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

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Reserved on: 24.05.2024
Pronounced on: 07.06.2024+ **BAIL APPLN. 995/2024**

DHARMENDER @ MOTA

..... Petitioner

Through: Mr. S.G. Goswami, Advocate.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State with Mr.
Ankit Khatri, Mr. Deepanshu
Badiwal & Mr. Lalit Kumar,
Advocates.
SI Shiv Dayal Kumar, P.S.:
Harsh Vihar.
Mr. Rajbir Singh Sagar,
Advocate for complainant.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The instant application under Section 439 of Code of Criminal Procedure, 1973 ('Cr.P.C') has been filed by the applicant seeking grant of regular bail in case arising out of FIR bearing no. 310/2023 registered at Police Station Harsh Vihar, Delhi for the offences



punishable under Sections 376D/363/354A/328/34 of Indian Penal Code, 1860 ('IPC').

2. Brief facts of the present case are that the FIR in this case was registered on the complaint of the prosecutrix, who was allegedly aged about 15 years. It is alleged that on 12.05.2023, at about 09:30 PM, when the prosecutrix had gone to buy a cold drink, and when she was returning home, a car bearing no. **93 had stopped near her which was being driven by co-accused Mohit, and two other persons namely Kalu and Chinu were sitting inside, and she knew all of them. It is alleged that thereafter, co-accused Chinu had made her smell a white handkerchief due to which she had lost her consciousness. Upon regaining consciousness, she had found that co-accused Mohit was establishing physical relations with her in an unknown room. When the prosecutrix had asked for water, he had allegedly given her alcohol to drink and thereafter, she had lost consciousness. When she had regained consciousness, she had found herself in front of a school behind Gagan Cinema. Thereafter, her family members had reached the spot and she had narrated the entire incident to her sister. During investigation, her medical examination was conducted on 13.05.2023 and the exhibits were sent to FSL for DNA examination. Her statement under Section 164 of Cr.P.C. was also recorded, wherein she stated that on 12.05.2023, she was lured by one *mota aadmi*, whose name she did not know at that point of time. However, she knew that he lived near her house, and he had taken her to his friend's flat where two other friends had come and three of them had committed rape upon her and had also forced her to drink alcohol.



She also stated that one Bhupender had also committed rape upon her and thus, four of them had committed rape upon her. She further stated in her statement under Section 164 of Cr.P.C. that 15-20 days prior to the incident, Mukesh, Mohit and Dinesh @ Chinu had forcibly pulled her inside the car and had touched her inappropriately. Thereafter, she had jumped from the car and had told everything to her mother, however her mother had asked her to not report the incident to the police. The accused persons were arrested and their blood and semen samples were also sent to FSL for examination. After receipt of the FSL examination, supplementary chargesheets were filed.

3. Learned counsel for the present accused/applicant argues that the applicant has been falsely implicated in the present case. It is stated that the learned Trial Court has already granted bail to co-accused Mohit, Yogesh@ Babu, Love Bhardwaj, Dinesh Kumar Chinu and Mukesh Kalu. It is also stated that the allegations levelled by the prosecutrix are unreliable as she has changed her version twice, i.e. she has given a different version while she was examined before the learned Magistrate and that the co-accused persons have been already released on bail. It is stated that the present accused is also entitled to grant of bail on parity, and therefore, present bail application be allowed.

4. Learned APP for the State, on the other hand, argues that the allegations against the applicant are serious in nature and that the FSL report supports the prosecution case that the DNA extracted from accused persons namely Love Bhardwaj and Yogesh@Babu



have matched with the exhibits collected from the body of the child victim/prosecutrix. Therefore, it is prayed that the present bail application be dismissed.

5. This Court has heard arguments addressed by learned counsel for the applicant and learned APP for the State and has perused the material available on record.

6. After hearing arguments and going through the case file, this Court is of the opinion the material witnesses in this case have already been examined including the prosecutrix, before the learned Trial Court. This Court has gone through the initial complaint lodged by the prosecutrix as well as her statement recorded under Section 164 of Cr.P.C. The applicant herein was not named in the initial FIR, which was registered on the basis of the complaint of the prosecutrix. It was in the statement recorded under Section 164 of Cr.P.C. that the present applicant was named for the first time. The call detail records also reveal that no phone calls have been exchanged between the prosecutrix and the present accused, whereas call exchanges have taken place between the co-accused Love Bhardwaj and Yogesh. This Court is also of the opinion that the FSL report has supported the case *qua* co-accused Love Bhardwaj and Yogesh, who have already been granted regular bail, and not the present applicant who has been in judicial custody since 08.06.2023.

7. Thus, considering the overall facts and circumstances of the case, and the fact the present accused is in judicial custody since 08.06.2023, this Court is inclined to grant regular bail to the applicant on his furnishing personal bond in the sum of Rs.10,000/- with surety



of the like amount to the satisfaction of the Trial Court/Successor Court/Link Court/Duty Judge concerned on the following terms and conditions:

- i) The applicant shall not leave the country without prior permission of the concerned Trial Court.
 - ii) The applicant shall not directly or indirectly make an attempt to influence the witnesses or tamper with the evidence in any manner.
 - iii) In case of change of residential address/contact details, the applicant shall promptly inform the same to the concerned Court and the concerned I.O.
8. Accordingly, the present bail application stands disposed of.
 9. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JUNE 7, 2024/zp