



2025:DHC:812



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

% ***Pronounced on: 10th February, 2025***

+ **BAIL APPLN. 4691/2024**

MR. SANTOSH KUMARPetitioner

Through: Mr. Nityanand Singh, Ms. Joohi &
Ms. Yashika Modi, Advocates

Versus

STATE GOVT OF NCT OF DELHI THROUGH SHO

.....Respondent

Through: Ms. Meenakshi Dahiya, Additional
Public Prosecutor for Respondent-
State with ACP Rakesh Kumar, SHO
Manoj, SHO Rakesh Kumar and
W/SI Jyoti, NIA

Ms. Tara Narula, Advocate on the
panel of Delhi High Court Legal
Services Authority for Complainant.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Bail Application under Section 483 of *Bhartiya Nagrik Suraksha Sanhita, 2023* ('BNSS' *hereinafter*) has been filed for grant of Regular bail in FIR No. 833/2024, under Sections 70(1)/351(2)/126(2)/74/78/87 & 3(5) of *The Scheduled Caste and Scheduled*



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Tribes (Prevention of Atrocities) Act, 1989 ('SC/ST Act' hereinafter), registered at Police Station Narela Industrial Area, Delhi.

2. The Petitioner has averred that he has been falsely implicated in the present FIR case and has no connection with the incident, as alleged by the Complainant.

3. It is stated that the Complainant in her Complaint has alleged that on 26.08.2024 at around 05:30 PM, on the day of Janamashtmi, the Petitioner and other co-accused came in a vehicle and dragged her inside the vehicle. The Driver stopped the vehicle under the flyover and went outside the vehicle. Then the co-accused held the hand of the Complainant and forcibly made physical relations with her.

4. It is submitted that the allegations are totally false, frivolous and baseless, as the Complainant changed her statements made before the Court under Section 183 of BNSS and before the Doctor at the time of her medical examination and also before the Police at the time of registration of the FIR. The Complainant has not mentioned the details of the vehicle, including its number, model, colour etc. which *prima facie* shows that she has made false and concocted story to falsely implicate the Applicant.

5. The Applicant has claimed that he was not present at the location mentioned in the FIR i.e. Near Kali Mata Mandir, Phase-2, Bhorgarh, Narela, Delhi at around 5:30 PM on 28.08.2024. He had gone to Punjabi Bagh at around 5:30 PM on that day to see the festival of Janamashtmi and purchased *jalebi* and paid Rs.75 to the *jalebi wala* at 7:17 PM. There was huge crowd to see the festival and he took around 30-40 minutes to enter the *mela*. He had taken some videos and photographs of festival from his



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mobile, which can be verified from his Mobile which is in the custody of Police.

6. The Petitioner has also stated that in the FIR it is mentioned that the Complainant had dialled No.112 and also informed her family about the alleged incident. The police arrived and took her along with her mother and sister to the Police Station, but she left the Police Station without filing any complaint in respect of the alleged incident. The FIR also mentions that the Complainant was fasting and she felt weak and wanted to first conclude her fast after offering prayer. The FIR also mentions that the Complainant on the said day had also made a statement that she did not want to take any action against the alleged offenders which clearly shows that no such incident had ever happened. But the very next day, the Complainant went back to the Police Station to file a complaint reflecting a plan to implicate the Petitioner.

7. There is delay in lodging of the FIR, which was registered on the next day after a delay of 26 hours, which *prima facie* shows that she wanted to falsely implicate the Petitioner.

8. The Petitioner has also averred that the Complainant was not medically examined on the day of the incident and she went to the Police Station on the next day after changing her clothes and taking a bath, which reflects that she has cooked up a story to falsely implicate the Applicant.

9. It is submitted that co-accused Amarjeet has already been granted protection by the learned Court of Sessions *vide* Order dated 25.10.2024 on the ground that there are improvements in the contents of the first call and second call at No. 112.



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10. It is submitted that at the time of hearing in the Bail Applications of Applicant and co-accused Amarjeet Kumar, the Complainant for the first time made the allegation that the Petitioner had passed caste-based remarks at the time of incident and the co-accused Amarjeet Kumar had laughed at that moment. The Court had issued Notice to the DCP *qua* invocation of SC/ST Act.

11. The Petitioner has averred that during the course of the investigation and also at the time of making her complaint or registration of the FIR or during her medical examination or recording of her statement under Section 183 of BNNS, the Complainant never uttered that caste based remarks were ever passed by the Applicant, which is nothing but an after thought.

12. Applicant has placed reliance upon decision in Dinesh @ Budhha Vs. State of Rajasthan AIR 2006 SC 1267; Maumsha Hasanasha Musalam Vs. State of Maharashtra AIE 2000 SC 1786; and Amir Vs. State of Madhya Pradesh 2004 CrI. L.J.3686.

13. It is therefore, submitted that SC/ST cannot be invoked against the Applicant. Initial investigation reveal that the Applicant was not present at the scene of the incident. He has clean antecedents, no criminal record and is willing to join and cooperate in the investigation and ready to abide by the terms and conditions of bail. *Hence, a prayer is made for grant of bail.*

14. The **Respondent-State in the Status Report** has submitted that the Complainant had been counselled by the Counsellor at DCW, to whom she stated that on the day of the alleged incident, she could not give her complaint in writing as she was fasting by keeping *Monday 'Nirjala Vrat'*. On 27.08.2024 on her Complaint, the FIR was registered and her statement



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was recorded in the presence of her mother and DWC Counsellor. Her medical examination was conducted at SRHC Hospital vide MLC No. 140/2024 and she told the doctor that *“she had been physically and sexually assaulted by a person namely Santosh when she was coming back from temple at about 07 PM on 26.08.2024.”* However, the doctor has opined that *“there was no external injury seen during physical examination and also that the victim has washed and changed her clothes worn during the incident”*.

15. It is further stated in the Status Report that in her statement recorded under Section 183 of BNSS, the Complainant has stated that on 26.08.2024, she had gone to the temple for offering prayer on the occasion of Janmashtami and while she was coming back, a car having three person in it came, out of which two came out and dragged her into the car forcibly and one person, Amarjeet, held her hand and other one, Santosh, raped her. The wrong act was done inside the car and Applicant used a condom.

16. The Complainant also stated that she used to work in a Company where the Applicant worked and he used to threaten and intimidate her that if she did not talk to him, he would kidnap her.

17. ***The Status Report*** also mentions that age related documents of the victim were collected and got verified, according to which date of birth of the Complainant was 01.04.2003 and she 21 years of age at the time of alleged incident. Also, the vehicle used in the alleged crime could not be recovered as the Complainant did not tell about the make and model of the vehicle. Also, the photocopy of the Caste Certificate were seized and verified from the concerned Revenue Department of Uttar Pradesh.



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18. Further, the Call Detail Record (CDR) of the mobile numbers of the victim and accused persons were obtained and the investigations were made from the concerned Service Providers. The Applicant had been using mobile No. 9990858150 (Vodafone) and 6205827534 (Jio). As per the Call Location Record, on 26.08.2024, location of mobile number 9990858150 (Vodafone) was Anand Parvat and that of mobile number 6205827534 (Jio) was also Anand Parvat, Delhi till 11:23 AM. Thereafter, location is at Karol Bagh, Delhi; whereas the Complainant has alleged that the Applicant was present at West Punjabi Bagh, Delhi.

19. Also, Mobile No. 8826531569 (Airtel) and 9084220729 (Airtel) are subscribed to the Complainant and as per Cell Location Record, on 26.08.2024 at around 17:15 PM to 18:02 PM, she was located at Narela Bawana Flyover. She had also made calls on 100 and 112 at 19:09 PM.

20. It is stated that in view of the gravity of the offence, which was committed with common intention and active participation and the caste based remarks, the Applicant does not deserve bail.

21. Submissions heard and record perused.

22. From the various disputed facts, it has emerged in the Charge Sheet and as have been highlighted by the Applicant, such as delay in registration of the FIR, washing of clothes by the prosecutrix before getting medical examination done, the improvement made in her statement and raising of caste based allegations subsequently. There are also discrepancies in regard to presence of the Applicant at the crime spot at the time of alleged incident,



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which are substantiated from the Call Detail Records. Custodial interrogation of the Applicant is not sought by the prosecution.

23. In a recent decision in Shajan Skaria v. State of Kerala 2024 INSC 625 the Apex Court has observed 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.

24. Considering the totality of the circumstances, the Petitioner is admitted to Regular Bail, on the following conditions:-

- a) The Applicant shall furnish a bail bond in the sum of Rs.35,000/ and one surety of the like amount, subject to the satisfaction of the learned Trial Court;
- b) The Applicant shall appear before the Court as and when the matter is taken up for hearing;
- c) The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the prosecutrix/witnesses;



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- d) That Applicant shall not visit in the vicinity of the residence/ workplace of the prosecutrix; and
- e) In case of change of the residential address, the same shall be intimated to the Trial Court as well as to the SHO/IO.

25. A copy of this Order be communicated to the Jail Superintendent as well as to the learned Trial Court, for compliance.

26. The Bail Application is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 10, 2025

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Signature Not Verified

Digitally Signed By: NIKAS
ARORA

Signing Date: 11.02.2025
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