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

+ **BAIL APPLN. 65/2025**

JIYALAL RAM @ ZIYA

.....Petitioner

Through: Mr. R.P. Luthra, Mr. Parveen Kumar,
Mr. Paramdeep Singh, Mr. Subodh
Kumar and Mr. Himanshu Luthra,
Advocates.

versus

THE STATE (GOVT OF NCT OF DELHI)

.....Respondent

Through: Mr. Aman Usman, APP for State with
SI Lokesh Kumar, PS New Friends
Colony.
Mr. Shiv Chopra, Mr. S. Pandey, Ms.
Surbhi Arora, Mr. Siddharth and Mr.
Dhananjay Porta, Advocates for the
prosecutrix.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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25.02.2025

Crl. M.A. 442/2025 (exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

BAIL APPLN. 65/2025

3. The present petition has been filed under Section 483 of BNSS, 2023 seeking regular bail in connection with FIR No.333/2023 under Sections 376/342/506 of the IPC registered at Police Station New Friends Colony, New Delhi.
4. The case of the prosecution is that the prosecutrix who was working as a part time cook in a house at Kalindi Colony, New Friends Colony, New



Delhi was raped by the present petitioner, who was working as security guard/driver in the said house, on 30.09.2023, when the owners were not present in the home. The FIR was registered on the basis of the statement of prosecutrix.

5. Mr. R.P. Luthra, the learned counsel appearing on behalf of the petitioner submits that post-investigation, chargesheet, as well as, a supplementary chargesheet have been filed and the trial is underway, however, the testimony of the prosecutrix has been recorded and therefore, the custody of the petitioner is not required. He further contends that since the statement of prosecutrix has already been recorded, therefore, the possibility of the petitioner threatening or influencing the material witness does not exist.

6. He also invites attention of the court to the testimony of the prosecutrix, who was examined as PW-1, to contend that the prosecutrix has admitted that after the incident of rape, she herself had taken lunch and had also served the lunch to the petitioner/accused. According to him, this part of the statement of the prosecutrix shows that the sexual relationship, if any, was consensual. Further, she has also admitted that during the incident neither her clothes were torn nor the same were spoiled. She also admitted that during the incident, she did not suffer any physical injury.

7. He submits that though the prosecutrix in her statement has stated that she had raised an alarm but no one came to her rescue, however, this part of the testimony of the prosecutrix is not in tune with her conduct, inasmuch as, she admitted in her cross-examination that post-incident, she herself had taken lunch, as well as, served lunch to the petitioner/accused.

8. He submits that in case the act was done forcefully, the prosecutrix



would not have stayed back to serve lunch to the petitioner. He submits that the petitioner is in custody since 30.09.2023 and has been incarcerated for a period of one year four months approximately. He further contends that the petitioner does not have any criminal record nor he is a flight risk inasmuch as the petitioner is a permanent resident of Delhi. He, therefore, urges the court that the petitioner may be granted bail.

9. *Per contra*, the learned APP appearing on behalf of the State has argued on the lines of the status report. The status report is stated to have been filed with the Registry and a copy thereof has been handed over at Bar, which is taken on record.

10. The learned APP opposes the petition on the ground that the allegations are serious and the FSL report is found positive. He submits that the prosecutrix/victim in her testimony has supported the case of the prosecution. He further contends that if the bail is granted, the petitioner may threaten witnesses and may also abscond, thereby hindering the judicial process.

11. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the record.

12. This court is cognizant of the fact that at this stage, the evidence cannot be sifted and appreciated in detail. However, this Court has perused the testimony of PW-1 only for the limited purpose of deciding the present bail application.

13. There appears to be some substance in the submission of Mr. Luthra that conduct of the prosecutrix as borne out from her testimony is not in tune with the allegations of rape. The prosecutrix in her statement has stated that she had raised an alarm but no one came to her rescue, however, at the same



time the prosecutrix in her cross-examination has stated that after the incident, she herself had taken lunch, as well as, served lunch to the petitioner/accused. In this backdrop the submission of Mr. Luthra that in case the act was done forcefully, the prosecutrix would not have stayed back to serve lunch to the petitioner, cannot be negated altogether.

14. The prosecutrix's testimony to the effect that during the incident neither her clothes were torn nor the same were spoiled and that she did not suffer any physical injury in the incident, will also enure to the benefit of the while considering his bail, although the ultimate call as to the probative value and the reliability of witness, will be taken by the learned Trial Court during the trial.

15. The submission of the learned APP that the FSL report is positive, will assume relevance only when the learned trial court negates the theory of consensual relationship.

16. Further, the petitioner has faced incarceration for one year four months approximately and his custody is no more required for any purpose.

17. That apart, since the prosecutrix has already been examined, there is no apprehension that in the event of petitioner being enlarged on bail, he may threaten or influence the prosecutrix.

18. It is also not the case of the prosecution that the petitioner has criminal antecedents. The petitioner is a permanent resident of Delhi, therefore, he does not seem to be a flight risk. In any case, the apprehension expressed by the learned APP that the petitioner may flee from justice if enlarged on bail, can be dispelled by putting appropriate conditions while enlarging the petitioner on bail.

19. Also, the prosecution has cited as many as 23 witnesses and till date,



only one witness has been examined, therefore, the conclusion of trial is likely to take long time, and in the facts and circumstances of the present case, the petitioner cannot be kept incarcerated to await the outcome of trial, especially when at this stage there is also a presumption of innocence in his favour.

20. Considering the aforesaid circumstances in entirety, this court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to regular bail subject to his furnishing a personal bond in the sum of Rs. 20,000/- with one surety of the like amount to the satisfaction of the learned Trial Court/JMFC/Duty JM, further subject to the following conditions:

- (a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- (b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- (c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the victim or any family members of the victim directly or indirectly.

21. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on merits of the case.

22. The application is disposed of.

23. Copy of the order be forwarded to the concerned Jail Superintendent



for necessary compliance.

24. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

FEBRUARY 25, 2025/aj