



2025:DHC:1718



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

Pronounced on: 18.03.2025

+ **BAIL APPLN. 4806/2024**

ASHOK@RAKESH

.....Petitioner

Through: Mr. Tushar Rohmetra, Adv.

versus

THE STATE (GOVT. OF NCT OF DELHI) & ANR....Respondents

Through: Mr. Aman Usman, APP for State with
Insp. Ravinder Malik, SHO and S.I.
Narender Kumar, P.S. Sultan Puri,
Delhi.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed by the petitioner under Section 439 CrPC read with Section 483 BNSS seeking regular bail in connection with FIR No.480/2018 under Section 328/366A/370/372/376(2)/120B IPC r/w Section 4 of POCSO Act and Sections 3/4/5(1)(d)/6 and 7 of the Immoral Traffic (Prevention) Act, 1956 at Police Station Sultanpuri.
2. The case of the prosecution as borne out from the FIR is that on 30.06.2018, Vikram (victim's father) submitted a complaint to PS Sultanpuri that his child went missing from her parental home and the same was recorded *vide* DD No. 44A attested by HC Kaptan Singh. An FIR No.480/2018 under Section 363 IPC was registered and the same was marked to IO/Assistant Sub Inspector Dharam Singh.



3. During investigation, on 21.07.2018, the victim along with her parents came to the police station and further investigation was entrusted to IO Inspector Mohinder Singh. The victim's statement was recorded under section 161 IPC. As per the statement, it is alleged that on the intervening night of 29/30.06.2018 accused Abhishek kidnapped the victim and took her to Haridwar. After 5-6 days in Haridwar, Abhishek brought her back to Delhi and met co-accused/Ravi. It is further alleged that co-accused Ravi raped the victim at his house in Ghaziabad, U.P.

4. The next morning, she was left alone with co-accused Rinki who mixed intoxicating substance in her food.

5. Further it is alleged that on 10.07.2018, accused persons namely Ravi, Intzar, Heena and Rinki took the victim to Sector 11 Rohini, Delhi on the false pretext to meet Abhishek and sold her for prostitution to petitioner (owner of the Spa) for Rs.2,00,000/-. As per the prosecution version, victim was raped by petitioner, as well as, other people at the Spa Centre. Subsequently, on 21.07.2018 she was able to escape.

6. During further course of investigation accused Abhishek, Ravi, Rinki Soni, Mohamed Sakil @ Vicky, Mukesh, Rohit and petitioner, were arrested and two mobile phones were also recovered from the 'Spa Centre', which were used by petitioner to make calls to the customers. On 08.09.2018 co-accused Sunil (who raped the victim at petitioner's Spa) was arrested on the identification of victim. Later, chargesheet was filed before the Ld. Trial Court on 26.10.2018.

7. Mr. Tushar Rohmetra, the learned counsel for the petitioner, at the outset submits that the petitioner has been falsely implicated in the present FIR. He points out contradictions in the statements of the victim recorded



under Section 161 CrPC *vis-a-viz* statement recorded under Section 164 CrPC. He submits that in her first statement recorded under Section 161 CrPC, the victim stated that accused Abhishek and Ravi both physically assaulted her and later in her statement under Section 164 CrPC, she states that except Abhishek rest of the accused persons sexually assaulted her. He, therefore, contends that the testimony of the victim cannot be relied upon.

8. He further submits victim's testimony before the court on 25.03.2019, raises serious concerns about her credibility and the truthfulness of the prosecution's case. She failed to recognize one of the co-accused, Sunil, who was a customer at the petitioner's SPA as per prosecution story. Additionally, victim did not initially recognize the petitioner/accused but later on when she identified him, the same was also not with certainty.

9. He submits that no CDR and CAF of the accused persons have been brought on record to show the transaction between the petitioner on one hand and co-accused Ravi@Kishan and Rinki@Soni, on the other.

10. He further submits that the allegation against the present petitioner is that he was the owner of alleged SPA where the victim was kept, however, no recoveries have been made from the SPA that could connect the petitioner to the SPA/establishment nor any CCTV footage from the locality has been produced to substantiate the allegations against him.

11. He further submits that other co-accused persons who were allegedly performing duties as guard at the premises of SPA, have already been enlarged on bail.

12. He submits that petitioner is in custody for over six years and the prosecution has cited as many as 26 witnesses and till date only 21 witnesses have been examined. The petitioner has clean antecedents and he is not a



flight risk. According to Mr. Rohmetra, the trial is going to be a protracted one and considering the long custody of the petitioner, he may be enlarged on bail.

13. *Per contra*, the learned APP for the State has argued on the lines of the status report. He submits that specific role has been attributed to the present petitioner, inasmuch as other co-accused had sold the victim to the petitioner/Ashok for the purpose of prostitution. He submits that there is further specific allegation against the petitioner. He, thus, urges that the bail application of the petitioner be dismissed.

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

15. It is the case of the prosecution that one, Abhishek was part of the conspiracy in kidnapping the victim and he is the one who took the victim to Haridwar where the victim stayed with him for 5-6 days. Later on, Abhishek has been discharged by the learned Trial Court on the basis of the statement of victim recorded under Section 164 CrPC. Thus, there appears to be evident contradiction in the statement of the victim recorded under Section 161 CrPC with her statement recorded under Section 164 CrPC.

16. There is also some merit in the submissions of the learned counsel for the petitioner that the victim failed to recognize one of the co-accused, Sunil, who was a customer at the petitioner's SPA as per prosecution story and that the victim did not initially recognize the petitioner/accused, Ashok Goel, but later identified him but such identification also lacks certainty.

17. However, the contradictions in the statements of the victim; the probative value of the testimony of the victim as to the manner in which she identified the petitioner/Ashok along with reliability of the witness will be



considered by the learned Trial Court during the trial. However, at this stage the aforesaid factors when seen in the light of long custody of the petitioner, which is more than 6 years 3 months, tilts the balance in favour of granting bail to the petitioner.

18. Further, the prosecution has cited 26 witnesses of which only 21 witnesses have been examined, therefore, the trial will inevitably take some time to conclude.

19. It is well settled that at the pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be awarded to him. Detention is not supposed to be punitive or preventive. The petitioner who is facing incarceration for more than 06 years 03 months cannot be kept in custody for an indefinite period in the facts and circumstances of the present case to await the outcome of trial, which is not likely to be concluded anytime soon.

20. It is not the case of the prosecution in the status report that the petitioner does not have clean antecedents or that he is a flight risk. There is also no possibility of the victim being influenced by the petitioner, in the event he is enlarged on bail, as the testimony of the victim stand recorded. The presence of the petitioner during trial can otherwise be ensured by imposing appropriate conditions.

21. Having regard to the aforesaid circumstances, 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.25,000/- and one Surety Bond of the like amount to



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the satisfaction of the Trial Court/JMFC/CMM/Duty Magistrate, 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 witnesses directly or indirectly.
22. The petition stands disposed of.
 23. 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.
 24. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
 25. Order *dasti* under signatures of the Court Master.
 26. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

March 18, 2025/aj