

# Manish Kumar Yadav vs State Nct Of Delhi And Anr on 24 May, 2022

**Author: Anu Malhotra**

**Bench: Anu Malhotra**

\$-43

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ BAIL APPLN. 1078/2022  
MANISH KUMAR YADAV ..... Petitioner  
Through: Ms.Tanya Agarwal, Advocate

versus  
STATE NCT OF DELHI AND ANR. .... Respondents  
Through: Ms.Kusum Dhalla, APP for State with  
SI Ashish Kumar

CORAM:  
HON'BLE MS. JUSTICE ANU MALHOTRA  
ORDER

% 24.05.2022 The applicant vide the present application seeks the grant of regular bail in relation to FIR No. 595/2016, Police Station Okhla Industrial Area registered under Sections 366A/328/368/376D/201/506/34 of the Indian Penal Code, 1860 and Section 6 of the POCSO Act.

The status report has been submitted by the State. It is the avowed contention on behalf of the applicant that the applicant having been incarcerated now for more than 6 years having been arrested on 26.10.2016 is entitled to a reformatory approach and thus to bail.

Reliance has been placed on a catena of verdicts filed on behalf of the applicant, i.e., "Union of India V. K.A. Najeeb;

(2021) 2 SCC 713 Shubham Suresh Thorat V. The State of Maharashtra; Crl.Bail Application (ST) No. 3242/2020 Indrani Pratim Mukerjee v. Central Bureau of Investigation & Anr.;

SLP(Crl.) 1627/2022

BAIL APPLN. 1078/2022

page 1

Signature  
Not Verified  
Digitally Signed  
By: SUMIT GHAI  
Signing  
Date: 25.05.2022  
18:35:27  
This file is  
digitally signed by

PS to HMJ ANU  
MALHOTRA.

Madan Singh V. State of Madhya Pradesh;

(2019) 20 SCC 587", to submit to the effect that the trial of the case is likely to take a long time and continued detention of the applicant in jail who was 19 years of age when he was arrested and is now 25 years would be an exercise in futility and that there needs to be a balance struck in the maintenance of the constitutional rights of the applicant as well.

Inter alia, it has been submitted on behalf of the applicant that the averments in the charge sheet itself reflect to the effect that a phone call was made even at the number of the applicant in as much as the mobile number of the applicant was also found in the call details of the prosecutrix and that the relations between the applicant and the prosecutrix, if any, were only wholly consensual.

On behalf of the State, the learned APP for State has vehemently opposed the prayer made by the Petitioner. It is also essential to observe that the prosecutrix in the instant case has already expired as per the status report that was submitted by the State dated 23.5.2022. However, as fairly stated on behalf of the applicant by learned counsel for the applicant that the prosecutrix has already been examined before the Trial Court. The learned APP for the State submits that the prosecutrix has withstood the test of cross-examination and has corroborated the prosecution version in relation to the commission of gang rape on her inclusive allegedly by the petitioner.

Learned counsel for the applicant presently does not refute the aspect that the prosecutrix has corroborated the prosecution version though it is BAIL APPLN. 1078/2022 page 2 of 4 Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:25.05.2022 18:35:27 This file is digitally signed by PS to HMJ ANU MALHOTRA.

submitted on behalf of the applicant that the prosecutrix has corroborated the prosecution version partly.

Furthermore, it is submitted on behalf of the applicant that even as per the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix that had been recorded on 27.10.2016, the prosecutrix had put forth that she had learnt the names of two persons, named, Manish Yadav and Rohit, the applicant being named Manish and that she did not know them before and had not seen them before but the said aspect is refuted through the averments in the charge sheet which show the presence of the mobile number of the applicant available with that of the prosecutrix. It is also contended that in the statement under Section 164 of the Cr.P.C. of the prosecutrix inter alia stated to the effect that she had become unconscious with in as much as two persons had put her into a vehicle who had been sent by her brother-in-law and had made her smell a handkerchief whereafter however she states that she was raped.

The said aspects which are sought to be contended on behalf of the applicant in relation to the applicant being the perpetrator of the alleged commission of the offence of rape are undoubtedly aspects of trial;- however it cannot be overlooked as brought forth through the CFSL result

submitted on behalf of the State through their averments in para 9 of the Status report filed today wherein it has been stated that the CFSL result indicates traces of semen of the applicant/petitioner were found on the salwar and vaginal smear of the prosecutrix.

For a moment even if the contention raised on behalf of the applicant is accepted that the relations between the applicant and the prosecutrix were BAIL APPLN. 1078/2022 page 3 of 4 Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:25.05.2022 18:35:27 This file is digitally signed by PS to HMJ ANU MALHOTRA.

consensual, the prosecutrix at the time of the alleged commission of the offence was aged 14 years as per the statement under Section 164 of the Cr.P.C., 1973.

Taking the nature of the allegations against the applicant as submitted on behalf of the State, there is no ground for grant of bail in the instant case taking into account also the submission on behalf of the State that the prosecutrix has corroborated the prosecution version, the prayer made by the applicant seeking the grant of regular bail is declined.

Nothing stated herein above shall however amount to an expression on the merits of demerits of the trial which is in progress. However taking into account the factum that the applicant is incarcerated since 26.10.2016, the learned Trial Court is directed to dispose of the trial in the instant case within a period of 15 months from the date of receipt of this order.

The State shall ensure the production of witnesses before the Trial Court.

ANU MALHOT

MAY 24, 2022  
Sv  
BAIL APPLN. 1078/2022

page 4

Signature  
Not Verified  
Digitally Signed  
By:SUMIT GHAI  
Signing  
Date:25.05.2022  
18:35:27  
This file is  
digitally signed by  
PS to HMJ ANU  
MALHOTRA.