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

+ **BAIL APPLN. 4516/2024**

SURAJ

.....Petitioner

Through: **Mr. Suraj Prakash, Advocate.**

versus

STATE (NCT OF DELHI)

.....Respondent

Through: **Mr. Mukesh Kumar, APP for State
with Ms. Kajal Tyagi, SI, PS-
Paharganj.
Ms. Gayatri Nandwani and Ms. Adv.
Mudita Sharda, Advocates for
Prosecutrix.**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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06.02.2025

[This case is being taken up today as 5th February, 2025 was declared a holiday on account of General Elections-2025 in the Legislative Assembly of NCT of Delhi vide Notification dated 31st January, 2025]

1. The Applicant seeks regular bail under Section 483 read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023¹ (read with erstwhile Sections 439 and 482 of Code of Criminal Procedure, 1973², respectively) in FIR No. 177/2024, dated 6th March, 2024, under Sections 376 and 506 of the Indian Penal Code, 1860³, registered at P.S. Pahar Ganj. Subsequently, a chargesheet dated 5th May, 2024 has also been filed against the Applicant

¹ "BNSS"

² "CrPC"



under Sections 376, 506, 323, 365 and 342 of IPC.

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

2.1 On 6th March, 2024, the aforementioned FIR was registered on the basis of a complaint filed by the Prosecutrix “K”, aged 22 years. In her complaint, the Prosecutrix stated that she is the wife of a person “A” and their marriage was solemnised in the year 2020. She further stated that she knew the Applicant (accused) prior to her marriage but had discontinued all communication with him thereafter. However, in December 2023, she met the Applicant again when he requested her to accompany him to the hospital after being bitten by a dog. She agreed, and following this interaction, they resumed contact and began speaking over the phone once again.

2.2 Once the Prosecutrix and the Applicant resumed communication, the Applicant took her to a hotel where he forcibly established sexual relations with her under the threat that he would kill her husband and children if she did not comply. She further alleged that the Applicant repeatedly summoned her to his residence, where he would make forceful sexual relations with her. On one such occasion, on 28th February, 2024, when the Applicant asked the Prosecutrix to meet him, he also instructed her to bring INR 30,000. Upon her arrival at the designated location, the Applicant switched off her mobile phone and forcibly took her to a hotel near Mahakal Mandir, Ujjain, Madhya Pradesh. While in Ujjain, the Applicant received a call informing him that Prosecutrix’s husband had lodged a missing person report for his wife. The Prosecutrix further alleges the Applicant then compelled her to state before the police in Ujjain that she had come of her own free will, warning her that failure to do so would result in harm to her

³ “IPC”



family. Out of fear, when the police arrived at the hotel on 2nd March, 2024, the Prosecutrix refrained from disclosing any details of the incidents. It was only after she returned home that she confided in her husband and subsequently accompanied him to the police station to lodge the present complaint.

2.3 Subsequently, the Prosecutrix was medically examined and an MLC was also recorded, however, she refused an internal medical examination. After this, counselling was provided to the Prosecutrix through a counsellor from the Delhi Commission for Woman and thereafter, the present FIR was registered.

2.4 On 07th March, 2024, the statement of the Prosecutrix was recorded under Section 164 of the CrPC, wherein she reiterated the version of events as stated in the FIR. During the course of the investigation, the Applicant was arrested on the same day and subsequently underwent a medical examination. As part of the examination, a potency test was conducted, and the medical report confirmed that there was no indication of the Applicant being incapable of engaging in sexual intercourse. Since his arrest, the Applicant has remained in judicial custody.

3. Counsel for the Applicant submits that the present case is a clear instance of false implication, driven by extraneous considerations rather than genuine grievance. He argues that the Prosecutrix was engaged in an extramarital relationship with the Applicant, a fact that is evident from the allegations in the FIR itself. It is only after her husband became aware of this relationship that the present FIR was lodged, suggesting that the complaint was motivated by external pressure rather than an actual offence. He further contends that the FIR lacks the essential ingredients to



substantiate the offence of rape, as the allegations themselves indicate that the Prosecutrix voluntarily accompanied the Applicant on multiple occasions, including traveling with him to Ujjain. In fact, when questioned by the police in Ujjain, she expressly stated that she had travelled of her own free will, which is inconsistent with her subsequent claim of coercion. Moreover, there are material contradictions in her statements, both in the FIR and in her subsequent testimony under Section 164 of CrPC, which cast serious doubt on their credibility. He further submits that the Applicant is a young man and the sole breadwinner of his family, and prolonged detention would cause undue hardship to his dependents. In these circumstances, he prays that the Applicant be released on bail.

4. Mr. Mukesh Kumar, APP for the State, as well as Ms. Gayatri Nandwani, counsel appearing for the Prosecutrix, strongly oppose the present bail application. They contend that the allegations made in the FIR, the statement of the Prosecutrix under Section 164 of CrPC as well as her testimony recorded before the Trial Court, clearly implicate the Applicant. They also emphasise that there are 4 previous criminal antecedents of the Petitioner – i.e., an FIR under Section 324 of IPC and three Kalandras under Sections 107 and 151 of CrPC. They submit that these antecedents indicate a pattern of delinquent behaviour, reinforcing the apprehension that if released on bail, the Applicant may threaten the witnesses or otherwise interfere with the trial proceedings. Ms. Nandwani, counsel for the Prosecutrix rebuts the allegations of extra-marital affair as a mere defence strategy which remains unsubstantiated. She emphasizes that such assertions, even if made, would have to be tested during trial and cannot serve as a basis for granting bail in a case involving serious allegations of sexual assault. She urges that the



Applicant's continued detention is necessary in the interest of justice.

5. The Court has considered the aforementioned contentions. It is noted that the Applicant has been in custody since 7th March, 2024. The chargesheet has already been filed, trial is progressing, and the testimony of the Prosecutrix has already been recorded. The allegations in the FIR pertain to incidents occurring over a prolonged period. While the Prosecutrix has provided an explanation for the delay in reporting the alleged offences, the impact of this delay on the overall credibility of the prosecution's case is a matter that can only be determined through a thorough evaluation of evidence during trial. Furthermore, the Applicant has emphasized that the relationship between him and the Prosecutrix was consensual and that she accompanied him to Ujjain voluntarily. This contention gains some *prima facie* strength from the fact that when the police at Ujjain traced the Prosecutrix, she did not make any complaint or seek help but instead stated that she was there of her own free will. Whether this statement was made under duress, as claimed by the Prosecutrix, is an aspect that requires trial scrutiny. The existence of such a statement, however, raises questions that merit consideration and cannot be ignored at this stage. The Court also notes that the present case solely hinges on the testimony of the Prosecutrix and her statement has already been recorded by the Trial Court. With this evidence now secured, the likelihood of the Applicant influencing the Prosecutrix to derail the trial is significantly reduced.

6. It is well established through catena of judgments by the Supreme Court that the object of granting bail is neither punitive nor preventative. The primary aim sought to be achieved by bail is to secure the attendance of



the accused person at the trial⁴. Therefore, in light of the above discussion, the Court is inclined to accept the Applicant's request in the present application.

7. The Applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court/ Duty Metropolitan Magistrate, on the following conditions:

- a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;
- b. The Applicant shall not indulge in any criminal activity and 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;
- c. The Applicant shall not contact the victim or any member of her family and shall also not come in the vicinity of where the Prosecutrix resides.
- d. The Applicant shall under no circumstance leave the country without prior permission of the Trial Court.
- e. The Applicant shall appear before the Trial Court as and when directed;
- f. The Applicant shall provide a permanent address to the Trial Court where he would be residing after his release and shall not change the address without informing the concerned IO/SHO.
- g. The Applicant shall, upon his release, give his mobile number to the

⁴ See also: *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.



concerned IO/SHO and shall keep his mobile phone switched on at all times.

h. The Applicant will report to the concerned IO on fourth Friday of every month, at 4:00 PM, and will not be kept waiting for more than an hour.

8. 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.

9. 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 shall also not be taken as an expression of opinion on the merits of the case.

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

SANJEEV NARULA, J

FEBRUARY 6, 2025

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