

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

% *Date of decision : 01.03.2023*
+ **BAIL APPLN. 4/2023**

MD SHAMSHER

..... Petitioner

Through: Ms. Madhu Saini, Ms. Meenakshi Dahiya,
Md. Saffruddin and Mr. Amit Kumar Roy,
Advocates.

THE STATE AND ANR

..... Respondents

Through: Mr. Amit Ahlawat, APP for the State with
Insp. Prateek Saxena, P.S.S.P. Badli.
Ms. Narita Yadav, Mr. Sanyam Khetarpal,
Mr. Nitesh Goyal, Ms. Kanupriya Tyagi, Mr.
Karan Vijayan and Ms. Prakriti, Advocates
for prosecutrix.
Prosecutrix in person.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J (ORAL)

1. The present application is filed under Section 438 of Code of Criminal Procedure, 1973, seeking anticipatory bail in FIR No.740/2022 dated 19.10.2022, under Section 376/506 of Indian Penal Code, 1860, registered at Police Station Samaipur Badli.
2. In brief, the facts of the case are that on 11.10.2022, a PCR call was received regarding quarrel at Gate No.4, Raja Vihar, Samaipur Badli, and the contents of PCR call were that "*Ek Ladka Ghar par aakar jhagda kar raha hai*". The call was initially marked to Head Constable for further necessary action. After around 10 minutes,

another PCR call was received having contents, “*sasural wale mayke mein aakar maar peet karke gaye hain or Aag lagane ki bhi koshish ki hai*,”. On receiving this call, IO reached at the address of the complainant ‘S’ and she stated that her brother-in-law (jeth) had quarrelled and misbehaved with her. Thereafter, complainant was sent to BSA for medical examination and her MLC was prepared wherein the treating doctor mentioned the alleged history. It was alleged that on 11.10.2022 at 11.PM the victim was at her home in Samaipur Badli and was making her bed when suddenly, 4-5 people entered the house as the door was unlocked and her other family members were upstairs. Out of these 4-5 men, one man namely, Shamsheer (petitioner herein) grabbed breast of the victim, kept his legs over victim’s thigh and accused was trying to remove clothes and undergarments of victim and tried to indulge in intercourse with her. Victim tried to escape by kicking the accused and made hue and cry. Thereafter, by hearing the noise of the victim, her parents and brother came down. The matter was further handed over to SI Priyanka for necessary action and when concerned SI reached at the house of the complainant to record her statement, she stated that she will give her statement later as she is not feeling well. On 19.10.2022, complainant came to police station and her statement was recorded in front of her mother and DCW counselor and on the basis of her statement, aforesaid FIR was got registered against the petitioner.

3. It is submitted by the learned counsel for the petitioner that petitioner is the Jeth of the victim and has been falsely implicated in

this case, as the petitioner and the victim are related to each other. It is further submitted that victim is in the habit of lodging false FIRs as she is having matrimonial dispute with her husband and she has previously also falsely implicated four family members along with her husband, who are now on bail. It is further submitted that the alleged incident took place on 11.10.2022 and two PCR calls were made by the victim but in none of these calls she stated that petitioner has raped her, and even there are no allegations of molestation against the petitioner and the subsequent statement given by her is nothing but an afterthought to falsely implicate the petitioner. She further submitted that there is a delay of 8 days in lodging the FIR and even subsequent to the FIR, the victim never came forward to get her statement recorded despite the IO calling her, and it was only on 19.10.2022 that her statement was got recorded. She further submitted that on 11.10.2022 itself, when the petitioner and the victim were brought to the police station after the PCR calls made by the victim, the petitioner had moved an application stating therein that he has apprehension that he would be falsely implicated in a rape case.

4. On the other hand, learned APP for the State while vehemently opposing the present bail application has argued on the lines of the status report and submitted that on the date of the incident i.e, on 11.10.2022 victim was taken to the hospital for medical examination and her MLC was prepared wherein she disclosed the entire incident and also her statement was recorded before the DCW on the basis of which the instant FIR was registered. It is further submitted by the

learned APP that in her statement recorded under Section 164 Cr.P.C prosecutrix has fully supported the case of the prosecution. It is further submitted that proceedings under Section 82 Cr.P.C have been initiated against the present petitioner and has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Prem Shankar Prasad Vs. The State of Bihar & Anr in Crl. Appeal No. 1209/2021, decided on 21.10.2021.***

5. In the instant case, the allegations against the petitioner are grave and serious in nature. On 11.10.2022 the victim has categorically stated about the incident which has been recorded by the doctor in the MLC and she has made specific allegations against the petitioner in her statement recorded before DCW and corroborated the same in her statement recorded under Section 164 Cr.P.C. Though there are some minor discrepancies in her two statements i.e., statement made to the doctor and statement before DCW, but the victim has totally corroborated the same and stood by her statements. It is pertinent to note that the petitioner is absconding and evading his arrest and thus, PO proceedings have already been initiated against the petitioner. Looking into the facts and circumstances of this case and gravity of the offence as well as the fact that process of proclamation under Section 82 Cr.P.C has been issued, the petitioner is not entitled to the privilege of pre-arrest bail.

6. As far as the contention of the counsel for the petitioner that two PCR calls were made in which nothing about the incident was mentioned does not cut much ice as there was only 10 minutes gap in

the two PCR calls dated 11.10.2022 and the victim was directly removed to the hospital from the police station on the same day where she has narrated the whole incident. Therefore, it cannot be said that the victim has narrated the incident for the first time on 19.10.2022.

7. No doubt, there is a delay of 8 days in lodging the FIR, however, the delay in such cases is not always fatal to the case of the prosecution.

8. Keeping in view the entire circumstances of this case and the fact that the incident recorded in the MLC and the statement before the DCW are duly corroborated with the statement of the victim under Section 164 Cr.P.C, furthermore, considering that PO proceedings have already been initiated against the petitioner and looking into the observations made by the Hon'ble Supreme Court in *Prem Shankar Prasad (supra)*, no ground for anticipatory bail is made out. The application, is accordingly dismissed.

9. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

MARCH 1, 2023/ib