



2025:DHC:1266



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

Date of decision: 24.02.2025

+ BAIL APPLN. 4161/2024

SUMIT KUMAR

.....Petitioner

Through: Mr. Sumit Singh, Advocate.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Laksh Khanna, APP for State with SI Shalini, PS Paharganj Mr. Harshit Jain, Adv (DHCLSC)
Ms. Pallavi S. Kansal, Mr. Shantanu Sharma and Mr. Raghav Vij, Advocates for R-2/Complainant.

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present application has been filed under Section 439 of the Criminal Procedure Code, 1973 (Cr.P.C.) read with Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) for seeking grant of regular bail in FIR No. 762/2023 registered under Sections 313/376/201/506 of the Indian Penal Code, 1860 (IPC) at Police Station (P.S.) Paharganj.

Brief Facts

2. As per the case of the prosecution set out in the Status Report, on the statement of the complainant SSSS/victim on 13.09.2023 the captioned FIR was registered.



2.1. It is stated that the victim informed that she works in a private enterprise known as CG & Company and is also preparing for government jobs and physical test for police recruitment. It is stated that the victim came in contact with the Applicant in a park. It is stated that the victim started talking with the Applicant on Facebook and they both exchanged numbers. It is stated that the Applicant told the victim that he wants to marry her. It is stated that before they could get married the Applicant was recruited in the Central Reserve Police Force (CRPF). It is stated that thereafter the Applicant asked the victim to secure a job so that they could get married after that.

2.2. It is stated that the Applicant came to Delhi from Jammu & Kashmir via train on 08.11.2022 and called the victim at Hotel Kamal Deluxe, Paharganj New Delhi. It is stated that the victim reached the said hotel at around 10 AM, where when she went to the room, the Applicant was already waiting there. It is stated that the Applicant tried to make physical contact with the victim to which she refused stating that physical relation before marriage was not appropriate. It is stated that the Applicant made the victim believe that they are anyways going to marry with each other and there was no wrong in having a physical relation prior to that amongst them. It is stated that the same event happened again on 12.02.2023 and both the Applicant and victim made physical relation.

2.3. It is stated that one day victim felt dizzy and went to Mavi Nursing Home in Ghaziabad UP and she was informed there that she was pregnant. It is stated that the victim informed the Applicant about the said pregnancy to which the Applicant responded to state that he will visit her in September,



2023 and will marry her. It is stated that the Applicant also prescribed the victim some medicine and after consuming the said medicines on regular basis the victim had an abortion in June, 2023.

2.4. It is stated that after the victim suffered abortion the Applicant stopped taking her calls. It is stated that thereafter in July, 2023 one lady claiming herself to be the wife of the Applicant called the victim and informed her that Applicant is married to the said lady and directed the victim to not contact the Applicant.

2.5. It is stated that however, the Applicant called the victim and threatened her to continue her relationship with him and threatened her that if she discontinues, he will leak her private and intimate pictures amongst her relative and parents. It is stated that these were the pictures which victim had shared with the Applicant during their relationship.

2.6. It is stated that the Applicant contacted the victim on 03.09.2023 and blackmailed her to come to the same hotel and again made physical relation with the victim forcefully. It is stated that victim made no contact with the Applicant after 09.09.2023.

2.7. It is stated that on 11.09.2023 the Applicant along with his wife and one female came to the office of the victim and assaulted her and took away her mobile phone. It is stated that on 13.09.2023, the present FIR was registered and the victim's statement was recorded under Section 164 Cr.P.C.

2.8. It is stated that Applicant was arrested on 18.09.2023 and during investigation the Applicant disclosed the crime committed and the same was written in form of his disclosure statement.



2.9. It is stated that the Applicant did not cooperate for discovery of the objectionable photos of the victim in the Applicant's mobile phone for discovery of the victim's mobile phone and the person through whom the Applicant sent the abortion medicines.

2.10. It is stated that during further interrogation the Applicant stated that he had thrown his personal mobile phone in a drain (Nala) in Krishna Nagar Delhi. It is stated that notice under Section 91 Cr.P.C. was issued to Sonia the wife of the Applicant to produce the mobile phone of the Applicant. It is stated that wife of the Applicant produced one mobile stating that the same is the mobile phone of the Applicant. It is stated that nothing incriminating was found from the said mobile phone produced by the wife of the Applicant. It is stated that when the said mobile phone produced by Sonia was shown to the victim, she stated that the same does not belong to the Applicant. It is stated that later it was found that IMEI of the CDR of the Applicant's mobile phone did not match with the CDR of the mobile phone given by the wife (Sonia) of the accused. It is stated that pursuant to this Section 201 IPC was added in the present case.

2.11. It is stated that the hotel register of Hotel Kamal Delux records the entry in the name of the Applicant and the victim for the dates 12.02.2023 and 13.09.2023. It is stated that the CDR analysis show that the victim was present at Paharganj at 08.11.2022.

2.12. It is stated that investigation at Maavi Nursing Home, Loni, Ghaziabad, U.P. revealed that victim had visited the hospital on 23.05.2023 and they only had her OPD slip.



2.13. It is stated that the CDR analysis of the mobile numbers of the Applicant and the victim show that they had long telephonic communications.

2.14. It is stated that charge-sheet has been filed and charges have been framed vide order dated 09.02.2023. The statement of the prosecutrix stand recorded and she has also been cross-examined.

Arguments of the Applicant

3. Learned counsel for the Applicant states that Applicant is a constable in CRPF.

3.1 He states that the Applicant was arrested on 18.09.2023 and has been in custody for more than 1 Year and 3 Months. He states that the charge-sheet has already been filed in the present matter and all public witnesses have been examined.

3.2 He states that during the investigation no admissible proof of obscene photographs of the victim was found in the possession of the Applicant.

3.3 He states that the Applicant preferred a bail application before the Trial Court, which was dismissed vide order dated 11.10.2023. He states that the second bail application was filed before the Trial Court, which was dismissed by the said Court vide order dated 19.01.2024.

3.4 He states that thereafter, Applicant filed regular bail application before this Court which was withdrawn with liberty to approach the Trial Court after all the public witnesses have been examined.

3.5 He states that the Applicant moved another bail application before the Trial Court, which was dismissed vide order dated 05.08.2024.



3.6 He states that lastly, the Applicant filed 4th bail application before the Trial Court, which was dismissed by the said Court vide order 28.10.2024 on the ground that allegations against the applicant are of heinous nature and, possibility of accused to threaten the witnesses, if enlarged on bail cannot be ruled out.

3.7 He states that the victim was of the legal age and capable of making decisions on her free will and, therefore, it cannot be presumed that she was not aware that a person who is already married cannot marry her.

3.8 He states that there are a total of 16 witnesses, out of which 11 are yet to be examined, the trial process will take considerable time and no purpose would be served keeping the Applicant behind the bars.

3.9 He stated that the Applicant has deep roots in the society and he is a government employee working in CRPF and, therefore, there is no flight risk.

3.10 He states that the Applicant is the sole earner of his family and he has to take care of his family, which also includes his parents who are senior citizens.

3.11 He states that the Applicant is willing to abide by any terms and conditions imposed on him including restriction of going anywhere near the victim. He states that Applicant undertakes that he will not contact any witness or the complainant, if released on bail.

Arguments of the State

4. In reply, Mr. Khanna, learned APP states that the offence involved in the captioned FIR is serious and heinous.



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4.1. He states that Section 91 Cr.P.C. notice was issued to the Hotel Manager of the Hotel Kamal Deluxe. He states that the manager produced the hotel register as per which there was entry in the name of Applicant on 08.11.2022. He states that there was entry in the name of Applicant and victim on 12.02.2023 and 03.09.2023. He states that as per the CDR the location of the victim on 08.11.2022 was found at Paharganj, Delhi. He states that these facts corroborate the prosecution version.

4.2. He states that Section 91 Cr.P.C. notice was also issued to Maavi Nursing Home and they produced OPD slip of the victim dated 23.05.2023. He fairly states that the OPD slip does not bear out that the victim was pregnant.

4.3. He states that the Applicant has not co-operated with the police during investigation. He states that the mobile phone of the Applicant has not been discovered till date and so also the mobile phone of the victim, which was taken away by the Applicant has not been produced.

4.4. He states that if the Applicant is released on bail, he might try to threaten the complainant and/or the witnesses. He states that victim had approached the Police post Tis Hazari on 14.01.2025 as regards the alleged incident of threat from the Applicant and her wife Sonia during the Court hearing before the Trial Court, and as per the NCR report registered on 23.02.2025, the victim was asked to approach the Court. He states that the IO has not independently examined any such claim of threat.

4.5. He states that victim's uncle and aunt were contacted to verify if any alleged obscene photos and videos were received from Applicant, however it has been confirmed that no photos or videos have been received. He relies



upon the supplementary status report dated 24.02.2025. He states that Applicant had cited her uncle Deepak as a witness in this regard, however, the said witness has also confirmed that he has not received any objectionable photos of the victim from the Applicant.

4.6. He states that the objectionable photos of the victim which form part of the record have been produced by the victim herself.

4.7. He fairly confirms that the statements of all public witnesses have been recorded. He states that 11 witness remained to be examined and these are all official witnesses.

5. Learned counsel for the complainant states that since the victim's mobile phone was forcibly taken away by the Applicant on 11.09.2023 and the same has not been seized by the police, the prosecutrix has this apprehension that her private photos and videos stored in the mobile phone may be misused by the Applicant and released to her friends and family.

5.1. He states that the complainant resides in Ghaziabad but works in Delhi.

Analysis and conclusion

6. This Court has heard learned counsels for the parties and perused the record.

7. Before adverting to the facts of the present case, it would be apposite to refer to the factors which are to be taken into consideration for granting bail to an accused. The Supreme Court in the case of **Prasanta Kumar Sarkar v. Ashis Chatterjee**¹, **State of Uttar Pradesh v. Amarmani**

¹ (2010) 14 SCC 496.



Tripathi² and Deepak Yadav v. State of Uttar Pradesh³ has set out the conditions to be considered by Court while granting bail, which are summarized as under: -

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behavior, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated
- (vii) reasonable apprehension of the witnesses being influenced; and;
- (viii) danger, of justice being thwarted by the grant of bail.

8. The Supreme Court in the case of **Union of India v. K.A. Najeeb⁴** opined that once it is evident that the trial is not to be going to concluded timely and the accused having undergone sufficient period of incarceration, the Court would be obligated to enlarge the said accused on bail.

9. Further the Supreme Court in the case of **Sanjay Chandra v. CBI⁵** deliberated upon conflicting aspect of custody of the accused and underlying liberty and rights of the accused enshrined under Article 21 of the Constitution of India. The relevant paragraph reads as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. **Deprivation of liberty must be considered a punishment, unless it is required to ensure that an**

² (2005) 8 SCC 21.

³ (2022) 8 SCC 559.

⁴ (2021) 3 SCC 713.

⁵ (2012) 1 SCC 40.



accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.”

(Emphasis supplied)

10. In light of the fact that the charge-sheet has been filed and charges have been framed; the statement of the prosecutrix stands recorded; all public witnesses have been examined; keeping in view these facts this Court is of the opinion that judicial custody of the Applicant is no longer required.

11. The Applicant is employed with CRPF, has roots in the society and therefore he is not a flight risk.

12. The allegation of the complainant dated 14.01.2025 that she was extended threats by the Applicant during the hearings before the Trial Court has not been verified by the IO or the police. The allegation of the complainant that the Applicant circulated the victim’s personal and private photos and videos to her family and friends have prima facie not been substantiated. Thus, these facts cannot form the basis for denying bail to the Applicant, who is otherwise entitled to bail in the facts of this case.



13. This matter has remained pending on board since 19.12.2024 and has been adjourned from time to time at the request of the prosecutrix as she wanted her recall testimony to be completed, before the bail application is heard. The testimony of prosecutrix now stands concluded and this apprehension of the prosecutrix also stands redressed.

14. Further since 11 witnesses are yet to be examined, who are official witnesses, the trial is likely to take some time, and it would not be prudent to keep the Applicant behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the Applicant. Consequently, the Applicant is directed to be released on bail on furnishing a personal bond in the sum of 1,00,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- (i) Applicant will not leave the country without prior permission of the Court.
- (ii) Applicant shall provide permanent address to the Trial Court. The Applicant shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- (iii) Applicant shall appear before the Court as and when the matter is taken up for hearing.
- (iv) Applicant shall join investigation as and when called by the IO concerned.
- (v) Applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.



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(vi) Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.

(vii) The Applicant will not come within 5 kms of the residence and office of the victim/prosecutrix.

15. In the event of there being any FIR/DD-entry/Complaint lodged against the Applicant during the period of bail, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

16. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

17. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

18. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

19. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

**MANMEET PRITAM SINGH ARORA
(JUDGE)**

FEBRUARY 24, 2025/mr/sk

[Click here to check corrigendum, if any](#)