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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4400/2024**
NAZIRPetitioner

Through: Mr. Vishal Chauhan and Mr. Deepak
Shah, Advocates

versus

THE STATE (GOVT. OF NCT DELHI THROUGH SHO) & ANR.
.....Respondents

Through: Mr. Laksh Khanna, APP

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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28.01.2025

1. This petition has been filed seeking regular bail in FIR No.507/2023 registered at P.S Jafrabad, under Sections 376/324/325/354B/342 IPC
2. The case of the prosecution is that the complainant/prosecutrix used to work in the factory wherein the Applicant/accused i.e. Nazir was her employer. It is stated by the complainant/prosecutrix that she was deceptively called by the accused Nazir to the factory on the pretext of giving her work on 01.10.2023 and when she reached the factory, the accused banged her head against the wall and had forceful sexual intercourse with her without her consent. It is further alleged that during the alleged incident of rape, she also sustained several injuries on her body.
 - 2.1. It is a matter of record that there was no delay in lodging of the complaint, therefore, the FIR was registered on the very next day i.e. 02.10.2023 and thereafter the investigation was initiated. The prosecutrix/victim was sent for medical examination, which was conducted vide MLC No. 8542/23. It is stated that doctor opined that the nature of injury sustained by the prosecutrix/victim as 'Grievous'.



2.2. It is stated that a perusal of the MLC of the prosecutrix assumes crucial significance which clearly mentions a lacerated wound over the occipital region, multiple scratch marks near the breasts and bite marks of teeth as well. It also mentions about blood stains near the knee and thigh area. It further mentioned about the torn hymen with fresh tear which started bleeding on touch. Therefore, MLC of the prosecutrix clearly signifies that the prosecutrix sustained numerous injuries on her body.

2.3. It is stated that on 02.10.2023, the Applicant/accused was arrested.

2.4. Subsequently, medical examination and Potency test of accused Nazir was conducted vide MLC No- 3176/2023 wherein doctor opined that “After examination there is nothing to suggest that patient is incapable of performing sexual activity intercourse under normal circumstances”.

2.5. It is stated that biological examination of the exhibits, DNA profile of the prosecutrix/victim generated from her FTA card was sent to FSL and it was found to be matching with the DNA profile generated from blood samples of the accused. Mixed alleles of DNA profile were generated from the breast swabs and t-shirt of the accused. It is stated that FSL research prove the sexual intercourse between the prosecutrix and accused on the alleged day of incident.

2.6. The investigation of the case has been completed and charge-sheet against the Applicant was filed. Charges have been framed against the Applicant by the Trial Court and the case is at the stage of prosecution evidence. The testimony of the prosecutrix have been recorded and she has proved the stand of the prosecution with respect to the event which transpired on 01.10.2023.



3. Learned counsel appearing on behalf of the Applicant argues that the applicant has been falsely implicated in the present case, since Applicant/Nazir was having a love affair with the prosecutrix since last around 3 years and both of them were having a relationship based on mutual consent.

3.1. He states that there are material contradictions in the statement of the prosecutrix/victim observed during the chief and cross-examination of the prosecutrix/victim, which do not establish the case of prosecution beyond reasonable doubt.

3.2. He relies upon transcript of an undated mobile conversation between the prosecutrix and Intezaar i.e., the brother of the Applicant/Nazir, to contend that the said conversation shows that even after 01.10.2023 the prosecutrix was insisting on her marriage with the accused Nazir. He states that the said conversation has been admitted by the prosecutrix during her cross-examination.

3.3. He further points out that various lapses and infirmities in the investigation since the IO failed to find out the previous history of relationship between the accused and the prosecutrix and no Call Detail Records (CDRs) were placed.

3.4. He states that the Applicant has been falsely roped in the present case due to the prosecutrix's demand of marriage not being fulfilled by the Applicant/accused.

3.5. He states that since the investigation qua the applicant already stands concluded, the charges as well stands framed and trial is likely to take a considerable amount of time; therefore, no useful purpose would be served by keeping the applicant in judicial custody.



4. In reply, Mr. Khanna, learned APP for the State opposes the present bail application and states that the present case is a case of committing rape and the allegations levelled in the FIR are very serious and grave in nature.

4.1. He states that the prosecutrix has supported her earlier version in the statement recorded under Section 164 of the Cr.P.C. Further the Chief and Cross examination of the prosecutrix's mother and sister has been recorded and they as well supported the prosecution.

4.2. He drew this Court's attention to the testimony of the prosecutrix, who appeared as PW-1. He read out the portions of the testimony where the trial Court has recorded the demeanour of the prosecutrix and more specifically the terrifying reaction of the prosecutrix when she identified the accused Nazir on 02.09.2024.

4.3. He states that the brutality of the rape is evident from the injuries suffered by the prosecutrix as recorded in her MLC. He states in this case the testimony of the prosecutrix is backed by compelling medical evidence and scientific evidence in the form of DNA match.

4.4. He states on instructions from the mother of the prosecutrix, who is present in Court that that prosecutrix was hospitalized after this incident on 01.10.2023, for 5-6 days and was also given blood transfusion.

4.5. He states that the trial is moving at the smooth pace without any delay. He states that the incident occurred on 01.10.2023. The charge-sheet was filed on 30.11.2023. Three witnesses have already been examined and therefore there is no violation of the Applicant's right of speedy trial.

4.6. He states that previously as well the regular bail application of the Applicant filed before the Trial Court has already been dismissed vide order dated 19.10.2023 and besides that there has been no change in circumstances,



which could evidence that Applicant is not involved in commission of such grave offence.

5. This Court has heard arguments on behalf of the applicant as well as State and has perused the material placed on record.

6. Before advertng to the facts of the present case it would be imperative to refer to the order passed by the Supreme Court on 27.11.2024 in Special Leave Petition (Criminal) No. 13378 of 2024 titled as '**X v. State of Rajasthan**'¹ wherein the Supreme Court made observations vis-à-vis for grant of bail in cases involving serious offenses. The relevant portion of the said order reads as under:

“14. Ordinarily in serious offences like **rape**, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.

15. Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.

16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.”

¹ 2024 SCC OnLine SC 3539



(‘Emphasis Supplied’)

7. In the present case, on a perusal of the testimony of PW-1, the findings in the MLC and the FSL result of the biological exhibits duly corroborate the the alleged incident of rape and prima facie establish the involvement of the Applicant. The brutality of the rape, which is reflected in the MLC of the prosecutrix fails to substantiate the defence of the Applicant that it was consensual. The presence of the Applicant is not disputed and is further confirmed by the FSL result of the biological exhibits.

8. The contention of the learned counsel for the Applicant that the IO has failed to take into account the pre-existing physical relationship between the prosecutrix and the accused, is a fact which is not relevant for grant of bail at this advanced stage of trial. In any event, the Trial Court in its order dated 19.10.2024 has rightly observed that existence of a physical relationship would not entitle the Applicant to have forceful sex with the prosecutrix on the fateful day. So also, the transcript of the audio conversation (Annexure P-6) between the prosecutrix and Intezaar [brother of the Applicant], relied upon by the learned counsel for the Applicant does not militate the evidence which indicates commission of forceful sex on 01.10.2023. The demeanour of the prosecutrix when she identified the accused as noted by the learned Trial Court while recording her testimony on 02.09.2024 reflect her trauma and is a relevant consideration.

9. Further the learned counsel for the Applicant to seek bail also relies and point out discrepancies w.r.t the investigation and testimony of the prosecutrix/victim recorded. In this regard it would be relevant to refer to the observations made by the Coordinate Bench of this Court in **Raju v. The**



State and connected matters² wherein it was observed that the Court while deciding a bail application is confined to examine whether a prima facie case exists against the Applicant or not and it is not for this Court to undertake a meticulous analysis of the evidence or delve into the credibility of the prosecution's witnesses.

10. In this case since the trial has commenced within reasonable time and material witnesses have been examined, this Court is satisfied that keeping in view the observations made by the Supreme Court in its order dated 27.11.2024 in **State of Rajasthan** (supra), the Applicant has failed to make out a case for grant of regular bail.

11. Accordingly, the present petition stands rejected.

12. Pending applications, if any, stands disposed of as infructuous.

13. It is clarified that the observations made in the present judgment/order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial. The said observations should not be taken as an expression of opinion on the merits of the case.

MANMEET PRITAM SINGH ARORA, J
JANUARY 28, 2025/hp/ms

Click here to check corrigendum, if any

² BAIL APPLN. 4455/2024 (at para 5 and 10)