



2025:DHC:3360



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 05.05.2025*+ **BAIL APPLN. 1071/2025**

AKASH

.....Petitioner

Through: Ms. Vaishali Goyal, Advocate

versus

THE STATE OF NCT DELHI &amp; ANR.

.....Respondents

Through: Mr. Naresh Kumar Chahar,  
APP for the State with Mr.  
Vipin Kumar Yadav, Advocate  
Mr. Arjun Anand, Advocate  
for complainant/R-2**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. The applicant has approached this Court by way of this application, praying for grant of regular bail in case arising out of FIR No. 500/2024, registered at Police Station Mahendra Park, Delhi, for the offences punishable under Sections 70/61(2)/123 of the Bharatiya Nyaya Sanhita, 2023 [hereafter '*BNS*'].

2. Briefly stated, the present FIR was registered at the instance of prosecutrix 'J' who disclosed that she used to work in a factory in Bhalswa Dairy, where one Rohan also used to work as a Manager and one of his friends namely Akash i.e. present applicant/accused



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used to come to meet him. She further stated that the said persons had planned to go for a party, for which they had managed to convince the prosecutrix. It was alleged that on the intervening night of 03/04.08.2024, Rohan had picked her from Outer Ring Road alongwith his two other friends in a car for the party; but the prosecutrix knew only one of the friends i.e. present applicant Akash, and did not know the name of another friend who was driving the car, whom both of them used to call as bhai. First they had gone to Murthal and had dinner and thereafter they had taken the prosecutrix to Hotel Park in Mahendra Park, where they had allegedly given her something in a cold drink, due to which she had become semi-conscious; and thereafter, all three of them had made sexual relations with her one by one in the hotel room against her consent while she was in semi-conscious state. On these allegations, the present FIR was registered on 03.10.2024.

3. During the course of investigation, medical examination of the prosecutrix was conducted on 03.10.2024 *vide* MLC no. 259313, wherein she had refused her internal examination. On 04.10.2025, her statement under Section 183 of BNSS was recorded, wherein she had reiterated her allegations. Thereafter, accused persons Rohan and Aakash (applicant herein) were arrested from their house at the instance of the prosecutrix. It is the prosecution's case that during investigation, the present applicant had disclosed the name of the third accused as Piyush, who was his friend for about six years and used to live in Punjabi Bagh, Delhi, in whose white Swift car, they



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had taken the prosecutrix on the day of incident to the spot. Next day, the accused Piyush was arrested and white Swift car bearing no. DL 5CU 2789 was seized from his possession.

4. During further investigation, the police had seized CCTV footage of Hotel Park along with relevant documents and hotel records. The footage, though found to be approximately of 2 hours and 20 minutes ahead of real time, showed that the prosecutrix and all three accused had checked in at the hotel around 4:40 AM and had checked out around 1:08 PM on the same day. Hotel records also reflected their names and identity documents corresponding to the entries in the register. Thereafter, judicial Test Identification Parade of both the car and accused Piyush were conducted; however, the prosecutrix failed to identify either the car of accused Piyush or Piyush. Co-accused Piyush was granted bail by the learned Sessions Court on 28.10.2024. Upon completion of the investigation, chargesheet was filed, and the case is now at the stage of arguments on charge.

5. The learned counsel appearing for the applicant contended that the applicant has been in judicial custody since 04.10.2024, despite being innocent and having no role in the alleged offences. It was argued that the applicant has no connection with the commission or of the alleged acts, and the chargesheet has already been filed; thus, the applicant was no longer required for the purposes of investigation. It was further contended that one of the co-accused Piyush has already been granted bail by the learned Sessions Court.



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In this regard, it was submitted that despite the co-accused Piyush, allegedly being present in the same hotel room as the prosecutrix on the night of the incident, she had chosen not to identify him during the judicial TIP proceedings. The learned counsel also pointed out that the prosecutrix had failed to offer any satisfactory explanation for the delay of nearly two months in lodging the FIR from the date of the alleged incident. It was further argued that the present FIR has been manipulated by the prosecutrix with the intent to extort money from the applicant and that no complaint was made by her at the time of the alleged incident. It was further submitted that the learned Sessions Court, while dismissing the bail application of the applicant, had failed to appreciate that the prosecutrix had declined to undergo an internal medical examination. It was therefore prayed that the applicant herein be granted regular bail.

6. The learned APP for the State, on the other hand, argued that in the statement recorded under Section 183 of BNSS, the present accused has been named as the one who had committed the offence in question. He however admitted that the victim had refused her internal medical examination to the doctor and there is no history of external injury as seen in the MLC of the victim.

7. Interestingly, during the course of arguments, the learned counsel who appeared for respondent no. 2/prosecutrix, (he has filed his Vakalatnama *vide* diary no. 3047198), that he has instructions from the prosecutrix to state that the present accused/applicant was not involved in the commission of offence in question and that the



prosecutrix has no objection if the applicant is granted regular bail. The learned counsel for the prosecutrix also stated that the prosecutrix is a woman, and an illiterate person. He also stated that one of the co-accused had already been granted bail. Therefore, respondent no. 2/prosecutrix had no objection to grant of bail to the present accused/applicant.

8. Arguments were **heard** on behalf of the applicant, State and the prosecutrix by this Court. The material available on record has also been perused.

9. In the present case, the prosecutrix appeared before this Court, assisted by her counsel, and made certain submissions in addition to those advanced by her counsel on her instructions. She stated that she knew the present applicant/accused Akash, and that she had accompanied him voluntarily. She further submitted that although she had earlier made a statement before the learned Magistrate alleging that all three accused persons – Rohan, Piyush, and Akash – had committed rape upon her, she now clarified that the present applicant Akash had not committed any sexual assault on her and was merely present at the spot.

10. However, a perusal of the record reveals that in her earlier statement recorded under Section 183 of BNSS before the learned Magistrate, the prosecutrix had specifically stated that on the night of the incident, the three accused persons had taken her to a hotel where they had booked two rooms. She had also stated that while the three



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accused persons smoked *hookah*, they had given her a cold drink, after drinking which, she had become semi-conscious and was unable to comprehend what was happening to her. Two days later, accused Rohan had allegedly given her a pill, which she later discovered was for the termination of pregnancy. In her statement, she categorically alleged that she was gang raped by Rohan, Akash (the present applicant), and the third person (i.e. Piyush), who she refused to identify during TIP proceedings. This Court further notes that during her medical examination conducted on 03.10.2024 at Babu Jagjivan Ram Memorial Hospital, the prosecutrix voluntarily provided a history of sexual assault, clearly stating that the three accused persons had sexually assaulted her one by one.

11. The FIR in this case was registered on 03.10.2024. Her statement under Section 183 of BNSS was recorded on 04.10.2024, and it specifically records that the statement was made voluntarily, without any pressure, coercion, or threat. It is pertinent to note that the history recorded in the MLC on 03.10.2024 must also have been given voluntarily, as the examining doctor had no reason to either know the prosecutrix or the accused, and therefore, the doctor could not have fabricated or inferred such details. While it is sometimes argued that police may record statements on their whims and fancies, the same cannot be said about the history recorded by a medical professional, which is based solely on the history disclosed by the patient/victim.

12. The submission now made before this Court – that the



prosecutrix is a woman and illiterate, and therefore may have made an incorrect statement – deserves outright rejection inasmuch as such a contention is wholly meritless. The prosecutrix, who appeared before this Court, was capable of making submissions on her own. Merely being a woman, or being illiterate (for which there is no proof), was never made a ground to doubt her initial, consistent statements alleging sexual assault. It is therefore untenable that her gender, which is central to the very allegation of rape, can now be used to discredit her own statements and to argue that, because she is a woman or illiterate, she may have falsely accused someone. Allegations of rape are serious and cannot be lightly presumed to be false merely on the ground that the complainant is a woman or not literate. The offence of rape, by its very nature, is committed upon a woman because of her gender; thus, her gender cannot be turned around as a reason to doubt the truthfulness of her complaint. Also, the allegations of rape stem from an act committed upon her body – they are not, and cannot be, contingent upon her educational qualifications.

13. In this regard, one must remember that the investigating agency is expected to register an FIR when a woman – whether literate, semi-literate, or illiterate – levels allegations of sexual assault and seeks investigation and punishment against an accused. The investigating agency and courts of law are not expected to question or doubt her statement at the threshold. Therefore, women too are expected to act with responsibility and are not expected to make false



statements regarding sexual assault, later taking the defence that, being a woman, they could have made a mistake in levelling such serious allegations against a man. The very fact of being a woman is what attracts the protection of the law under Section 376 of IPC (or under the provisions of BNS); however, that same fact cannot simultaneously become the basis for presuming that she may have lied. In case this argument is accepted, it would lead to a situation where allegations levelled by a woman in a genuine case would also be liable to be doubted, because they are levelled by the woman who is literate, semi-literate or illiterate.

14. Such a proposition would result in contradictions and confusion and run contrary to the mandate of law and judicial precedents laid down by the Hon'ble Supreme Court. A woman cannot be conferred the right to allege sexual assault, protected under law solely by virtue of her gender, and later be permitted to resile from her own statement on the same ground – that she is a woman.

15. A pertinent question that arises in such circumstances is how a statement alleging sexual assault can be accepted as truthful at one stage of the investigation, yet be considered untruthful at a later stage. But in the present case, this Court is dealing with a bail application of a man who has been in judicial custody for nearly seven months. Considering that the investigation is now complete and the matter is pending at the stage of charge, the prosecutrix's recent retraction of allegations – claiming that her earlier statements were incorrect – offer little relief to the present applicant, who has



already spent nearly seven months in judicial custody. During this period, he has not only lost his personal liberty, but also likely to have suffered the loss of employment, damage to crucial relationships, erosion of social standing and dignity, and the enduring trauma of suffering the stigma of incarceration and being seen as a rapist. At this stage, this Court cannot undo the harm already caused to the applicant or to compensate the accused for such irreparable psychological and social damage caused to him and his family. In such circumstances, the accused is left with nothing but the burden of stigma, and irreparable loss of reputation, time, and dignity.

16. Before parting with this case, this Court is constrained to note that it is deeply perturbed by the conduct of the prosecutrix, who had initially made grave allegations of gang rape against three individuals, resulting in their incarceration, and has now chosen to retract her statements in part, singling out the present applicant. It is also relevant to note that she had also earlier refused to recognize the third accused Piyush in TIP even though as per investigation conducted, he was the third person with the prosecutrix on the day of alleged incident. Such conduct, in this Court's view, often leads to dilution of the seriousness of genuine cases of sexual assault. When a prosecutrix makes multiple consistent statements at different stages – before the Magistrate, the police, the doctor who has medically examined her and thereafter makes a contrary statement, when she appears before the court hearing a bail application *qua* a particular accused later in Court, totally exonerating him of the allegations of



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the sexual assault, it not only weakens the prosecution case which rests on her testimony but also burdens the justice delivery system and the investigating agency, who relying on her statement, register a case of sexual assault, conduct investigation, file chargesheet and the Courts of law conduct hearings and invest judicial time dealing with such cases. More importantly, it causes irreversible harm to the accused, against whom society forms an opinion the moment such an accusation is made. The accused in such circumstances, considers himself fortunate, if he at least gets bail from a court of law.

17. In the present case, since the prosecutrix herself has appeared in the Court and stated that the accused had not committed any of the offence in question, this Court is inclined to grant regular bail to the applicant, on his furnishing personal bond in the sum of Rs.20,000/- with one 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 Court, and shall deposit his passport, if any, with the learned 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 concerned IO/SHO as well as the learned Trial Court.

18. The bail application is accordingly disposed of.



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19. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.
20. The judgment be uploaded on the website forthwith.

**DR. SWARANA KANTA SHARMA, J**

**MAY 5, 2025/zp**