

(2010) 06 DEL CK 0065

Delhi High Court

Case No: Bail Application No. 1082 of 2010

Dushyant Varma

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision: June 22, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 164
- Penal Code, 1860 (IPC) - Section 376

Hon'ble Judges: S.N. Dhingra, J**Bench:** Single Bench**Advocate:** R.N. Mittal and Manoj Kumar, for the Appellant; Navin Sharma, APP for State, Trideep Pais and Seema Misra, for the Respondent**Final Decision:** Dismissed

Judgement

@JUDGMENTTAG-ORDER

Shiv Narayan Dhingra, J.

The applicant is involved in a case u/s 376 of IPC. This is second bail application of the applicant made before High Court. The first bail application, after lengthy arguments, was withdrawn. The additional grounds taken by the applicant are that the call records of the prosecutrix, SMS messages and the carbon copy of MLC of prosecutrix show that the prosecutrix was a consenting party and there was fabrication of evidence.

2. It is submitted by counsel for the applicant that after the alleged incident of rape, the prosecutrix had travelled in the car of the accused for about 10 kilometers and she got down near Bhikaji Gama Place. She did not lodge FIR on the same day. There was delay in lodging of FIR of two days. Though the prosecutrix had visited Max hospital on the same night but the injuries described by her in her complaint to the police as well as to the Doctor of AIIMS at the time of her examination at AIIMS do not find mention in the prescription of Max hospital. It is also submitted that

accused and prosecutrix had been exchanging SMSs reflecting their long relationship.

3. In order to consider this application, it would be necessary to look into some of the documents, SMS messages and conduct of the parties and statement of witnesses.

4. SMS messages exchanged between the two from April 13, 2009 onwards are available on record. The message by prosecutrix to the accused on 13th April, 2009 gives the impression that while the accused wanted to have more intimacy (may be sex) with the prosecutrix, the prosecutrix refused the same and told him that she was not emotionally prepared to take this leap. She stated that he was an interesting guy and "dates" all that she could say. The messages do show that the accused and prosecutrix were friends and seemed to be meeting each other till the incident. After the incident the accused sent desperate messages to the prosecutrix asking her to at least talk to him but she refused to talk to him and did not respond to his messages.

5. A message of 17th April, 2009 sent by the accused shows the intentions of accused. The message reads: "come with me ... If you wana live:*". Similarly a message dated 14th April, 2009 reads as under:

Hey ... Hews it going ...=) Read your message ... I think we should just take it your way ... slow and casual ... But I wana assure you ... I'd be the greatest friends you'd ever have ...

And another message sent by the accused to the prosecutrix reads as under:

It was a joy ...:) can't wait to see you again ... I know my pace and yours are light years apart ... But remember its always the differences that attract =)

The statement of the servant of accused recorded by the M.M. u/s 164 Cr. P.C., would show that the accused was in the habit of entrapping girls for sexually exploiting them. The prosecutrix seemed to be friendly with the accused without knowing intentions of the accused. On 18th April, 2009, the prosecutrix, in order to have lunch with him, went to his house and there she was raped. Interestingly, on the same day the father of accused had left the residence of accused. He had come to visit the accused and was seen off by the accused in the noon. The statement of prosecutrix, SMSs coupled with statement of servants of the accused does not reflect consent of prosecutrix, as claimed. Her travelling in the car of accused after the incident reflects move of her compulsion than consent.

6. The other plea taken by the accused about tempering with the MLC, does not hold ground at this stage. Definitely, it looks if some addition in the original copy of the MLC was made but only the concerned Doctor can explain whether this addition was made by him or by someone else and the Doctor is yet to be examined. Similarly, not disclosing that she was raped, to Doctor at Max hospital, reflects her stage of

shock & trauma.

7. In this case, two servants of the accused are cited as witnesses. Their statements u/s 164 Cr. PC have been recorded. The accused has been living in Delhi alone and has been leading a luxurious life because his father was earning enough to meet his extravagances and he enjoyed life in his own manner. There is every possibility of the accused trying to win over or threaten the witnesses.

8. No doubt, there is delay of two days in lodging the FIR, but, the circumstances in which the prosecutrix was placed seemed to have a stunning effect on her. She had gone to Max hospital on the same evening. If it had been a case of consensual act, she would not have been under trauma and it would not have necessitated that she had to visit a Doctor. Not lodging of FIR on the same evening does not show that this case was a false case or she was a consenting party.

9. I, consider that it is not a fit case for grant of bail. The application is dismissed.