



2024: DHC: 4095



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 20th May, 2024

+ **BAIL APPLN. 251/2022**

BHOODEV SINGH

.....Applicant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Applicant :Mr.Sanjeev Kumar & Mr. Pankaj Kashyap,
Adv.

For the Respondent :Mr. Utkarsh, APP for the State.
SI Atul Prabhakar, PSSunlight Colony.
Mr. Nitin Saluja, Ms. Shivani Luthra
Lohiya&Ms.Simran Khurana, Adv. for R-2.

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of regular bail in FIR No. 31/2021 registered at Police Station Sunlight Colony dated 03.02.2021 for offence under Section 376 of the Indian Penal Code, 1860 ('IPC').
2. The case of the prosecution is that the prosecutrix was travelling in a bus driven by the applicant on 03.02.2021. It is alleged that when



the bus reached Delhi, the applicant induced the prosecutrix by offering food to her and took, her and her minor daughter, to a hotel. It is alleged when the daughter of the prosecutrix fell asleep, at about 3:30 am in the night, the applicant raped the prosecutrix.

3. During investigation, on 03.02.2021, the medical examination of the prosecutrix was conducted at AIIMS Delhi *vide* MLC No. 1056/2021. Thereafter, on 03.02.2021, the prosecutrix gave her statement to the learned Metropolitan Magistrate under Section 164 of the CrPC.

4. Subsequently, chargesheet was filed under Section 376 *qua* the applicant.

5. The applicant's second bail application was dismissed, on 09.10.2021, by the Hon'ble Court of Sh. Sandeep Garg, ASJ South East, Delhi. Hence, the present application has been filed.

6. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. He submitted that the investigation is complete and the chargesheet has also been filed and no purpose would be served by keeping the applicant in custody.

7. He submitted that the applicant is in custody since 03.02.2021 and no useful purpose would be served by keeping him in further incarceration. He further submitted that the applicant has deep roots in the society and has clean antecedents.

8. He submitted that the allegations levelled against the applicant are frivolous and are an outcome of mischievous design of the



prosecutrix to pressurise him to succumb to her unjustified and unsustainable demands. He submitted that the only motive behind the allegation was to get money from the applicant.

9. He submitted that the statement of prosecutrix recorded under Section 164 of the CrPC contradicts the FIR. The prosecutrix has given different story in her statement recorded before the learned MM under Section 164 of the CrPC. He submitted that a perusal of DD No. 10A, dated 03.02.2021, shows that initial version was only regarding 'ched-chad' and attempt to disrobe, with no mention of rape. He submitted that various facts stated in the statement under Section of the 164 CrPC are not mentioned in the FIR and therefore, the version given by prosecutrix is doubtful. He further submitted that it is not believable that the girl child of the prosecutrix would not wake up while the alleged offence of rape was committed.

10. He submitted that this is the third FIR lodged by prosecutrix as three similar FIRs were registered at her instance against different persons.

11. He submitted that the MLC dated 03.02.2021 does not indicate any sexual assault on the prosecutrix.

12. He submitted that the applicant belongs to the poor strata of the society. The applicant is the sole bread earner in the family and has two minor children and a wife to take care of.

13. *Per contra*, the Additional Public Prosecutor for the State assisted by the learned counsel for the prosecutrix opposed the present bail application. It is submitted that there is no contradiction in the



FIR and in the statement recorded under Section 164 of the CrPC. It is further submitted that the applicant was arrested from the hotel which establishes the truth of version given by prosecutrix in the FIR and in her statement under Section 164 of the CrPC. It is submitted that the offence alleged against the applicant is a serious offence and hence, he is not entitled to bail.

14. It is further submitted that enlarging the applicant on bail would prejudice the trial.

Conclusion

15. I have heard the learned counsel for the parties.

16. While considering the application for bail, the Court has to consider the nature of the offence, severity of the punishment and prima facie involvement of the accused. The Court, at this stage, is not required to enter into the detailed analysis of the evidence to establish beyond the reasonable doubt whether the accused has committed offence. It is essential to remember that bail is not a determination of guilt but a safeguard ensuring the accused's right to liberty pending trial. Moreover, the court should ensure that bail conditions are tailored to address any potential risks while respecting the accused's rights. By upholding these principles, the court can strike a balance between protecting the interests of the complainant and safeguarding the rights of the accused.

17. A bare perusal of the material on record indicates that the allegations *qua* the offence of rape were not made in the statement given by the prosecutrix during her medical examination. Further, as



per her own statement, she accompanied the applicant voluntary along with her daughter to the hotel and she gave her Adhar Card to the security guard. While the veracity of the allegations and defences would be tested during the trial, this Court cannot lose sight of the conflicting narratives provided by the prosecutrix.

18. It is also imperative to note that the prosecutrix had previously filed complaint with similar allegations against three persons at Gwalior and all those accused persons were granted bail.

19. This Court while considering the application of Bail cannot lose sight of the fact that from the statement of the victim, as discussed, the very foundation of the allegations, at this stage, becomes doubtful.

20. It is not in doubt that an order for bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that a great amount of humiliation and disgrace is attached with arrest. The purpose of custodial interrogation is to aid the investigation and is not punitive.

21. Any apprehension regarding the applicant tampering with the evidence or threatening the witnesses can be taken care of by imposing appropriate conditions.

22. It is not alleged that the applicant is a flight risk or that he will tamper with evidence if released on bail. The apprehension, even otherwise, can be taken care of by putting appropriate conditions.

23. It is essential to consider the allegation that the offence occurred in the presence of the child of the prosecutrix/complainant, within the very room which is the place of the alleged incident. Notably, the



statement of the child, a critical potential witness under such circumstances, has not been recorded. The presence of the child during such a traumatic event without any reaction – such as– noise or screaming from the child– strikes a discordant note with the expected behavior of a minor witness to such distressing act. The absence of any reaction or testimony from the child casts a substantial doubt on the circumstances and the same is matter of trial.

24. It is also crucial to note that during the examination before the learned Trial Court, the manager of the said hotel stated that on the date of the alleged incident, upon being alerted by his associate about the commotion coming from the room of the applicant and prosecutrix, he went there and overheard the prosecutrix explicitly demanding money from the applicant by stating “*paise do*”. This statement, made in the context of the prosecutrix simultaneously alleging rape, also introduces significant contradiction which casts substantial doubts on the reliability and consistency of her statements. The same is also a matter of trial.

25. Further, it is not in dispute that the antecedents of the applicant are clean. The applicant, who is aged about 34 years, is in custody since 03.02.2021. Keeping the applicant in jail will not serve any useful purpose. The victim has also already been examined. It is not disputed that the trial in the present case is likely going to take long.

26. The Hon’ble Apex Court in the case of ***Union of India v. K.A. Najeeb*** : AIR 2021 SC 712, held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration



for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

27. A long period of incarceration, thus, is also a factor which has to be kept in mind at the time of deciding the question of grant or refusal of bail. The applicant has therefore established a prima facie case for grant of bail.

28. In view of the above, the applicant is 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 learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. The applicant 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;
- b. The applicant shall under no circumstance travel out of the country without prior permission of the learned trial court;
- c. The applicant 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;
- d. The applicant shall appear before the learned Trial Court as and when directed;
- e. The applicant shall report to the local police station once in every week and mark his presence;
- f. The applicant shall neither contact nor interact, whether directly or indirectly, with the prosecutrix or her family, in



any manner whatsoever. The petitioner shall also not visit the locality in which the prosecutrix ordinarily resides ;

- g. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- h. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone active and switched on at all times.

29. 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.

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

31. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MAY 20, 2024

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