



\$~1

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

+ **BAIL APPLN. 4619/2024**

MR. AMARJEET KUMAR

.....Petitioner

Through: Ms. Joohi, Ms. Yashika and Mr.
Sandeep Pandey, Advocates.

versus

STATE GOVT OF NCT OF DELHI THROUGH SHO.....Respondent

Through: Ms. Meenakshi Dahiya, APP for the
State with ACP Rakesh Kumar, SHO
Manoj Kumar and SI Jyoti, PS NIA,
Delhi.

Ms. Deepika Garg, Mr. C. G. Maurya
and Mr. Gaurav Kumar, Advocates
for the Complainant.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

19.02.2025

%

1. Anticipatory Bail Application under Section 482 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* (hereinafter referred to as 'B.N.S.S.') has been filed on behalf of the Applicant, Mr. Amarjeet Kumar for grant of Anticipatory Bail in FIR No. 0833/2024 under Section 70(1), 351(2), 126(2), 74, 78, 87 & 3(5) of the *Bharatiya Nyaya Sanhita, 2023* (hereinafter referred to as 'B.N.S.') and Section 2(V) of SC and ST (Prevention of Atrocities), Act, 1989, registered at Police Station Narela Industrial Area.
2. It is submitted in the Application that the Applicant is innocent and has been falsely implicated in the present FIR. He has no connection with the alleged incident and he barely knows the Complainant. Furthermore, he



was not even present at the alleged scene (Near Kali Mata Mandir at Narela) at about 05:30 p.m at which time the alleged incident is claimed to have taken place. The Complainant and the main accused, Mr. Santosh were working in the same factory and they became friends as is admitted in the FIR.

3. The Applicant and the main accused, Mr. Santosh were the roommates and hail from the same village. When he came to Delhi in search of employment, he contacted Mr. Santosh, who offered him assistance by offering the Appellant his house for stay and also secure a job for him as a helper at Arun Plastic Factory, Narela Industrial Area.

4. One day, Mr. Santosh, the Appellant and the Complainant planned to visit India Gate, inviting the Applicant to join them and he accordingly accompanied them. He has met the Complainant only once.

5. The main accused, Santosh and the Complainant were having good relations and enjoyed each other's company. The Complainant was well aware that Mr. Santosh was already married despite which she had an affair with Mr. Santosh as is proved from some photographs of the Complainant and Mr. Santosh. The relationship between the Complainant and Mr. Santosh turned sour, leading to false implication of Mr. Santosh and the Applicant, in the present FIR.

6. According to the Complaint, on 26.08.2024 at around 05:30 p.m, the main accused, Mr. Santosh and the Applicant came in a vehicle and dragged her inside the vehicle. Thereafter, the vehicle was stopped under the Flyover and the driver of the vehicle went out. The Applicant held the hand of the Complainant while the main accused, Mr. Santosh established physical relationship with the Complainant. It is submitted that the Complaint does



not mention the details of the vehicle including number, model, colour etc. Moreover, the Investigating Officers/Police Officers have not recovered the alleged offending vehicle which *prima facie* shows that it is a false and concocted story created by the Complainant to falsely implicate the Applicant.

7. The Applicant was not present at the alleged scene of crime. He had planned to go to Punjabi Bagh to see the festival of Janmashtami along with his friend, Mr. Raju Kumar r/o Kirti Nagar, New Delhi. He took the Metro to reach Kirti Nagar Metro Station at about 4:00 p.m. He exited Kirti Nagar Metro Station at approximately 4:30 p.m. and thereafter, he called his friend, Raju on his mobile at 05:38 p.m. The location of the Applicant can be verified from CDR, as well as, the Metro Card.

8. The Applicant has asserted that he along with his friend, Raju Kumar then went to see the Janmashtami festival at Punjabi Bagh at about 06:30 p.m. where they remained till 10:00 p.m., where he took some photographs. There is no question of the Applicant being involved in the alleged offence.

9. The Complainant as per her FIR, had called No. 112 and informed her family about the alleged incident. The Police arrived and took her along with her mother and sister to the Police Station. However, she left the Police Station without making any complaint on the ground that she was on fast and felt weak and wanted to first conclude her fast after offering prayers. On the next day, she made a Complaint to the Police.

10. There is a delay of about 26 hours in registration of FIR, which shows that it is a false Complaint. She also did not get herself medically examined on the day of the incident. She came for her medical examination on 27.08.2024 but refused internal examination. The FIR is based only on the



statement of the Complainant and he has been implicated merely because he is the roommate of the main accused.

11. Hence, the Anticipatory Bail is sought by way of the present Petition.

12. *The State has submitted the Status Report* wherein it is submitted that the FIR has been registered on the Complaint of the Prosecutrix. Her age has been verified and the date of birth is 01.04.2003 whereby indicating that she was 21 years old at the time of the incident. The efforts have been made to search Amarjeet at the probable hideouts, but he has been evading arrest. On 09.10.2024, NBWs were obtained against Mr. Santosh, who had been subsequently arrested on 11.10.2024. Efforts made to identify the vehicle have not ended any result. The Charge-Sheet against the main accused has been filed on 23.10.2024. The Regular Bail has been granted to Mr. Santosh by this Court on 10.02.2025.

13. During the course of the investigation, Caste Certificate has been provided by the Complainant, has been taken on record and verified through Revenue Department, Uttar Pradesh.

14. During the investigations, the Applicant applied for Anticipatory Bail and directions were given that no coercive action be taken against him.

15. During the investigations, the Call Detailed Records of mobile numbers of victim as well as the Applicant, with subscriber details, were obtained from the concerned Service Provider and were analysed. It has been found that at the relevant time, the location of the Applicant was at Moti Nagar, Najafgarh, New Delhi. As per his other mobile phone, he was near the New Delhi Railway Station at 5:09 hrs. As per the Call Detailed Records, the Applicant and the Complainant had many conversations between them.



16. *Learned counsel on behalf of the Complainant* has submitted that as per the Status Report, the Applicant was found at New Delhi Railway Station at 5:09 hrs. and that Moti Nagar Metro Station at 05:38 p.m.. The incident took place at around 07:00 p.m. and the distance between Moti Nagar and Narela is less than half an hour and there is every possibility of the Applicant being able to reach the scene of crime well in time.

17. It is further submitted that the Complainant and the main accused, Santosh Kumar, who were working in the same factory, has been abused by him under force and threat. Some photographs have been taken by Mr. Santosh Kumar. Learned counsel for the Complainant further submits that the photographs placed on record, were in the mobile phone of the Complainant, which was forcibly taken by the main accused, Mr. Santosh. It is, therefore, submitted that the Anticipatory Bail be not granted to the Applicant.

18. **Learned counsel for the Applicant** in rejoinder has argued that it takes about one hour and 57 minutes from Moti Nagar Metro Station to reach the scene of incident and not about 35 minutes as has been claimed by the Complainant.

19. **Submissions heard and the record perused.**

20. The basic allegations against the Applicant, were that he being the friend of main accused, Mr. Santosh Kumar had accompanied him on the date of incident and was present in the vehicle and held the prosecutrix while she was raped by the main accused, Mr. Santosh Kumar.

21. The Police had collected the CDR records of his mobile phone numbers, which show that he was present at Moti Nagar, at the relevant time. Moreover, the main accused has already been granted bail. There are



also allegations added in the Charge-Sheet on the basis of the Statement given by the Prosecutrix in the Court that the caste based remarks had been made against her by the main accused while the Applicant had laughed at them. Consequently, Sections 3 (V) of SC/ST Act has been added. However, in a recent Judgment in *Shajan Skaria vs. State of Kerala*, 2024 INSC 625 of the Apex Court, it has been held that the basic ingredients to constitute the offence under Section 3(1)(r) of the Act, 1989, are that the Accused person must not be a member of the Scheduled Caste or Scheduled Tribe; Accused must intentionally insult or intimidate a member of a Scheduled Caste or Scheduled Tribe; Accused must do so with the intent to humiliate such a person; and */Accused must do so at any place within public view*. Mere Insult to a member SC/ST community is not an offence under the SC/ST Act unless the intent was to humiliate based on Caste Identity. *It has been held that no offence under SC/ST Act is made out in case such remarks are made in private*. According to the Complainant, the entire incident had occurred in the Car when no one else was present.

22. The Charge-Sheet already stands filed. The investigations have been completed. The custodial interrogation is not required.

23. Considering the totality of the circumstances, it is directed that in the event of his arrest, the Petitioner shall be admitted to Anticipatory Bail by the Investigating Officer/Arresting Officer, subject to the following conditions:-

- (i) The Petitioner shall furnish a personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the Investigating Officer/Arresting Officer.
- (ii) The Petitioner shall join the investigations, as and when called



by the Investigating Officer.

(iii) The Petitioner shall furnish his cellphone number to the Investigating Officer on which he may be contacted at any time and shall ensure that the number is kept active and switched-on at all times.

(iv) The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case.

(v) The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

24 The Petition stands disposed of in the above terms.

25. Copy of the Order be sent to the learned Trial Court for compliance.

NEENA BANSAL KRISHNA, J

FEBRUARY 19, 2025/RS