

(2023) 02 DEL CK 0154

In the Delhi High Court

Case No : Bail Application No. 3193 Of 2022

Manish Kumar

APPELLANT

Vs

State Of Nct Of Delhi And Anr

RESPONDENT

Date of Decision : 24-02-2023

Acts Referred:

Indian Penal Code, 1860 — Section 376, 506

Code Of Criminal Procedure, 1973 — Section 161, 164, 439

Citation : (2023) 02 DEL CK 0154

Hon'ble Judges : Amit Sharma, J

Bench : Single Bench

Advocate : Ridam Tyagi, Manjeet Arya

Final Decision : Allowed

Judgement

Amit Sharma, J

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeks grant of regular bail in case FIR no. 366/2022, registered at PS Harsh Vihar on 08.07.2022, for offences under Sections 376/506 of the Indian Penal Code, 1860 ('IPC').

2. The case of the prosecution, as stated in the chargesheet and status report dated 09.12.2022, authored by Inspector Balram Singh, SHO, PS Harsh Vihar, is that on 08.07.2022, the prosecutrix filed a written complaint against the present applicant alleging that on 10.02.2021, Manish, the present applicant, who was her friend and neighbour, took her to an OYO Hotel in Vaishali, Ghaziabad, Uttar Pradesh, and made physical relation with her, without her consent. It was further alleged that when the prosecutrix protested against the said act, the present applicant assured her that he would get married to her. Thereafter, allegedly the applicant used to often go to the house of the prosecutrix, when she was alone, and made physical relation with her on the false pretext of marrying her. However, he has now refused to marry her. The said complaint

culminated into registration of the present FIR bearing no. 366/2022, for the offences under Sections 376/506 of the IPC. After that, the medical examination of the prosecutrix was conducted at GTB Hospital.

3. Thereafter, the statement of the prosecutrix was recorded under Section 161 and 164 of the CrPC. In the said statement, she reiterated the above stated facts and further alleged that she was in a relationship with the present applicant and the applicant used to threaten her to make her photographs and videos viral. He allegedly also gave the photographs to her. Thereafter, on 10.07.2022, the applicant was arrested and sent to judicial custody.

4. Upon completion of the investigation, chargesheet was filed in the Court of Shri Dev Chaudhary, Metropolitan Magistrate, Karkardooma Court, for offences under Sections 376/506 of the IPC.

5. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He further submits that the present FIR was registered after an inordinate delay of more than one year from the date of incident, which has not been explained by the prosecutrix. Such inordinate delay creates a cloud of suspicion about the allegations made by the prosecutrix.

6. He further asserts that the photographs recovered during the investigation clearly show that the prosecutrix and the applicant were well-acquainted with each other and used to meet each other often. It is further submitted that no evidence has been put on record, including any document, which would signify force or coercion on the part of the applicant. It is also urged that it has been admitted by the prosecutrix herself that she was in a relationship with the applicant and they were in contact with each other for more than an year. During investigation as well it has been revealed that the prosecutrix and applicant used to frequently communicate with each other.

7. The learned counsel further submits that the present applicant has been in custody since 10.07.2022 and no useful purpose will be served by keeping him in custody any further. It is urged that the applicant is a young man of 25 years of age, who has deep roots in society and is the main bread earner of his family, therefore, it is prayed that in such circumstances, he may be granted bail. He has relied upon the following judgments in furtherance of his contentions:

i. Brijesh Kumar v. State, 2002 Cri. L.J. 3873 (Delhi)

ii. Sanjay Chandra v. CBI, AIR 2012 SC 830

iii. State of Rajasthan v. Balchan @ Balia, AIR 1977 SC 2447

8. The learned counsel has drawn the attention of this court to the court notice issued to the prosecutrix/respondent no. 2, vide order dated 28.10.2022. However, despite the said notice being served, neither the respondent nor her authorised representative/counsel appeared on the next two subsequent dates. Thereafter, on 14.02.2023, the prosecutrix sought adjournment on the ground

that her counsel was not available. Even today, despite passover, neither the prosecutrix nor her counsel appeared.

9. Learned APP for the state vehemently opposes the present application on the ground that the allegations are serious and grave in nature. It is further submitted that the applicant has forcefully established physical relation with the prosecutrix on the false pretext of marrying her. The applicant has also previously threatened the prosecutrix of making her photographs viral and since they live in the same vicinity, there is a likelihood of applicant threatening or influencing the prosecutrix. It is submitted that the mobile phone of the applicant has been sent to FSL and the result is awaited. It is also asserted that there is an apprehension of applicant absconding or tampering the evidence. Therefore, in such circumstances, the applicant should not be released on bail.

10. Heard the learned counsel for the parties and perused the records.

11. The prosecutrix in her statement has stated that the first incident took place in February, 2021 and thereafter, the applicant on false pretext of marrying her, continued establishing physical relation with her. It has been further stated by her that she was in relationship with the present applicant for almost a year.

12. It is also pertinent to note, as pointed out by the learned counsel for the applicant as well, that there is an inordinate delay of more than one year in registration of FIR, which stands unexplained by the prosecution. The FIR was registered on 08.07.2022, whereas the alleged incident took place on 10.02.2021. Mere delay may not prove to be fatal, if there is a reasonable explanation for the same, however, in the present case nothing has been placed on record to justify such delay at this stage.

13. In the statement recorded under Section 164 of the CrPC, the prosecutrix alleged that the applicant used to threaten her of making her photographs viral and the same were also given to her by the latter. On a pointed query from this Court, the learned APP on instructions from the Investigating Officer, states that the photographs have been annexed with the chargesheet and are not obscene in nature.

14. The present applicant has been in judicial custody since 10.07.2022, and the chargesheet stands filed.

15. The plea of the prosecution with regard to the present applicant threatening or influencing the witness or tampering the evidence, if released on bail, is not substantiated by way of any material placed on record. No useful purpose will be served by keeping the present applicant in judicial custody.

16. In totality of the facts and circumstances of the case, the application is allowed. The applicant is directed to be released on bail on her furnishing a personal bond of Rs. 50,000/- with one surety of like amount to the satisfaction of the learned trial Court/Link Court, further subject to the following conditions:

- i. The memo of parties shows that the applicant is residing at House no. B-325, Saboli Bagh, Saboli Village, Delhi. In case of any change of address, the applicant is directed to inform the same to the learned Trial Court and the Investigating Officer.
 - ii. The applicant shall not leave India without the prior permission of the learned Trial Court.
 - iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
 - iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner.
 - v. The applicant shall join the investigation, as and when required by the Investigating Officer.
 - vi. In case it is established that the applicant tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled forthwith.
17. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case.
18. The application is allowed and disposed of accordingly alongwith all the pending application(s), if any.