on 28th June, 2022, while the first incident allegedly took place on 22nd May, 2022, followed by another on 26th June, 2022. However, the FIR was registered only on 9th July, 2022, 11 days after the last alleged incident, without any plausible explanation for this delay.

3.2. The PCR call was made only after the Prosecutrix's mother-in-law allegedly saw the Applicant at their residence. This suggests that there was no immediate distress call following the alleged incidents, which contradicts the claim of forcible assault.

3.3. There are discrepancies in the statements made by the Prosecutrix under Sections 161 and 164 of Cr.P.C. as well as her testimony before the Court.

3.4. There were approximately 300 calls exchanged between the Applicant and the Prosecutrix within a span of one month, using an alternate mobile number of the Applicant. This raises questions about the nature of their



relationship. To further establish this, the Applicant intends to move an application under Section 311 of Cr.P.C. for re-examining the Prosecutrix to confront her with these facts.

3.5. The Applicant has been in custody since 25th September, 2022. All the material public witnesses have been examined and continued incarceration will serve no purpose.

3.6. The Applicant is the only earning member of the family and belongs to the poor strata of society and his incarceration is will have a deleterious impact on the financial conditions of his family.

3.7. The Applicant has no criminal antecedents and undertakes to abide by the conditions imposed by the Court, if bail were to be granted.

4. *Per contra*, Mr. Amit Ahalawat, APP for the State as well as Mr. Archit Upadhayay, counsel for the Prosecutrix, strongly oppose the bail application. Mr. Ahlawat submits that while all material witnesses have been examined, the only remaining testimonies are of the Investigating Officer and a nodal officer. Thus, the trial is at its final stage, and in light of the evidence on record, the Applicant's conviction is imminent. In such circumstances, if released on bail, there exists a serious risk of the Applicant absconding to evade conviction. It is argued that the prosecution's case primarily rests on the testimony of the Prosecutrix. However, it is well settled in law that in cases of sexual assault, where there are no eye-witnesses, the sole testimony of the Prosecutrix, if found credible, is sufficient for conviction. The absence of medical evidence does not automatically negate the case, especially when the testimonies recorded establish the offence beyond reasonable doubt. The Applicant evaded arrest for two months, which led to the issuance of Non-Bailable Warrants against



him. After multiple efforts, he was eventually produced before the Metropolitan Magistrate on 26th September, 2022, and was subsequently sent to judicial custody. This conduct demonstrates a likelihood of him absconding again, should he be granted bail. It is submitted that the supplementary chargesheet reveals that between 1st June, 2022, and 30th September, 2022, the Applicant contacted the Prosecutrix five times, while she contacted the Applicant four times. The frequency of these calls does not substantiate any defence of a consensual relationship but rather aligns with the prosecution's case that the Applicant persistently approached the Prosecutrix.

5. Mr. Archit Upadhayay, counsel appearing for the Prosecutrix, submits that the medical examination of the Prosecutrix is no longer of a significant factor, as the Applicant has already admitted to having a physical relationship with her. This admission emerges from the line of cross-examination conducted with both the Prosecutrix and her mother-in-law. Therefore, in such circumstances, the testimony of the Prosecutrix alone would be sufficient to establish the conviction. He further contends that the alleged exchange of calls and messages, as argued by the Applicant's counsel, was never brought up during the Prosecutrix's cross-examination. Consequently, this argument is irrelevant. Furthermore, the Applicant's claim that he intends to file an application under Section 311 of Cr.P.C. for the re-examination of the Prosecutrix is without merit, as no such application has been filed to date. This assertion, therefore, carries no legal consequence at this stage.

6. The Court has carefully considered the rival submissions and the material on record. It is undisputed that the investigation is complete and the



trial has substantially progressed, with only the examination of the Investigating Officer and a nodal officer of the Telecom Service Provider, remaining. Since all material public witnesses, including the Prosecutrix, have already testified, the possibility of the Applicant influencing witnesses or threatening the Prosecutrix stands significantly diminished.

7. The case primarily hinges on the testimony of the Prosecutrix, and it is evident that there exists a delay in lodging the FIR. While delay in reporting an offense of sexual assault is not necessarily fatal, especially given the societal and psychological barriers that a survivor may face, its impact on the credibility of the prosecution's case is a matter that must be assessed during trial. At this stage, the Court is only required to make a *prima facie* assessment and not conduct a meticulous analysis of the evidence. Accordingly, the alleged inconsistencies in the Prosecutrix's statements, as pointed out by the Applicant's counsel, cannot be conclusively adjudicated at this stage and remain a matter for trial.

8. The plea of a consensual relationship raised by the Applicant is an aspect that cannot be outrightly disregarded at this juncture. As per the CDR details filed along with the chargesheet, there is evidence of communication between the Applicant and the Prosecutrix. While this does not *ipso facto* establish consensual relationship, it raises questions regarding the nature of their interactions, particularly given the Prosecutrix's acknowledgment of prior acquaintance and familiarity between her and the Applicant. Whether this aspect mitigates the prosecution's case or lends support to the plea of consensual relations is again a matter that requires deeper evaluation at trial. At this stage, however, the mere existence of sustained communication cannot be ignored altogether.



9. The Court further notes that the Applicant has been in custody since 25th September, 2022, a period of nearly 2 years and 5 months. While the gravity of the allegations is undeniable, prolonged incarceration before the conclusion of trial must also be weighed against the constitutional mandate of personal liberty. In line with the principles laid down by the Supreme Court that bail is the rule and jail is the exception, particularly when the accused has endured significant pre-trial detention, continued incarceration without a definitive finding of guilt may not be justified.

10. In view of the foregoing, the Applicant is directed to be released on bail on furnishing a personal bond for a sum of INR 50,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court, on the following conditions:

- a. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The Applicant shall not contact the victim or any of her family members;
- c. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;
- d. The Applicant shall appear before the Trial Court as and when directed;
- e. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- f. The Applicant shall not reside within 3 km radius of the residence of the victim and shall also furnish proof of his residence to the concerned IO.



The Applicant shall also not move in the vicinity of the victim in any manner.

g. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

h. The Applicant shall report to the concerned P.S. on every Monday of every month;

11. In the event of there being any FIR/DD entry/complaint lodged against the Applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

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

13. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

FEBRUARY 14, 2025

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