



\$~83

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 378/2025**

X

.....Petitioner

Through: Ms. Warisha Farasat, Ms.
Suvarna Swain & Ms.
Kaustubh Chaturvedi,
Advs.

versus

STATE GOVT NCT OF DELHI AND ANOTHER &
ANR.Respondents

Through: Mr. Sunil Kumar Gautam,
APP for the State.
SI Divya Gehlot, PS V.K.
North.
Ms. Geeta Verma & Mr.
Pawan Kumar, Advs. for
R-2.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **15.09.2025**

1. The present petition is filed by the petitioner challenging the order dated 18.01.2025 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), New Delhi District, Patiala House Courts, New Delhi in Bail Application No. 67/2025 arising out of FIR No. 296/2024, registered at Police Station Vasant Kunj North for the offence under Section 64(1) of the Bharatiya Nyaya Sanhita, 2023 ('**BNS**').
2. By the impugned order the learned ASJ admitted Respondent No. 2 on bail.
3. The brief facts are, the petitioner meet Respondent No. 2 in June 2024, thereafter, they exchanged contact numbers and started talking to each other.



4. It is alleged on 12.10.2024 the petitioner and Respondent No. 2 went out for dinner, whereafter, Respondent No. 2 invited the petitioner to his hostel at Jawaharlal Nehru University, where the petitioner stayed the night.

5. It is alleged that next day on 13.10.2024, Respondent No. 2 gave the petitioner a tour of the college campus and also introduced the petitioner to his friends. It is alleged that thereafter the petitioner got involved in some of her office work which got finished late at night.

6. It is alleged that the petitioner was ready to leave, however, Respondent No. 2 asked her to stay over the night to which the petitioner agreed.

7. It is alleged that in the night both of them were watching a movie in Respondent No. 2's room, whereafter, due to exhaustion the petitioner slept.

8. It is alleged that after waking up the next day the petitioner saw Respondent No. 2 sleeping next to her. It is alleged that at that time Respondent No. 2 started touching her inappropriately and thereafter sexually assaulted her.

9. It is alleged that after the aforesaid incident the petitioner was traumatized and after confronting Respondent No. 2 about the same, she left from his room.

10. It is alleged that after the first incident the petitioner tried to maintain her boundaries with Respondent No. 2, however, Respondent No. 2 repeatedly contacted the petitioner.

11. It is alleged that on 24.12.2024, the petitioner again met Respondent No. 2, where, he again invited the petitioner to his hostel.

12. It is alleged that Respondent No. 2 again committed sexual assault against the petitioner. Pursuant to her complaint the



police registered FIR No. 29720/4 under Section 64(1) of the BNS. Thereafter on 27.12.2024, Respondent No. 2 was arrested in the present case.

13. As noted above, the learned ASJ by the impugned order admitted Respondent No. 2 on bail. It was noted that Respondent No. 2 was no more required for the purpose of investigation, he is aged 25 years and has no previous criminal involvement. It was also noted that Respondent No. 2 is a student of PhD at JNU and no purpose would be served by keeping him in company of hardened criminals in the jail and he must be given an opportunity to prepare for his defence.

14. Learned counsel for the petitioner submits that the trial has since proceeded and she will be satisfied if the erroneous observations made by the learned ASJ against the petitioner are set aside since that may affect the final judgment.

15. It is observed that the learned Trial Court while admitting the accused on bail made certain observations against the petitioner which are set out below:

“7. The complainant is an educated girl who is gainfully employed as a journalist. Therefore, she is expected to be aware about the consequences of her act. As per the said whatsapp chats, she has claimed to be in a committed long distance relationship with some third person. The said chats indicate that she was unhappy with the said relationship as it was abusive and traumatic. The applicant and the prosecutrix have been continuously interacting on the whatsapp for at least last six months prior to the latest incident on 24.12.2024. Their interaction appears to be cordial, mutual and voluntary. In respect of the first alleged incident of October 2024, she admittedly stayed in the room of the applicant with her own free will. As per the chats after the said incident, she appears to be in confusion due to her committed long distance relationship. But she never claimed to him in the chats that he had forcible sexual intercourse with her against her consent. On the contrary, she seems to be cordially interacting with him after the first alleged incident and planning to meet him in future. She again voluntarily and alone went to his room on



24.12.2024. In these circumstances, it can be inferred that she did not have any complain against the applicant in respect of the first alleged incident of October 2024.

8. In respect of the second alleged incident of 24.12.2024, from their whatsapp chat post said date, it can be inferred that she tacitly gave consent to have sexual intercourse with him. The applicant in his message asked her that if she was not interested she could have told him. In response, she conceded that he asked her but as the things happened very fast, she could not perceive the things in proper manner. Further, as per the CCTV footage of Uddipi restaurant, both the applicant and the prosecutrix together went for dinner to the said restaurant after the incident and in the said footage, they do not appear to be in any confrontation or dispute. In these circumstances, the defence raised by the accused cannot be held to be improbable and possibility of false implication of the accused cannot be ruled out. The veracity of allegations made by the prosecutrix and the defence of the applicant can only be determined after the conclusion of trial. The apprehension of the prosecution that the applicant, if released on bail, may influence the prosecutrix can be addressed by invoking appropriate stringent conditions in that regard.”

16. In the opinion of this Court, the said observations were not warranted and in the strict sense ought not to have been a ground for admitting Respondent No. 2 on bail. The observations are in the nature of imputing doubts on the character of the victim. The probabilities of the allegations cannot be commented in this manner as done by the learned ASJ while considering the application for bail. The allegations could not have been trivialised for the reason that victim after the first alleged incident again met the accused or went to the Respondent No. 2's room alone.

17. Concededly, no person has right to sexually assault the victim for the reason that she voluntarily came to his room.

18. It is relevant to note that the observations had been made by the learned ASJ at the initial stages while the investigation was still underway. At that stage, the learned Court fell in error in giving findings in regard to complaint of the victim,



essentially for the reason of the victim's acquittance with the accused.

19. The trauma of the victim, in the opinion of this Court, ought not to have been trivialised by such observations. Only because the victim had known the accused or that she was in cordial relations with him, will not make her responsible for the sexual assault.

20. The Hon'ble Apex Court in the case of **XYZ v. State of Madhya Pradesh and Anr. : (2021) 16 SCC 179** held that the judges while granting relief to an accused in matters relating to sexual assault should refrain from making any observations regarding the character of the prosecutrix. The relevant portion of the judgment is reproduced hereunder:

*"42. This Court therefore holds that the use of reasoning/language which diminishes the offence and tends to trivialize the survivor, is especially to be avoided under all circumstances. Thus, the following conduct, actions or situations are hereby deemed irrelevant, e.g. - to say that the survivor had in the past consented to such or similar acts or that she behaved promiscuously, or by her acts or clothing, provoked the alleged action of the accused, that she behaved in a manner unbecoming of chaste or "Indian" women, or that she had called upon the situation by her behavior, etc. **These instances are only illustrations of an attitude which should never enter indicial verdicts or orders or be considered relevant while making a judicial decision; they cannot be reasons for granting bail or other such relief.** Similarly, imposing conditions that implicitly tend to condone or diminish the harm caused by the accused and have the effect of potentially exposing the survivor to secondary trauma, such as mandating mediation processes in non-compoundable offences, mandating as part of bail" conditions, community service (in a manner of speaking with the so-called reformatory approach towards the perpetrator of sexual offence) or requiring tendering of apology once or repeatedly, or in any manner getting or being in touch with the survivor, is especially forbidden. The law does not permit or countenance such conduct, where the survivor can potentially be traumatized many times over or be led into some kind of non-voluntary acceptance, or be compelled by the circumstances to accept and condone behavior what is a serious offence."*



(emphasis supplied)



21. Therefore, in the opinion of this Court, the veracity of such observations made against the petitioner are to be seen during the course of trial and ought not to have been made at the time of admitting Respondent No. 2 on bail.

22. Therefore, in light of the observations made by the Hon'ble Apex Court in **XYZ v. State of Madhya Pradesh and Anr. (supra)** the learned ASJ ought to have refrained from making the said observations against the petitioner.

23. It is pointed out that the accused pursuant to his release on bail, has not misused the liberty.

24. As noted above, the petitioner has not prayed that the order granting bail be set aside, but is challenging the impugned order to the extent that the observations may be deleted.

25. In light of the aforesaid discussion, the impugned order is modified to the extent that the observation made in paras 7 and 8 are set aside.

26. The present petition is disposed of with the aforesaid observations. Pending Application(s), if any, also stand disposed of.

AMIT MAHAJAN, J

SEPTEMBER 15, 2025

"SK"