



\$~7

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

+ BAIL APPLN. 665/2023

KESHAV PRAKASH GUPTA

..... Applicant

Through: Mr. Sanjiv Kumar Gill, Mr. Vipin
Rana, Ms. Ritu and Mr. Shyamendra
Kumar, Advocate

versus

STATE NCT OF DELHI

..... Respondent

Through: Meenakshi Dahiya, Additional Public
Prosecutor for the State with Insp.
Narender Kumar, PS. Bhajanpura**CORAM:****HON'BLE MR. JUSTICE SAURABH BANERJEE****ORDER**

%

21.11.2023

1. The applicant vide the present application under Section 439 of the Code of Criminal Procedure, 1973 [CrPC] seeks regular bail in FIR No.0566/2022 dated 03.09.2022 registered under Sections 323/328/343/376D/376(2)(n)/506/509/120B of the Indian Penal Code, 1860 at PS.: Bhajanpura, North-East District, Delhi.

2. The facts of the FIR reveal that the applicant alongwith two other co-accused persons *namely* Aashu and Arjun Rathore were involved in committing heinous sexual atrocities upon the complainant over a period of almost 2 years. It is also alleged therein that sometime in November, 2021, for a period of over 6 days, the complainant was forcefully intoxicated, her hands were tied-up and the applicant herein, alongwith the aforementioned two other co-accused persons, invited other persons in lieu of money charged, to commit sexual atrocities upon her.

3. Learned counsel for the applicant submits that since the chargesheet



has already been filed, therefore, there is no threat of the applicant either tampering with the evidence or threatening the witnesses; and that the applicant never came in any direct contact with the complainant at any point of time; and that the complainant, in her statement recorded under Section 161 of the CrPC, has not alleged that the applicant had ever made any direct physical/ sexual relations with her; and that the applicant is a young boy aged around 19 years and has clean antecedents; and that there has been an inordinate/ unexplained delay of around 31 months in registration of the present FIR and *lastly* that since one of the co-accused *namely* Arjun Rathore has already been granted bail by a co-ordinate Bench of this Court vide order dated 08.02.2023, the applicant ought to be released on bail on the grounds of parity.

4. This Court, vide its order dated 28.02.2023, issued notice. The Status Report was called for and the Nominal Roll was also requisitioned from the concerned Jail Authorities.

5. Learned APP for the State, while opposing grant of bail in the present application submits that the complainant has leveled extremely serious allegations against the applicant to the effect that it was the applicant who used to call several persons for having sexual intercourse with the complainant in lieu of the money charged from those persons; and that the applicant is in fact the *king-pin* and the key player who used to arrange different persons for the other two co-accused persons for having forceful sexual intercourse with the complainant and *lastly* that the delay in the registration of the present FIR was on account of the fact that the complainant had stated that she was blackmailed by one of the co-accused persons that if she takes any step qua registration of a complaint/ FIR against



the co-accused persons, then he would make her nude pictures/ videos, public and viral.

6. This Court has heard the learned counsel for the applicant and the learned APP for the State and perused the Status Report filed by the State as also the other documents on record.

7. As per the Nominal Roll, the applicant has been in judicial custody since 06.09.2022, and his overall jail conduct has been satisfactory.

8. Before advertng to the merits involved herein, this Court would like to specify that though filing of the chargesheet is a material consideration while granting bail, however, the same is not the sole criterion to be taken into consideration as it has to be coupled with the facts and circumstances involved. Here is a case wherein, though the chargesheet has already been filed, however, the complainant in both her statements recorded under Sections(s) 161 and 164 of the CrPC has specifically deposed not only naming the applicant but also attributing a specific role to him. The applicant has been assigned the role of bringing other persons to have physical relations with the complainant after charging them money.

9. The involvement of the applicant, under the given circumstances, raises a concern, more so, as there is no denial of the fact that he was known to the other co-accused persons named in the present FIR and in any event, the same is very much a matter of trial. At this stage, there is no plausible reason or explanation given by the applicant for his involvement with the other co-accused persons in the commission of the alleged offences.

10. The aforesaid facts coupled with the grievousness of the offences including the severity of the punishment, if convicted, are themselves sufficient reasons for this Court to deny bail to the applicant at this stage.



Primarily when the conditions laid down by the Hon'ble Supreme Court in Re.: *Prasanta Kumar Sarkar vs. Ashis Chatterjee* (2010) 14 SCC 496 and *State of Uttar Pradesh vs. Amaramani Tripathi* (2005) 8 SCC 21 and *Deepak Yadav vs. State of Uttar Pradesh* (2022) 8 SCC 559] for granting bail to any accused like the applicant are as under:-

- a. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- b. nature and gravity of the accusation;
- c. severity of the punishment in the event of conviction;
- d. danger of the accused absconding or fleeing, if released on bail;
- e. character, behaviour, means, position and standing of the accused;
- f. likelihood of the offence being repeated;
- g. reasonable apprehension of the witnesses being influenced;
- and
- h. danger, of course, of justice being thwarted by the grant of bail.

11. Accordingly, the present bail application is dismissed in the above terms.

12. Needless to mention, observations made, if any, are purely for the purposes of adjudication of present application and shall not be construed as expressions on the merits of the matter.

SAURABH BANERJEE, J

NOVEMBER 21, 2023/Pt