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

+ **BAIL APPLN. 4316/2024**

SURAJ KUMAR

.....Petitioner

Through: Mr. Akshay and Ms. Tabassum,
Advocates

versus

STATE (GOVT. OF NCT OF DELHI)

.....Respondent

Through: Mr. Sanjeev Sabharwal, APP for State
with SI Sanjeeta, PS Mukherjee
Nagar
Mr. Rohan J. Alva and Mr. Anant
Sanghi, Advocates for R-2 Victim

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

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15.09.2025

1. Applicant herein is before this Court seeking regular bail, having remained under incarceration since 06.06.2024 for more than 1 year 3 months, in a criminal case arising out of FIR No. 0389/2024 dated 20.05.2024 for the alleged offences under Sections 376, 328 and 506 of the IPC, registered at Police Station Mukherjee Nagar.

2. Briefly speaking, per FIR, the case set up by the prosecution/prosecutrix is that in June 2022, the prosecutrix joined a gym where she met the accused, Suraj Kumar (Applicant herein), who was employed as a trainer. In January 2023, the accused persuaded her to take personal training sessions from him and gradually gained her confidence,



encouraging her to share personal details and proposing that she start her own gym with his assistance.

2.1 That in March 2023, on the pretext of arranging cheap gym equipment, the accused called the prosecutrix to a Café, later persuaded her to visit his place, offered her a mango shake which rendered her unconscious, and upon regaining consciousness, she discovered that her clothes had been removed and she had been subjected to sexual assault.

2.2 That when she confronted the accused, he allegedly showed her nude photos and videos, threatened to make them viral, and thereafter repeatedly subjected her to sexual assault and unnatural acts at various locations including at a Hotel and the gym premises, under constant threats of harm to her and her family.

2.3 That on 06.08.2023, the prosecutrix disclosed the incident to her brother and approached the police. Later, it was also discovered that there were earlier complaints of sexual assault against the accused, which though stood settled and compromised.

3. In the aforesaid backdrop, I have heard the rival contentions and perused the case file.

4. Learned counsel for the applicant would argue on lines of grounds taken in the petition *inter alia* urging as below:-

4.1 That the Ld. Trial Court failed to appreciate the fact that the relationship between the prosecutrix and the petitioner/appellant was consensual in nature, the parties having voluntarily established physical relations at multiple places including the home of the prosecutrix and various hotels. Instagram chats exchanged between them, wherein affectionate expressions such as “Jaanu” and “I love you” were used, as well



as lengthy video calls, corroborate the consensual nature of their association. Moreover, the learned counsel submits that from a plain reading of the ingredients of Section 375 IPC, none of the ingredients constituting the offence of rape are attracted in the instant case.

4.2 That the Ld. Trial Court failed to appreciate that the prosecutrix and petitioner/appellant were business partners in Squad Yard Gym, and that the prosecutrix induced the petitioner/appellant to invest in the business with an understanding that profit sharing and salary would be decided once the gym became functional. After the gym became operational, the prosecutrix turned hostile, first lodging FIR No. 498/2023 under Sections 354/354A/354B/509 IPC and thereafter the present FIR, with the sole object of escaping her financial liability towards the petitioner/appellant.

4.3 That the Ld. Trial Court failed to appreciate that the FIR contains vague allegations, merely mentioning “last week of March 2023” and “month of April” without specifying exact dates, and that there was an inordinate delay of more than 14 months in lodging the present FIR. The learned counsel submits that such vague narration and unexplained delay, as held by the Hon’ble Supreme Court in **Mohd. Ali @ Guddu v. State of U.P (2015) 7 SCC 272**, cast serious doubt on the veracity of the prosecution story.

4.4 That the Ld. Trial Court failed to appreciate that two FIRs have been registered on the same set of facts i.e. FIR No. 498/2023 at PS Model Town and FIR No. 389/2024 at PS Mukherjee Nagar, and that successive FIRs are impermissible in law as held by the Hon’ble Supreme Court in **T.T. Antony v. State of Kerala (2001) 6 SCC 181** amounting to abuse of process.

4.5 That the Ld. Trial Court failed to appreciate that there are material



contradictions between FIR No. 498/2023, FIR No. 389/2024, and the statement recorded under Section 164 CrPC, and that the prosecutrix kept filing supplementary statements under Section 161 CrPC thereby changing her version on multiple occasions, which materially affects her credibility.

4.6 That the Ld. Trial Court failed to appreciate that the case is based solely on the version of the prosecutrix which is riddled with inconsistencies, there being no independent witnesses to corroborate her allegations. That the prosecutrix refused to undergo internal gynaecological examination, did not produce her mobile phone in compliance with notice under Section 91 CrPC, and submitted selectively deleted WhatsApp chats, thereby withholding best evidence. That records from KPC Mind Clinic reveal that the prosecutrix was treated only for anxiety and depression and did not disclose any history of sexual assault to the psychiatrist, discrediting the belated allegations.

4.7 That the Ld. Trial Court failed to appreciate that despite allegations of video blackmail, the Investigating Agency did not seize crucial evidence such as CDRs, CCTV footage, first FIR investigation file, Instagram chats, and other electronic material, thereby resulting in a defective investigation.

4.8 That the Ld. Trial Court failed to appreciate that the prosecutrix also filed an anonymous complaint of threat on 07.05.2024, which was neither investigated nor made part of the chargesheet, reflecting mala fide intent.

4.9 That the Ld. Trial Court failed to appreciate that after registration of FIR No. 498/2023, the applicant left the vicinity and joined another gym as trainer at Kalkaji, thereby negating any possibility of threat or contact with the prosecutrix.

4.10 That the applicant was not informed of the remand proceedings in



advance and was denied representation by counsel of his choice, thereby violating Article 22(1) of the Constitution and Section 41D CrPC. That denial of legal representation during remand amounts to breach of the principle of *audi alteram partem*.

4.11 That the continued incarceration of the petitioner/appellant, despite the above glaring infirmities in the prosecution case, is violative of his fundamental rights guaranteed under Article 21 of the Constitution of India.

4.12 That the applicant was arrested on 06.06.2024 and has been in custody for more than 1 year and 3 months, and has already undergone substantial incarceration. He is thus not required for any custodial investigation.

4.13 That the applicant is the sole bread earner for his family and lives with his widowed mother and 2 unemployed brothers, and there is no one else in the family to take care of them.

5. Opposing the above submissions, the learned APP for the State has expressed concern regarding the seriousness of the allegations. It is submitted that there exists a real apprehension that, if released on bail, the petitioner may abscond, threaten or intimidate the witnesses, tamper with the evidence or otherwise obstruct the course of justice. It is further submitted that the address of the applicant is yet to be verified, and that he is shown to be involved in three other cases, namely FIR No. 164/2020, FIR No.717/2021 and FIR No. 498/2023. It is also pointed out that the earlier bail application of the applicant was dismissed by the Ld. Sessions Court, Rohini *vide* order dated 21.08.2024. It is therefore urged that continued custody of the petitioner is necessary to ensure a fair trial and to prevent any misuse of liberty, and the instant petition deserves to be dismissed being



devoid of merit.

6. On the other hand, arguments of the learned counsel for the prosecutrix are that it is not her case that she did not know the petitioner, but that he took advantage of this acquaintance. It is submitted that when the alleged sexual assault happened for the first time, there was no consent given by her, as she was surreptitiously given a drink laced with intoxicants, and the accused took advantage thereof. It is further submitted that he made a video recording as well as took obscene pictures, on the basis of which she was subsequently blackmailed and repeatedly subjected to forcible sexual relations without her consent.

7. The arguments have been noted, but at the same time, at this stage based on the contradictory material in the petition, no definite opinion can be formed either way.

8. Having seen the material appended with the petition, same *prima facie* the relationship between the prosecutrix and the applicant was consensual, as evidenced by chats, video calls, and repeated voluntary meetings, which do not satisfy the ingredients of rape under Section 375 IPC. Though, of course, it is a matter of trial. Be that as it may, on the basis thereof, it seems to be a case of bail at this stage since the testimony of the prosecutrix stands concluded.

9. Furthermore, the applicant has been in judicial custody since 06.06.2024, amounting to more than 1 year 3 months. Investigation is over qua him as the charge sheet has been filed on 03.08.2024. This prolonged pre-trial detention, coupled with the slow progress of proceedings, are contributory factors for bail.

10. The applicant has cooperated fully during the course of investigation,



including appearing before investigating authorities whenever required. There has been no attempt by the applicant to delay or obstruct the investigation, which reinforces his bona fide conduct.

11. There is nothing on record to suggest that he would interfere with evidence, or influence witnesses. Moreover, there is also no likelihood of the applicant absconding, given that he is a well-settled individual, has deep roots in society, and is the primary caregiver of his widowed mother and 2 unemployed brothers, who are dependent on him for their well-being.

12. Continued incarceration of the applicant would serve no useful purpose, particularly when the trial is unlikely to conclude in the near future. Prolonged pre-trial detention becomes punitive even before conviction and runs contrary to the settled principle that *bail is the rule and jail the exception*, especially when the accused is neither a flight risk nor a threat to the fairness of the trial.

13. As an upshot and taking a wholesome view of the matter, the applicant is directed to be released on bail on his furnishing personal bond with solvent surety of like amount to the satisfaction of the Trial Court/Duty Judge concerned as the case may be, subject to the other usual conditions to be imposed by the learned Trial Court/Duty Court.

14. In addition to the usual conditions, the learned Trial Court shall take an undertaking from the applicant that he shall not leave the territorial jurisdiction of Delhi/NCR without permission of the Trial Court. In case of any violation of the said condition, the prosecution shall be at liberty to seek cancellation of bail.

15. The applicant shall also provide the local address where he currently resides or intends to reside upon being granted bail.



16. Any observation made herein above is only for the purpose of disposing of the instant bail application and not to be construed, in any manner, as any expression on the merits of the pending case and the trial shall proceed without being influenced either way by the same.

17. Accordingly, the bail application stands disposed of.

ARUN MONGA, J

SEPTEMBER 15, 2025/SV